



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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TO: Paul Blackburn, Attorney at Law (paul@blackburn.net)
Howard Roston, Attorney at Law (HRoston@fredlaw.com)
Benjamin Wilcox, Attorney at Law (bwilcox2@embarqmail.com)

FROM: Timothy J. O'Malley, Assistant Chief Administrative Law Judge
Municipal Boundary Adjustment Unit

DATE: March 14, 2013

RE: A-7829 Ortonville/Ortonville Township
(Ordinance No. 12-07; Hedge Property; 118.26 acres)
A-7830 Ortonville/Ortonville Township
(Ordinance No. 12-08; Mclelland-Knippen Property; 111.28 acres)
A-7831 Ortonville/Ortonville Township
(Ordinance No. 12-09; Ziegler Property; 102.71 acres)
A-7832 Ortonville/Ortonville Township
(Ordinance No. 12-10; Crookston Property; 3.98 acres)
A-7833 Ortonville/Ortonville Township
(Ordinance No. 12-11; Crookston Property; 63.52 acres)
A-7834 Ortonville/Ortonville Township
(Ordinance No. 12-12; Crookston Property; 48.61 acres)

Two issues, scope of review and determination of property ownership, have arisen in the six matters comprising the City of Ortonville's (City) filings for annexation by ordinance under Minn. Stat. § 414.033, Subd. 2(3). The factual background includes the ordinances passed by the City, the objection by Ortonville Township (Township), and the requested additional information received from the City and Petitioners.

CONTROLLING STATUTES

The Office of Administrative Hearings (OAH) is an agency in the executive branch. As such, the OAH's authority - and in turn the authority of its judges - is statutorily based. The scope of action to be taken in annexation proceedings is set out in Minnesota Statutes Chapter 414.

Minn. Stat. § 414.011, subd. 5, defines "property owner":

"Property owner" means the fee owner of land, or the beneficial owner of land whose interest is primarily one of possession and enjoyment. The term includes, but is not limited to, vendees under a contract for deed, and mortgagors. Any reference to a percentage of property owners shall mean in number.

Minn. Stat. § 414.033 provides for annexation by ordinance, which allows a municipality to declare land annexed to the municipality under certain limited circumstances. As relevant to this matter, the limiting circumstances are set out in Subdivision 2(3) which states in part:

(3) the land abuts the municipality and the area to be annexed is 120 acres or less, ... and the municipality receives a petition for annexation from all the property owners of the land. Except as provided for by an orderly annexation agreement, this clause may not be used to annex any property contiguous to any property previously annexed under this clause within the preceding 12 months if the property is owned by the same owners and annexation would cumulatively exceed 120 acres; ...

Minn. Stat. § 414.033, subd. 2, permits a municipality to adopt an ordinance annexing land and "any such land is deemed to be urban or suburban in character or about to become so if: ... (3) the land abuts the municipality and the area to be annexed is 120 acres or less ..."

The City and Petitioners maintain that all of the statutory standards have been met; therefore, approval of the ordinances is appropriate. The Township maintains that the land is not "urban or suburban in character or likely to become so" and that beneficial ownership of the properties renders the area to be annexed greater than 120 acres; therefore, approval of the ordinances is not appropriate.

FACTUAL BACKGROUND

Fee Ownership and Location

The requests for annexation consist of six petitions filed with the City for annexation by ordinance. The petitioners are the long-time fee owners (original owners) and three recent owners of portions of the total area to be annexed (Subject Area). The total acreage of the Subject Area is approximately 448 acres. The recent owners received quitclaim deeds from the original owners on September 27, 2012. Each deed describes the transfer as a gift. Each quitclaim deed expressly limits the use of the property to agricultural uses and expressly subordinates the recent owners' interests to a mining lease and option (described below). Each deed reserves to the original owners all rights to receive the proceeds of the mining lease and option. While the entirety of the Subject Area is approximately 448 acres in area, none of the individual parcels exceed 120 acres. The sole petitioner with multiple parcels does not possess more than 120 acres in the aggregate.

The terms of each quitclaim deed are identical except for the grantee and the description of the deeded property (referred to as "Subject Property"). Each deed identifies Gayle E. Hedge and

Colleen M. Hedge as the “Grantor.” Each deed contains quitclaim grant language to the individual grantee or grantees accompanied by the following language:

... reserving and excepting for the benefit of Gayle E. Hedge and Colleen M. Hedge, as joint tenants, the right to receive any and all payments due to Grantor under that certain Aggregate Mining & Lease and Agreement (“Lease”) between Grantor, as landowner, and Glacier Resources, Ltd. (“Glacier”), as Lessee, dated April 26, 2006 and that certain Option Agreement dated April 26, 2006 (as amended by Agreements to Extend the Term of Option Agreement dated March 21, 2011 and March 21, 2012) (“Option”), as evidenced by that certain Memorandum of Lease (“Memorandum of Lease”) recorded as Document No. 160958 with the Big Stone County Recorder’s office, which Lease and Option covers the Subject Property as well as other parcels of real property.

Grantor and Grantee acknowledge that the Subject Property is subject to (i) the superior rights and interests of Glacier (and its affiliate Strata Corporation) under the Lease and Option, (ii) the rights and interests of Clark Mastel under an existing agricultural lease between Grantor, as Landowner, and Clark Mastel, as Lessee, which expires on May 31, 2013, and (iii) a restriction herein being declared by the Grantor that the Subject Property be used only for agricultural purposes except for the uses by the Lessee Glacier (and its affiliate Strata Corporation) under the Lease.

Abutting Requirement

Each of the subject properties abuts the City of Ortonville.

Option and Lease

The option described in the quitclaim deeds was executed on April 26, 2006, by the Hedges and Glacier Resources, Ltd. The option allows Glacier to convert the agreement into a lease (described below) at any time during the option period, at the sole discretion of Glacier. The option is expressly binding on the parties’ heirs and assigns. The Hedges are required to provide proof of marketable title to Glacier. Throughout the period of the option, Glacier is granted the right of access to the Subject Area for the purpose of exploration and investigation of mineral deposits and suitability of the Subject Area for conducting mining, processing, and shipping of aggregate. Under the terms of the option, notice by Glacier commences the lease agreement. The option has been extended twice and currently expires on March 21, 2015.

The lease governs the entire Subject Area. By its terms, the lease agreement was “made and entered into” on April 26, 2006, when the lease was executed by the Hedges (as the landowner of the entire Subject Area) and Glacier. The commencement date of the lease is defined as “the date of execution of this Aggregate Mining & Lease Agreement.” The lease includes a purchase agreement for the aggregate extracted from the Subject Area, and sets out the amounts in royalty payments that will be paid to the Hedges for aggregate removed. As set out in Article 4, the term of the lease “shall begin on the date of this Aggregate Mining & Lease Agreement (the

“Commencement Date”) and will continue uninterrupted until all commercially mineable Aggregate located upon the Property has been depleted, as determined at the sole discretion of GLACIER, or until December 31, 2060 (the “Expiration Date”), whichever is earlier, or until terminated as provided for in this Aggregate Mining & Lease Agreement.” Glacier also has the option of extending the lease agreement indefinitely past 2060, so long as commercially mineable aggregate remains.

In addition to mineral extraction rights, the lease affords to Glacier use of the entire surface of the Subject Area, limited only by rights of the landowner to engage in agricultural uses in those areas not utilized by Glacier. Article 3 of the lease authorizes extensive mineral extraction, processing, and transportation activities on the surface of the Subject Area. These activities include bringing recycled asphalt and concrete materials onto the property for blending with mined aggregate.

Article 11 of the lease authorizes Strata Corporation to act as the “operating entity” in the exploration, mining, removal and transportation of aggregate material. Strata Corporation is expressly authorized under the lease to conduct operations on the property.

ANALYSIS

Land Deemed to be Urban or Suburban in Character

The Township has asserted that the underlying nature of the transactions demonstrates that the Subject Area will be used in a manner inconsistent with urban or suburban uses. The Township urges that the OAH deny approval of the ordinances for not meeting this statutory standard. The Petitioners and the City assert that the statutory authority of the OAH in annexations by ordinance does not extend to making that determination.

Minn. Stat. § 414.033, subd. 2, permits a municipality to adopt an ordinance annexing land and “any such land is deemed to be urban or suburban in character or about to become so if: ... (3) the land abuts the municipality and the area to be annexed is 120 acres or less ...”

Minn. Stat. § 414.033 does not authorize the OAH to conduct an inquiry into the urban or suburban nature of the Subject Area. So long as the Subject Area meets the jurisdictional limitations of the statute, the question of “urban or suburban in character” is resolved by the fact of the municipality’s adoption of the annexing ordinance. *See Gilbert v. Minn. State Office of Strategic and Long-Range Planning*, CX-01-1221 (Minn. App. 2002). The Legislature has determined that for small parcels of land, suitability of annexation is best determined by the municipality, not by the OAH.

Beneficial Ownership

Status of Lease

As an initial matter, the City denies that the lease is in effect. The petitioners also contend that only an unexercised option is in effect and that the Township has engaged in “speculation” as to the status of the lease. It may be argued that these assertions are contradicted by: 1) the terms of the lease; and 2) a number of actions taken in furtherance of the use of the Subject Area (held in

fee by the original owners and recent owners) as an aggregate quarry. For example, the Environmental Assessment Worksheet (EAW) prepared by the Big Stone County Environmental Officer for a project entitled Strata Corporation's Proposed Big Stone Quarry (Proposed Quarry) includes the following:

The proposed granite quarry consists of a 95.55 acre quarry on a 478 acre rural site located southeast of Ortonville, MN within Big Stone County (Figure 1). The quarry development is located approximately 1,500 feet from the southern most edge of the Ortonville City limits. **The quarry site is on private land perpetually leased by Strata Corporation from Gayle & Colleen Hedge, local residents and business owners.** ... (Emphasis added.)

In addition to the EAW, Strata Corporation applied for and obtained a Conditional Use Permit (CUP) in furtherance of the Proposed Quarry project. The CUP permit title is "Application of **Strata Corporation**, dated December 22, 2012, **lessee of Gayle E. Hedge and Colleen M. Hedge, property owners** in the County of Big Stone, State of Minnesota for a conditional use permit to establish a granite quarry on the following described property." (Emphasis added.) The property described is the entirety of the properties that are the subject of the annexations. The application date appears to be a typographical error, as the CUP was granted on May 15, 2012, and recorded with the Big Stone County Recorder on the same date.

Strata Corporation is in privity with Glacier, as recognized in both the terms of the lease agreement and in the language in all of the quitclaim deeds. Strata Corporation has asserted that it is a lessee of the entirety of the Subject Area in proceedings to obtain required government approval for its intended operation of an aggregate quarry. Strata is expressly authorized to take these actions under the lease agreement between the Hedges and Glacier. Only Glacier is authorized to take these actions under the Option Agreement. Approval has been obtained in the form of a CUP issued by Big Stone County. The original owners were aware of Strata Corporation's CUP application and have acquiesced in that action. One of the two original owners, Gayle Hedge, has denied that Glacier Corporation has exercised its right under the Option Agreement.

The information presented regarding the lease strongly suggests that a leasehold interest currently exists running from the original owners to Glacier. But any dispute over this information would best be resolved at a hearing, where evidence could be assessed in light of testimony, and the credibility of that testimony determined. As noted above, the OAH has no authority to conduct a hearing into issues arising from disputes over annexations by ordinance. *See Gilbert v. Minn. State Office of Strategic and Long-Range Planning*, CX-01-1221 (Minn. App. 2002). The Administrative Law Judge reaches no conclusion as to whether a beneficial ownership interest exists in favor of Glacier within the meaning of Minn. Stat. § 414.011, subd. 5.

Effect of the Option Agreement

Unlike the lease, there is no dispute that the Option Agreement is in effect. In the Option Agreement the Hedges have retained ownership in the mineral rights that exist in the Subject Area. The interest passed by the original owners to the new owners reserves both the right of the

“Grantor, as landowner, and Glacier Resources, Ltd. (“Glacier”), as Lessee ...” For this reservation to be effective in the absence of a commenced lease, the original landowners must retain the ownership of that which is being leased and that continued ownership interest must exist beyond the date of the quitclaim deeds. As stated in the Option Agreement:

WHEREAS, LANDOWNER warrants being the rightful owner of Real Property and the underlying Aggregate (Sand, Gravel, Stone, Bedrock, Granite, etc.) **Mineral Rights and Aggregate Reserves**, consisting of approximately 478 acres situated in Ortonville Township, Big Stone County, Minnesota, legally described and depicted in Exhibit A attached hereto and incorporated herein (hereinafter referred to as “Property”); ... (Emphasis added.)

Thus, the original landowners, by entering into the Option Agreement, which is by its terms binding on the original landowner’s heirs and assigns, separated the rights to the underlying aggregate (hereinafter “mineral rights”) from the other rights to the entirety of the Subject Area.

The practice of separating mineral rights of all sorts from the other rights in real property is long standing and expressly recognized in Minnesota. In *Washburn v. Gregory Company*, 147 N.W. 706, 708 (Minn. 1914), the Minnesota Supreme Court described this practice as follows:

It is well settled in this state, as elsewhere, that the owner of land may segregate the mineral estate from the rest of the land, and convey either interest without the other. It is also clear that the reservation in this case was valid. *Carlson v. Minnesota Land & Colonization Co.* 113 Minn. 361, 129 N.W. 768; *Buck v. Walker*, 115 Minn. 239, 132 N.W. 205, Ann. Cas. 1912D, 882. As stated by Chief Justice Start in the *Buck* case: "Contracts excepting ores and minerals from grants of land with a reservation of the right to enter upon the portion thereof granted are in accordance with long-established usage and have been invariably held by the courts to be valid." As stated by Mr. Justice Lewis in the *Carlson* case: "The owner may convey any part of real estate. He may convey some particular deposit or stratum and retain the surface, or he may convey a part or all of the mineral strata or deposits and retain the surface. Such strata or deposits are land." There is no dissent from the proposition that such an interest so created or reserved is land, whatever may be the case under leases or other contracts under which the right to mine is granted for a fixed term. "The minerals and surface interests may, by separate conveyances, become separate pieces of real estate, and held by different persons, and each estate may be separately seized and sold by execution, and each may be defeated by the statute of limitations as any other real estate. (See *Kincaid v. McGowan*, 88 Ky. 91, [4 S.W. 802, 13 L.R.A. (N.S.) 289] where the matter is fully discussed.) The mineral estate, when severed by conveyance, being separate real estate, may be taxed as other real estate." *Stuart v. Commonwealth*, 94 Ky. 595, 23 S.W. 367. That mines may form a distinct possession and a different inheritance from the surface lands was the settled law in England and in this country long before the enactment of any statute on the subject. *Caldwell v. Copeland*, 37 Pa. St. 427, 78 Am. Dec. 436. It would seem to follow logically that the mineral estate, being land, is taxable separately from the

surface, when the owners are different, just as when the owner of a tract of land conveys a part of it to another the parcel of each is taxable separately. And that this is the law, even in the absence of statute, there can be no doubt. 37 Cyc. 775, and cases cited in note 64; note to *Wolfe County v. Beckett*, 17 L.R.A. (N.S.) 688.

The express terms of the Option Agreement bind the original owners to enter into a lease for the extraction of specified minerals throughout the entire Subject Area. The language in the quitclaim deeds issued to the new owners recognizes those rights. The only manner in which the original owners could comply with their obligation to make the lease effective (assuming that it is not already effective) is through the original owners retaining both the mineral rights and extensive surface rights of use and access as described in both the option and the lease agreement. This retention of rights by the original owners meets the definition of property owner under Minn. Stat. § 414.011, subd. 5.

While the argument could be made that the mineral estate alone does not meet the statutory definition relating to possession and enjoyment, the extent of activities afforded to the lessee under the lease indicates that the retention of rights extends through the use and enjoyment of the surface for the stated purposes of both the option and lease agreement. To conclude otherwise would allow the original owners to transfer only beneficial use of a mineral estate to Glacier/Strata by way of a lease without sufficient access to extract those minerals. This would be an absurd result, and contrary to the language contained in both the option and the lease agreement. The potential for the option to expire creates a contingent remainder in those rights of possession and enjoyment encumbered by the lease agreement and option, but that is not a present right.

The original owners (and signatories to both the option and the lease) have transferred their fee interest in a large portion of the Subject Area by deed to other individuals. This raises a question, under the structure of these transactions, as to whether the privity of estate required to bring a lease into existence remains after the original owners have transferred their fee interest by way of quitclaim deeds. But considering all the transactions in total regarding the Subject Area, including the option, lease, and quitclaim deeds, it appears that the parties to those transactions intended for the Hedges to retain sufficient ownership interest in the Subject Area to make the lease effective upon exercise of the option. Thus, the Hedges remain beneficial owners of all the parcels through at least the term of the Option Agreement.

Compliance with Minn. Stat. § 414.033

As discussed above, the municipality must receive “a petition for annexation from all the property owners of the land.” Minn. Stat. § 414.033, subd. 2(3). The City and Petitioners have cited *Blee v. City of Rochester et al.*, 109 N.W.2d 44 (Minn. 1961), in support of the proposition that the owner of the interest that is primarily one of possession and enjoyment is the required petitioner in an annexation proceeding. In *Blee*, the purchaser by contract for deed was found to be the owner under the statute, with a superior interest to the fee owners of the property. In 1978, the Minnesota Legislature reinforced that possession and use were to be the touchstones of the statutory requirement by deleting “in contemplation of ultimate ownership” from the beneficial owner portion of the definition of property owner in Minn. Stat. § 414.011, subd. 5. Contractual

arrangements can afford possession and use of property over and above that of a fee owner and result in recognition of beneficial property ownership without fee ownership. *See Federated Retail Holdings, Inc. v. County of Ramsey*, A11-2093 (Minn. September 19, 2012) (leasehold interest can run with the land where there is: (1) privity of estate; (2) a covenant that touches and concerns the land; and (3) the ability and fact of assignment).

With the Option Agreement in effect, the Hedges remain beneficial owners whose primary interest is possession and enjoyment through the terms of the Option Agreement. The Hedges are named as petitioners only in Docket No. A-7829, and are also the fee owners of the property in that docket. Therefore, Ordinance No. 12-07 (Docket No. A-7829) must be approved. The Hedges are not named on any of the other five petitions. As the Hedges are beneficial owners of the other five parcels, each of those five ordinances must be denied as lacking jurisdiction as “all of the property owners” are not named in the petition for annexation by ordinance. *See Gilbert v. Minn. State Office of Strategic and Long-Range Planning*, CX-01-1221 (Minn. App. 2002). .

CONCLUSION

The urban or suburban character of the Subject Area is outside the jurisdiction of the OAH in proceedings under annexation by ordinance. The OAH must determine that the jurisdictional requirements for an annexation by ordinance are met before an ordinance is approved. The OAH cannot conduct a hearing regarding disputes over the propriety of an annexation by ordinance. Where the presented facts show that there is a jurisdictional defect, the ordinance must be denied.

Docket No. A-7829 has been approved as there are no procedural defects present.

Dockets Nos. A-7830, A-7831, A-7832, A-7833, and A-7834 have been denied as the City did not receive petitions for annexation from all of the property owners as required by Minn. Stat. § 414.033, subd. 2(3).

TJO:sjh



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February 14, 2013

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Re: A-7829 Ortonville/Ortonville Township
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Counselors:

On December 14, 2012, the City of Ortonville, Big Stone County, filed with the Office of Administrative Hearings (OAH) six petitions for annexation pursuant to Minn. Stat. § 414.033, Subd. 2(3).

A-7829-A-7834 Ortonville
February 14, 2013
Page Two

On December 28, 2012, Mr. Paul Blackburn, Attorney for Ortonville Township, filed an objection to the six petitions.

On January 16, 2013, Assistant Chief Administrative Law Judge Timothy O'Malley requested additional information from the City of Ortonville and the petitioning property owners.

On February 11, 2013, the City, through Attorney Benjamin R. Wilcox, provided the requested additional information.

On February 12, 2013, the Petitioners, through Attorney Howard Roston, provided the requested additional information.

On February 13, 2013, Mr. Blackburn requested leave to supplement the Township's objection to the petitions for annexation.

On February 14, 2013, both Mr. Wilcox and Mr. Roston objected to Mr. Blackburn's request.

In this matter, the Administrative Law Judge must determine whether the proposed annexations by ordinance are authorized under Minn. Stat. § 414.033, Subd. 2(3). The Administrative Law Judge has received sufficient information to make that determination. Therefore, Mr. Blackburn's request for leave to submit additional information is denied.

Sincerely,



Timothy J. O'Malley
Assistant Chief Administrative Law Judge
Municipal Boundary Adjustment Unit

TJO:sjh

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February 14, 2013

The Honorable Timothy J. O'Malley
Assistant Chief Administrative Law Judge
Office of Administrative Hearings
Municipal Boundary Adjustment Unit
P.O. Box 64620
St. Paul, MN 55164-0620

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Dear Judge O'Malley:

I represent the City of Ortonville in this matter, and am writing this letter in response to attorney Paul Blackburn's request for leave to supplement Ortonville Township's objection to the above captioned petitions for annexation.

The City of Ortonville objects to Mr. Blackburn's request. As detailed in attorney Howard Roston's letter of February 14, 2013, the Township is not authorized by Minn. Stat §414.033, subd. 10. The statute only permits additional information from the city and the property owners, if such information is requested by the MBAU. There is no statutory language that authorizes a reply from the Township to the information provided by the City and the petitioners. The City of Ortonville agrees with Mr. Roston's position and objects to Mr. Blackburn's request.

Sincerely,

WILCOX LAW OFFICE, P. A.



Benjamin R. Wilcox

BRW:kw

cc: Paul Blackburn, Esq.
Howard Roston, Esq.

February 14, 2013

VIA EMAIL AND U.S. MAIL

The Honorable Timothy J. O'Malley
Assistant Chief Administrative Law Judge
Municipal Boundary Adjustment Unit
Minnesota Office of Administrative Hearings
600 North Robert Street
Saint Paul, MN 55101

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Dear Judge O'Malley:

I represent the Petitioners in this matter and write to respond to attorney Paul Blackburn's February 13, 2013 letter requesting an opportunity to "supplement" the materials he submitted to the Municipal Boundary Adjustment Unit ("MBAU") on behalf of Ortonville Township on December 20, 2012. As stated by Mr. Blackburn's letter, the Township seeks to "supplement" its materials so he may reply to the information your Honor required the Petitioners and the City of Ortonville to furnish to you pursuant to Minn. Stat. § 414.033, subd. 10, which states:

The chief administrative law judge may require *the city or property owners* furnish additional information concerning an annexation by ordinance to inform the chief administrative law judge about the extent to which the proposed annexation conforms to the statutory

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The Honorable Timothy J. O'Malley
February 14, 2013
Page 2

criteria set forth in sections 414.01, subdivision 1, and 414.031, subdivision 4.

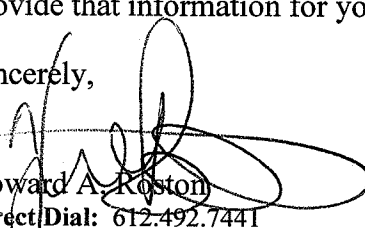
Minn. Stat. § 414.033, subd. 10 (emphasis added).

Petitioners object to the Township's request to submit a "reply" because it is not authorized under Minn. Stat. § 414.033, subd. 10, which only permits the MBAU to require the "*city or property owners*" to furnish additional information concerning an annexation by ordinance. *See* Minn. Stat. § 414.033, subd. 10. There is nothing in the statute that permits the Township or any other objector to submit additional information to the MBAU in its review of an annexation by ordinance, much less the materials the Township already submitted on December 20, 2012.

The reason why there is no such authority authorizing the "reply" that is being requested by Mr. Blackburn in an annexation by ordinance under Minn. Stat. § 414.033, subd. 2(3) is because this is not a contested case proceeding governed under the hearing procedures required for annexations that utilize Minn. Stat. § 414.031. *See Gilbert v. Minnesota State Office of Strategic and Long-Range Planning*, 2002 Minn. App. LEXIS 117 * 5 (Minn. Ct. App. Jan. 29, 2002) (holding that "[n]o statutory provision gives the board authority to consider the criteria set forth in section 414.01, subd. 1, and 414.031, subd. 4, in annexations by ordinance under Minn. Stat. § 414.033, subd. 2."). Allowing the Township to submit additional information to the MBAU would render the language in Minn. Stat. § 414.033, subd. 2 meaningless and, in effect, turn this proceeding into a contested case hearing that is not authorized for an annexation by ordinance governed by Minn. Stat. § 414.033, subd. 2.

Finally, there is no need for the Township to "supplement" its December 20th materials, which already consisted of a 19 page letter brief with 106 pages of exhibits. On January 16, 2013, your Honor required the City and Petitioners to supply the MBAU with certain information under its authority in Minn. Stat. § 414.033, subd. 10, and the City and Petitioners provided that information on February 11th and 12th. If your Honor requires any further information from the Petitioners pursuant to Minn. Stat. § 414.033, subd. 10, please let me know and we will promptly provide that information for your consideration. Thank you.

Sincerely,



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Email: hroston@fredlaw.com

HAR/ras:5325329

cc: Paul Blackburn, Esq.
Benjamin Wilcox, Esq.



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February 13, 2013

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(Ordinance No. 12-09; Ziegler Property; 102.71 acres)
A-7832 Ortonville/Ortonville Township
(Ordinance No. 12-10; Crookston Property; 3.98 acres)
A-7833 Ortonville/Ortonville Township
(Ordinance No. 12-11; Crookston Property; 63.52 acres)
A-7834 Ortonville/Ortonville Township
(Ordinance No. 12-12; Crookston Property; 48.61 acres)**

Dear Judge O'Malley:

Ortonville Township ("Township") respectfully requests leave to supplement its Objection to the above captioned petitions for annexation, and specifically requests one week, until February 20, in which to prepare and file its supplement.

On January 16, 2013, you required the City of Ortonville ("City") and the petitioning landowners ("Petitioners") to provide additional information related to two specific issues and also to provide the mining lease between Glacier Resources, Ltd. ("Glacier") and Gayle and Colleen Hedge ("Hedges"). On Monday, February 11, the City responded and provided a copy of the Option Agreement between Glacier and the Hedges and legal argument related to this document. Yesterday, the Petitioners responded and provided the Option Agreement and its attached Aggregate Mining & Lease Agreement, an Affidavit of Gayle Hedge containing additional factual information, and legal argument related to these documents.

Now that the City of Ortonville and the petitioning property owners have provided the information you required, the Township requests leave to supplement its objection, because the documents provided by

the Petitioners and City contain new relevant information to which the Township did not and could not have access at the time it submitted its Objection. Specifically, this information clarifies the nature of the private commercial relationships between Glacier, its corporate affiliate, Strata Corporation, and the Hedges, as well as the relationship of the Hedges to the other Petitioners. The facts in these documents are critical to disposition of this matter.

Thank you for your consideration.

Very truly yours,



Paul C. Blackburn

cc via email: Star Holman
Senior State Program Administrator
Office of Administrative Hearings
Municipal Boundary Adjustments Unit

Howard Roston, Esq.
Fredrikson & Byron, P.A.

Benjamin R. Wilcox
Wilcox Law Office, P.A.

February 12, 2013

VIA EMAIL & U.S. MAIL

The Honorable Timothy J. O'Malley
Assistant Chief Administrative Law Judge
Municipal Boundary Adjustment Unit
Minnesota Office of Administrative Hearings
600 North Robert Street
Saint Paul, MN 55101

Re: A-7829 Ortonville/Ortonville Township
(Ordinance No. 12-07; Hedge Property; 118.26 acres)
A-7830 Ortonville/Ortonville Township
(Ordinance No. 12-08; McLelland-Knippen Property; 111.28 acres)
A-7831 Ortonville/Ortonville Township
(Ordinance No. 12-09; Ziegler Property; 102.71 acres)
A-7832 Ortonville/Ortonville Township
(Ordinance No. 12-10; Crookston Property; 3.98 acres)
A-7833 Ortonville/Ortonville Township
(Ordinance No. 12-11; Crookston Property; 65.52 acres)
A-7834 Ortonville/Ortonville Township
(Ordinance No. 12-12; Crookston Property; 48.61 acres)

Dear Judge O'Malley:

I represent Gayle and Colleen Hedge (the "Hedges"), Allen Knippen and Kimberly McClelland-Knippen, June Ziegler and Geraldine Crookston, each of whom filed separate petitions for annexation by ordinance under Minn. Stat. § 414.033, subd. 2(3) with the City of Ortonville (collectively referred herein as "Petitioners"). Following the required statutory notices and public hearing, each of the ordinances were enacted in the order set forth above by the City of Ortonville (the "City") on November 19, 2012, and subsequently filed by the City with the Office of Administrative Hearings-Municipal Boundary Adjustment Unit ("MBAU") on December 14, 2012.

On behalf of the Petitioners, I am supplying the additional information requested in your January 16, 2013 letter for your use to determine if the objective criteria of Minn. Stat. §

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414.033, subd. 2(3) are satisfied with respect to the above-referenced annexations by ordinance. You requested this information in response to a letter ("Objection Letter") filed by Ortonville Township (the "Township") attorney Paul Blackburn, who has argued that the annexation ordinances should not be approved by MBAU because: 1) Strata Corporation ("Strata"), Glacier Resources, Ltd. ("Glacier"), and Gayle and Colleen Hedge are "beneficial owners" of all of the properties described in the above-referenced annexation ordinances (the "Petitioned Properties") and should have also signed the petitions as "property owners"; 2) the acreage of all the Petitioned Properties should be aggregated for purposes of determining compliance with Minn. Stat. § 414.033, subd. 2(3); and 3) the Petitioned Properties are not "urban or suburban in character or about to become so." As explained more fully below, these arguments raised by the Township are based on misstatements of fact, gross speculation and a misleading legal analysis that contradicts the terms of the Option Agreement, the plain language of the Minnesota annexation statutes, and case law interpreting annexations by ordinance under Minn. Stat. § 414.033, subd. 2(3).

First, the Township's argument that Strata, Glacier and the Hedges were required to sign all of the petitions as "beneficial owners" of the Subject Properties is disproven by the terms of the Option Agreement, which is submitted as **Exhibit 1** to the Affidavit of Gayle Hedge ("Hedge Affidavit"). There is no long term lease currently in existence, as the Township's attorney has represented to the MBAU, because Glacier has not exercised the option in the Option Agreement to make the Aggregate Mining & Lease Agreement legally effective. As a result, Glacier is not a lessee that may presently conduct mining and processing operations on the Petitioned Properties and, therefore, the Hedges have no rights to receive any royalty payments because the option has not been exercised and mining activities have not commenced. Minnesota law provides that a mere optionee holds no legal rights of ownership for any purposes. Glacier has not assigned any of its rights under the Option Agreement to Strata, so Strata is not even an optionee. Even if Glacier was a lessee, the Township has not cited any legal authority that a lessee can be considered to be a "beneficial owner." Moreover, the restrictions in the deeds relating to the Option Agreement are not effective until and when the option is ever exercised by Glacier. Last, the mere fact the Hedges have restricted the grantees' use to agricultural purposes does not make the Hedges a "beneficial owner." The Petitioners presently enjoy all legal rights of primary ownership and use of their respective properties.

Second, there is no legal support for the Township's "aggregation" argument that the Petitioned Properties described in each ordinance should be combined for purposes of Minn. Stat. § 414.033, subd. 2(3), and therefore, exceed the 120-acre limitation. The language of Minn. Stat. § 414.033, subd. 2(3) is unambiguous and the restrictions that are being argued for by the Township do not exist in this statute. If the legislature desired to impose the additional restrictions the Township has raised in its Objection Letter, the legislature would have done so. But neither a court nor the MBAU may read the additional restrictions argued for by the Township into the statute. In fact, the Minnesota Court of Appeals has rejected a similar

argument made by another township opposing an annexation by ordinance under this well-established canon of statutory interpretation.

Last, the Township's argument that the Petitioners and City must also show that the Petitioned Properties are "urban or suburban in character or about to become so" also ignores the clear and plain language of Minn. Stat. § 414.033, subd. 2, which expressly "deems" the properties "urban or suburban in character or about to become so" if the statutory criteria for annexation by ordinance are met. Here, the Petitioned Properties have been automatically "deem[ed]" "urban or suburban in character or about to become so" because the ordinances meet the objective criteria of Minn. Stat. § 414.033, subd. 2(3).

Because all of the above-referenced annexations by ordinance meet the objective criteria of Minn. Stat. § 414.033, subd. 2(3) and it is undisputed that the other procedural requirements for annexing property by ordinance were satisfied by the City, the MBAU must approve these annexations by ordinance.

STATEMENT OF FACTS

Mr. Blackburn set forth his "Statement of Fact" on pages 4-10 of the Objection Letter. Some of the statements set forth in his "Statement of Fact" are incorrect and many are irrelevant to the MBAU's scope of review, which is limited by Minnesota law to determining if the annexation ordinances approved by the City of Ortonville meet the objective criteria of Minn. Stat. § 414.033, subd. 2(3). Unless the MBAU requests the Petitioners to address any additional facts not addressed below, Petitioners will correct inaccurate statements made by the Township that are relevant to the legal issues raised in the Township's Objection Letter, produce the facts requested in your January 16th letter, and set forth any additional facts that are related to the question of whether the annexation ordinances meet the objective criteria of Minn. Stat. § 414.033, subd. 2(3).

The Petitioned Properties were once owned by the Big Stone Canning Company (the "Canning Company"). Hedge Affidavit ¶ 2. The Canning Company was the major employer in the Ortonville community for decades and used the property for commercial and industrial purposes, as well as agricultural purposes and employee housing. *Id.* ¶ 7. In addition to being used for industrial canning and commercial farming operations, the property previously owned by the Canning Company has been used continuously for mining¹ purposes dating back to the

¹ Without citing any authority, the Township contends on page 3 of its Objection Letter that mining in Minnesota "is not typically an urban or suburban land use, but is far more often a rural land use." This is not a true statement. A review of MnDOT's Geology Unit's interactive map and database of all aggregate sources in Minnesota (*see* <http://www.dot.state.mn.us/materials/asismap.html>) shows that there are one or more active quarries and/or sand and gravel pits in many cities throughout Minnesota, including but not

late 1800's. *Id.* ¶ 8. There are a total of four granite quarries and two gravel pits located on this property. *Id.*

In 1985, the Hedges purchased the Canning Company's Ortonville land holdings and all of the manufacturing facilities, and buildings that were located on those lands. *Id.* ¶ 2. This land purchase by the Hedges involved a total of approximately 1,175 acres located on the east and west sides of the Whetstone Diversion Channel (Minnesota River), and within the boundaries of both the City and Township. *Id.*

Of the approximate 1,175 total acres the Hedges purchased in 1985, approximately 478 acres were located on the east side of the Whetstone Diversion Channel. *Id.* ¶ 3. Those 478 acres are within both the limits of City and the Township. *Id.* Approximately 25 of those acres are located within the City near the City's southern municipal boundary, and the remaining acres are located in the Township and abut the City's southern municipal boundary. *Id.* The annexation ordinances noted above include approximately 448 acres of this property located in the Township (the "Petitioned Properties"). *Id.*

The 25 acres located in the City, along with other nearby and abutting properties already within the City, are zoned I-2 (General Industry). *Id.* The Petitioned Properties within the Township are zoned by the County as mostly A1 and A2 (Agricultural) with a small portion zoned as O-S (Open Space). *Id.* Two of the four quarries and one of the gravel pits that exist on the 1,175 total acres the Hedges purchased in 1985 are located on the Petitioned Properties. Hedge Affidavit, ¶ 8. In addition, the Petitioned Properties abut an active quarry mine operated by Cold Spring Granite Company and a railway operated by BNSF Railroad, which abuts another active quarry mine operated by LG Everist. *Id.* ¶ 9. If the Petitioned Properties are annexed, they will be automatically zoned I-2 (General Industry) by operation of the City's Municipal Code. *Id.* ¶ 3

On April 26, 2006, the Hedges entered into an Option Agreement and Aggregate Mining & Lease Agreement with Glacier Resources, Ltd. ("Glacier"), an aggregate resource holding company based in North Dakota. *See* Hedge Affidavit, **Exhibit 1**. The Option Agreement addressed the 478 acres of the Hedges' property located on the east side of the Whetstone Diversion Channel within both the limits of the City and Township. *Id.* ¶ 3. Contrary to the Township's speculation, the Petitioned Properties are not presently subject to a "perpetual lease" to Glacier. ***In fact, there is no lease presently existing because Glacier has not***

limited to the following cities: Shakopee, Prior Lake, Savage, Apple Valley, Rosemount, Hastings, Afton, Chaska, Chanhassen, Hopkins, Eden Prairies, Maple Grove, Osseo, Granite Falls, Saint Cloud, Waite Park and Elk River.

exercised the option in the Option Agreement to convert the Option Agreement to an Aggregate Mining & Lease Agreement. Id. ¶ 5.

Specifically, the Option Agreement provides Glacier with an option to “purchase the aggregate mineral rights and to mine, extract and remove (ship via rail or truck) all of the aggregate reserves located on such Property” *Id.*, **Exhibit 1**, Option Agreement, at p. 1. When and if Glacier elects to exercise the option, the Option Agreement converts to an Aggregate Mining & Lease Agreement as explained in Sections 4 and 5 of the Option Agreement:

4. Conversion from Option Agreement to an Aggregate Mining & Lease Agreement. At any time during the term of this Option Agreement and prior to its Expiration Date, GLACIER at its sole and absolute discretion shall enjoy the option to enter into the attached Aggregate Mining & Lease Agreement by providing LANDOWNER with written notice of such intent, and such Aggregate Mining & Lease Agreement shall then commence within five (5) days of such notice. Should GLACIER take such actions to exercise such Aggregate Mining & Lease Agreement, this Option Agreement and any future Option Payments which may remain unpaid, shall then be terminated in its entirety.

5. Right to Terminate Option Agreement. Should GLACIER, at its sole discretion, and at any time during the term of this Option Agreement, determine that the execution of an Aggregate Mining & Lease Agreement would not be in its best interests, shall have the right and option to terminate this Option Agreement in its entirety and to not enter into the attached Aggregate Mining & Lease Agreement by providing LANDOWNER with written notice of such intent, and with such actions, GLACIER shall have no further obligations or liabilities to LANDOWNER, and LANDOWNER shall have no further obligations or liabilities to GLACIER.

Hedge Affidavit, **Exhibit 1**, Option Agreement, at §§ 4 and 5, at p. 2.

If the option is ever exercised by Glacier, the Aggregate Mining & Lease Agreement then commences for an initial term that lasts “until all commercially mineable Aggregate located on the Property has been depleted, as determined at the sole discretion of GLACIER, or until December 31, 2060 (the “Expiration Date), whichever is earlier, or until terminated as provided for in this Aggregate Mining & Lease Agreement.” *Id.*, **Exhibit 1**, Aggregate Mining

& Lease Agreement, Article 4.1, p. 4. The initial term of the lease may also be extended by Glacier in ten year terms. *Id.* at Article 4.2. Pursuant to the Aggregate Mining & Lease Agreement, the Hedges would grant to Glacier the right to use the Property, remove aggregate, and conduct mining operations. *Id.* at Article 3.1. The Aggregate Mining & Lease Agreement further provides that Glacier will pay the Hedges royalty payments based upon the quantity of aggregate removed. *Id.* at Article 5.1. However, Glacier has not yet exercised the option in the Option Agreement to make the Aggregate Mining & Lease Agreement effective and may never do so. Hedge Affidavit, ¶ 5. Until the option is exercised, the Aggregate Mining & Lease Agreement is not in effect and the only rights Glacier presently has under the Option Agreement are to enter the Subject Properties “for any exploratory purposes and activities” related to a potential mining operation. Hedge Affidavit, **Exhibit 1**, Option Agreement, at § 2, at p. 1. The original expiration date of the Option Agreement has been extended from March 21, 2011 to March 21, 2015 through two amendment agreements dated from March 21, 2011 and March 21, 2012. *Id.*, **Exhibits 2 and 3**.

Glacier has not assigned any of its rights under the Option Agreement to Strata Corporation, which was also incorrectly assumed by the Township in its Objection Letter. Hedge Affidavit, ¶ 5. Strata is a construction and ready mix concrete company with aggregate, rail and truck transportation operations, and shares common ownership with Glacier. *See* www.stratacorporation.com. The only agreement Glacier has with Strata concerning the properties is described in Article 11.1 of the Aggregate Mining & Lease Agreement, *which is not effective until the option in the Option Agreement is exercised by Glacier*. Hedge Affidavit, **Exhibit 1**, Aggregate Mining & Lease Agreement at Article 11.1. Article 11.1 of the Aggregate Mining & Lease Agreement states that Glacier has simply agreed to permit Strata to conduct the operations of any mining activities that may occur on the properties. *Id.* However, neither this provision nor any other term of the Aggregate Mining & Lease Agreement become effective until the option in the Option Agreement is exercised by Glacier. *See* Hedge Affidavit, **Exhibit 1**, Option Agreement, §§ 4-5, at p. 2.

In August 2012, Mr. Hedge found out that he had another cancerous tumor. Hedge Affidavit, ¶ 10. Since he was 78 years old and his wife was 82 year old, they decided to contact a lawyer and update their estate plan. *Id.* They decided it was important to make any changes to their estate plan before the end of 2012 in light of pending changes to federal tax law. *Id.* As a result, in 2012 the Hedges decided to update their will, split their properties owned by them and gift some of the parcels to family, move other property that they still farmed into the entity G& C Hedge, FLP, provide cash gifts to their nieces and nephews, place all tractors and trailers that they owned into the entity Gayle Hedge Leasing, LLC, and gift shares of their trucking company, Hedge & Herberg, Inc., into an Irrevocable Trust for the benefit of key employees. Hedge Affidavit, ¶ 10.

Before finalizing their estate plan, the Hedges consulted with Glacier and Strata to determine if the properties they were going to divide and gift to family members could be annexed into the City. *Id.* ¶ 11. Prior to this time, Mr. Hedge had discussed the possibility of annexation with a City official. *Id.* The Hedges then divided up the property into six parcels, and gifted by quit claim deeds five of the parcels to Alan Thomas Knippen and Kimberly Ann McClelland-Knippen (Mr. Hedge's step son and daughter-in-law) (one parcel), Geraldine Ann Crookston (Mr. Hedge's sister) (three parcels) and June Joanne Ziegler (Mr. Hedge's sister) (one parcel). The Hedges retained ownership of the largest parcel. *Id.* ¶ 12.

At that time the Hedges looked into annexing the property in 2012, Glacier and Strata had already obtained a conditional use permit from Big Stone County to conduct future mining and processing operations on these properties if Glacier ever exercised its option in the Option Agreement. *Id.* ¶ 11. The Hedges believed the Township's "Interim Ordinance" was illegal and did not supersede the conditional use permit granted by Big Stone County. *Id.*

After the Hedges transferred the properties, they along with their family members holding the other five parcels filed separate petitions with the City on September 27, 2012, to annex the Petitioned Properties by ordinance under Minn. Stat. § 414.033, subd. 2(3). *Id.* ¶ 11; *see also* Objection Letter, Exhibit I. The Hedges and their family members petitioned for annexation of these properties because they believed they would benefit, and therefore become more valuable, from the services that could be provided by the City, such as planning, environmental controls, water, sewer and electrical utility services, and police protection, none of which were available or offered by the Township. Hedge Affidavit, ¶ 11. In addition, they believed that annexation of these properties was logical since they are only accessible through a route using a City street and these properties would be a natural extension to the adjoining properties the Hedges own that are already within the City limits. *Id.* They also believed annexation into the City was appropriate given the historical use of the properties, which has included extensive commercial and industrial uses, and the possibility that Glacier may exercise its option in the Option Agreement sometime in the future to engage in mining operations. *Id.* Glacier's option gives it the right to develop other portions of the property owned by the Hedges already located within the City limits, so it made sense to the Hedges and their family members that all of these properties be joined and located solely within City limits. *Id.*

Each petition filed by the Petitioners complied with the objective criteria of Minn. Stat. § 414.033, subd. 2(3), which provides:

Subd. 2. Conditions. A municipal council may by ordinance declare land annexed to the municipality and any such land is deemed to be urban or suburban in character or about to become so if:

...

(3) the land abuts the municipality and the area to be annexed is 120 acres or less, and the area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available, and the municipality receives a petition for annexation from all the property owners of the land. Except as provided for by an orderly annexation agreement, this clause may not be used to annex any property contiguous to any property previously annexed under this clause within the preceding 12 months if the property is owned by the same owners and annexation would cumulatively exceed 120 acres; or

First, the land in each petition clearly “abuts the [City] and the area to be annexed is 120 acres or less” Minn. Stat. § 414.033, subd. 2(3). Second, each petition accurately states that “the area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available” *Id.* Third, “the [City] receive[d] a petition for annexation from all the property owners of the land.” *Id.* Last, as to the land described in each of the petitions, none of the land described in each petition is “contiguous to any property previously annexed” under Minn. Stat. § 414.033, subd. 2(3) “within the preceding 12 months if the property is owned by the same owners” *Id.*

After receiving the petitions, the City complied with other requirements for annexations by ordinance under Minn. Stat. § 414.033, subd. 2(3), including providing 30 days’ written notice by certified mail to the Township and to all landowners within and contiguous to the area to be annexed as set forth in each of the six petitions for annexation and proposed annexation ordinance, and holding a public hearing on November 5, 2012, as required by Minn. Stat. § 414.033, subd. 2b. On November 19, 2012, the City enacted the six annexation ordinances and subsequently filed them with the MBAU and all other government entities described in Minn. Stat. § 414.033, subd. 7.

LEGAL ANALYSIS

I. An Annexation By Ordinance Under Minn. Stat. § 414.033, Subd. 2(3) Must Be Approved By the MBAU if the Objective Statutory Criteria Set Forth in Minn. Stat. § 414.033, Subd. 2(3) Are Met.

In adopting Chapter 414 of the Minnesota Statutes, the Minnesota state legislature created the manner and method by which annexation and detachment is accomplished in Minnesota. *See Indep. Sch. Dist. No. 700 v. City of Duluth*, 170 N.W.2d 116, 120 (Minn. 1969). “Chapter 414 was inspired in part by legislative findings that areas which are intensively developed are most efficiently governed by municipal government Its purpose is to

facilitate the annexation of such property.” *LaCrescent Twp. v. City of LaCrescent*, 515 N.W.2d 608, 611 (Minn. Ct. App. 1994) (citing Minn. Stat. § 414.01 and Laurie Reynolds, *Rethinking Municipal Annexation Powers*, 24 Urb. Law. 247, 258-59 (1992)).

The Minnesota annexation statute “allows municipalities to annex abutting unincorporated land in two ways: annexation by ordinance or annexation by board order.” *Rockford Twp. v. City of Rockford*, 608 N.W.2d 903, 906 (Minn. Ct. App. 2000) (citing Minn. Stat. §§ 414.031, 414.033). Each method has different procedures and requirements. *Id.* Annexations by board order under Minn. Stat. § 414.031 “require the state planning board to hold hearings and make a decision based upon its consideration of the factors listed in Minn. Stat. 414.031, subd. 4(a)-(n).” *Gilbert v. Minnesota State Office of Strategic and Long-Range Planning*, 2002 Minn. App. LEXIS 117 * 5 (Minn. Ct. App. Jan. 29, 2002) (unpublished op.) (attached hereto as **Exhibit A** to Affidavit of Howard Roston (“Roston Affidavit”)). Conversely, annexations by ordinance² are permitted in certain circumstances and the authority and decision-making regarding the annexation is delegated and entrusted to the municipality that is seeking to annex certain land. *Id.* (citing *Rockford*, 608 N.W.2d at 906).

As explained by the Minnesota Court of Appeals, this streamlined procedure for annexation by ordinance was intentionally created by the legislature in drafting the annexation statutes if the petitions met certain criteria:

The legislature determined that the presence of these circumstances signifies appropriate conditions for annexation. This presumptive determination is what explains the streamlined approval process for annexations by ordinance.

Gilbert, 2002 Minn. App. LEXIS 117 at *5. As a result, annexations by ordinance are left to the sound discretion of municipalities and their elected officials, like a myriad of other municipal decisions.

² The Township’s suggestion that annexations by ordinance are the rare “exception” does not comport with reality. Since at least 1995, annexations by ordinance have accounted for the majority of annexations in Minnesota. See Minnesota Planning, *Annexation Criteria*, at p. 2 (April 1995) (stating that annexation by ordinance “is the most common form of annexation.”); Minnesota Planning, *City Limits: A Report to the Minnesota Legislature on Municipal Boundary Adjustments*, at p. 9 (February 2002) (statistics from 1996 to 2001 showing that annexation by ordinance was the most common form of annexation in Minnesota); Municipal Boundary Adjustment Docket, Minnesota Office of Administrative Hearings, <http://www.mba.state.mn.us/Docket.html> (showing that 53 of 127 records filed with the MBAU in 2012 consisted of annexations by ordinance).

Accordingly, if a municipality acts within its delegated authority with respect to annexation, the wisdom or expediency of the particular annexation is not a concern of the courts. 1 Yokely, *Municipal Corporations*, § 34 (1956 Ed.). “It must be remembered that the formation of municipalities and the annexing or detaching territory therefrom is with the legislature and not the courts. We cannot question the wisdom of the statutes regulating the same, nor the expediency of the conditions prescribed for the right to organize or to change.” *State v. Vill. of Gilbert*, 149 N.W. 951, 952 (Minn. 1914).

Given the statutory framework in Chapter 414 that transfers the presumptive determination of annexation by ordinance to the municipality, the MBAU is limited to simply reviewing the annexation by ordinance “to determine whether the statutory criteria are met.” *Twp. of Franklin v. City of Delano*, 2004 Minn. App. LEXIS 662 at *6 (Minn. Ct. App. June 15, 2004) (unpublished op.) (attached hereto as **Exhibit B** to Roston Affidavit). The MBAU’s scope of review of annexation by ordinance has been explained by the Minnesota Court of Appeals as follows:

Minnesota Planning interprets the annexation-by-ordinance statute to give it no authority to “examine, or pass judgment on, the wisdom, planning policies, motivations, or other substantive issues relating to such annexations.” Instead, it examines each annexation by ordinance to determine if the objective statutory criteria are met under Minn. Stat. § 414.033.

Franklin, 2004 Minn. App. LEXIS 662 at **5-6. Therefore, “the plain language of the statute permits annexations by ordinance, with no further inquiry, when the statutory criteria are met.” *Id.* at *6 (citing Minn. Stat. § 414.033, subd. 2). This is in contrast to an annexation by board order, where the MBAU is required by statute to “undertake a substantive review” of the annexations and “hold hearings and make a decision based upon its consideration of the factors listed in Minn. Stat. § 414.031, subd. 4(a)-(h).” *Franklin*, 2004 Minn. App. LEXIS 662 at **3-4; *see also Rockford*, 608 N.W.2d at 906 (describing the procedural differences of annexation by ordinance versus annexation by board order).

This limited scope of review applies even if the MBAU, in its discretion, requests a city or property owner to furnish additional information to determine whether the objective statutory criteria have been met for annexation by ordinance pursuant to its authority under Minn. Stat. § 414.033, subd. 10. *Gilbert*, 2002 Minn. App. LEXIS 117 at * 7. The MBAU’s request for additional information under this provision does not expand its limited scope of review or require the petitioner and city to meet additional requirements not set forth in the particular annexation by ordinance that has been approved by the city. As explained by the Court of Appeals in a case where opponents of an annexation by ordinance under Minn. Stat. § 414.033, subd. 2 attempted to argue that Minn. Stat. § 414.033, subd. 10 allowed the Minnesota Planning

Board to expand its review and obligate the petitioners and city to also demonstrate they satisfied the additional factors set forth in sections 414.01, subd. 1 and 414.031, subd. 4:

Under the language of [Minn. Stat. § 414.033, subd. 10], the board's authority to request this information is discretionary. Further, the only references to these considerations [414.01, subd. 1 and 414.031, subd. 4] in annexation by ordinance are contained within Minn. Stat. § 414.033, subdivisions 3 and 5. *No statutory provision gives the board authority to consider the criteria set forth in section 414.01, subd. 1, and 414.031, subd. 4, in annexations by ordinance under Minn. Stat. § 414.033, subd. 2.*

Gilbert, 2002 Minn. App. LEXIS 117 at * 7 (emphasis added).

In this matter, the Petitioners, as property owners, each petitioned to the City for annexation by ordinance under Minn. Stat. § 414.033, subd. 2(3), which provides:

Subd. 2. Conditions. A municipal council may by ordinance declare land annexed to the municipality and any such land is deemed to be urban or suburban in character or about to become so if:

...

(3) the land abuts the municipality and the area to be annexed is 120 acres or less, and the area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available, and the municipality receives a petition for annexation from all the property owners of the land. Except as provided for by an orderly annexation agreement, this clause may not be used to annex any property contiguous to any property previously annexed under this clause within the preceding 12 months if the property is owned by the same owners and annexation would cumulatively exceed 120 acres; or

....

If the property qualifies for annexation by ordinance under Min. Stat. § 414.033, subd. 2, additional procedural requirements must be met by the municipality. *Gilbert*, 2002 Minn. App. LEXIS 117 at * 6. First, the municipality must hold a public hearing with written notice. *Id.* (citing Minn. Stat. § 414.033, subd. 2b). Second, any annexation ordinance passed must be properly filed with the MBAU, the township, the county auditor, and the secretary of state. *Id.* (citing Minn. Stat. § 414.044, subd. 7). If the criteria set forth in Minn. Stat. § 414.033, subd.

2(3) are met and these procedural requirements are satisfied by the municipality, the MBAU must approve these annexations by ordinance.

As described above in the Statement of Facts, the objective criteria of Minn. Stat. § 414.033, subd. 2(3) have been satisfied. None of the Township's evidence or arguments demonstrate otherwise. Because the ordinances meet this statutory criteria for annexation by ordinance and it is undisputed that the City satisfied the other procedural requirements for enacting such ordinances, the MBAU must approve the above-referenced annexation ordinances.

II. As Proven by the Option Agreement, Neither Strata Corporation Nor its Affiliate Glacier Resources, Ltd. Are "Property Owners" as Defined Under Minn. Stat. § 414.011, subd. 5. In addition, the Hedges are Not "Property Owners" of the Other Properties Owned By Their Family Members.

First, the Township is wrong that Strata, Glacier and the Hedges were required to sign all of the annexation petitions because they were "property owners" as defined under Minn. Stat. § 414.011, subd. 5. Specifically, the Township argues that they qualify as "beneficial owner[s]" of all of the Petitioned Properties under this statute because of an Option Agreement and Aggregate Mining & Lease Agreement described in a Memorandum of Lease recorded with the Big Stone County Recorder. In making this argument, the Township acknowledges it did not have copies of these agreements and was therefore speculating to their contents. A copy of the Option Agreement and Aggregate Mining & Lease Agreement have now been provided to the MBAU pursuant to its request. *See Exhibits 1-3* to Hedge Affidavit.

An examination of these agreements shows that their terms completely contradict the Township's "beneficial owner" argument. Glacier merely holds an option to lease the Petitioned Properties that it has not exercised. As an optionee, Glacier holds no legal rights of ownership or primary rights to possession and enjoyment of any of the Petitioned Properties. And Strata has no option whatsoever. Because the option has not been exercised, the Hedges have no rights to receive royalty payments under the Aggregate Mining & Lease Agreement. The Township's "property owner" argument is therefore without merit.

A. "Property Owner" Has a Narrow Definition For Purposes of Annexation as Defined By Statute and as Explained By the Minnesota Supreme Court.

One of the requirements of an annexation by ordinance under Minn. Stat. § 414.033, subd. 2(3) is that "the municipality receives a petition for annexation from all the property owners of the land." Minn. Stat. § 414.033, subd. 2(3). The term "property owner" is defined in the annexation statutes as follows:

Subd. 5. **Property Owner.** "Property owner" means the fee owner of land, or the beneficial owner of land whose interest is primarily one of possession and enjoyment. The term includes, but is not limited to, vendees under a contract for deed, and mortgagors. Any reference to a percentage of property owners shall mean in number.

Minn. Stat. § 414.011, subd. 5. This definition of "property owner" in the annexation statutes appears to originate from the Minnesota Supreme Court's holding in the case of *Blee v. City of Rochester*, 109 N.W.2d 44 (Minn. 1961), which the Township conspicuously fails to mention in its Objection Letter.

In *Blee*, property owners filed a petition for annexation by ordinance under Minn. Stat. § 414.03 with the City of Rochester. That provision, which has since been repealed and replaced by Minn. Stat. § 414.033, required that a majority of the "owners" sign the petition for annexation. The issue addressed by the Minnesota Supreme Court in *Blee* was whether vendors and vendees to a contract for deed were "owners" for purposes of this statute and, therefore, could sign the petition for annexation. To answer this question, the Court first explained that:

A review of authorities dealing with the meaning of the word "owner" leads to the conclusion that it has no fixed meaning but that the meaning of the word varies according to the context of the statute in which it is used and the purpose which is intended to be accomplished.

Blee, 109 N.W.2d at 45 (citing 2 A.L.R. 778 and 95 A.L.R. 1085; 30 Wd. & Phr. (Perm. Ed.) p. 606). The Court then reviewed prior Minnesota cases addressing the definition of "owner" and legal relationship between vendors and vendees and concluded that "[u]nder these decisions it is well established that in this state the vendor in a contract for deed occupies a position substantially analogous to that of a mortgagee. He holds the legal title in trust as security for the payment of the purchase price. The equitable and beneficial ownership rests in the vendee." *Id.* at 45.

In reaching this conclusion, one of the cases the Court relied upon was *In re Brandt*, 62 N.W.2d 816 (Minn. 1954), in which the Court had previously interpreted the word "owner" in the context of a petition for a drainage ditch project under Minn. Stat. § 106, et seq. (now Minn. Stat. § 103E, et seq.). *Blee*, 109 N.W.2d at 45-46. In *Brandt*, the Court held that a mortgagee and vendor in a contract for deed were not "owners," explaining that:

The word "owner" may be used to convey a broad meaning or it may be used in a restricted sense. The particular section in which

it is used here deals with the signing of the petition. The petition merely initiates the proceedings for the establishment of the ditch. It does not preclude other interested parties from later entering the proceedings. *We believe that the word "owner" is used here in its popular sense, the sense in which it is understood by the people as a whole. It refers to the general and beneficial owner, the person whose interest is primarily one of possession and enjoyment in contemplation of ultimate ownership. We do not consider it as including those who may have a right or lien to enforce against such property because of a collateral pecuniary claim.*

Blee, 109 N.W.2d at 46 (quoting *In re Brandt*, 62 N.W.2d 816, 820-21 (Minn. 1954)) (emphasis added).

Applying this same reasoning to the annexation statute, the Court in *Blee* held that it was the vendee, not the vendor, who was considered an "owner" for purposes of determining who was required to sign the annexation petition:

Looking at the result of an annexation, it seems apparent to us that it is the vendee and not the vendor who will be affected by it, at least until there is a default in the performance of the contract. Annexation places no cloud on the title of the subject property. It does make changes that affect the beneficial owner. The property becomes subject to the taxation and police power of the municipality – liabilities incurred and benefits received by the vendee. He receives the benefit of police and fire protection and other services rendered by the city for which he assumes his share of the obligation to pay.

Blee, 109 N.W.2d at 46.

B. Glacier is Not a "Beneficial Owner of Land Whose Interest is Primarily One of Possession and Enjoyment" Because it Merely Holds an Option to Lease That Has Not Been Exercised. Strata is Even Further Removed Because it Holds No Option. The Hedges Have No Rights to Receive Royalties Because the Option Has Not Been Exercised.

The statutory definition of "property owner" in Minn. Stat. § 414.011, subd. 5 and the Minnesota Supreme Court's holding in *Blee* demonstrates that the Township's argument is completely erroneous.

Contrary to the Township's speculation, Strata and Glacier do not have a long term mining lease on the Petitioned Properties. Rather, Glacier holds merely an option to lease the properties that it has not yet exercised and may never exercise in the future. It is black-letter law that option agreements to purchase or lease real property, prior to their exercise, do not constitute an interest in real property or convey any interest in real property to the optionee. *See Wurdemann v. Hjelm*, 102 N.W.2d 811, 818 (Minn. 1960); *Shaughnessy v. Eidsmo*, 23 N.W.2d 362, 365 (Minn. 1946). Rather, an option is merely a privilege given by the owner of the property to another to buy or lease the property at the latter's election at some time in the future. *See Vogt v. Ganlisle Holding Co.*, 15 N.W.2d 91, 94 (Minn. 1944); *City of Minneapolis v. Republic Creosoting Co.*, 201 N.W. 414, 416 (Minn. 1924); *see also* 14 Powell & Rohan, *Powell on Real Property* Ch. 81, 879[2][b] (1997 ed.).

Therefore, as an optionee, Glacier presently holds no legal rights to the real property other than limited rights to enter the Subject Properties for "exploratory purposes" for the remainder of the Option Term, which expires on March 21, 2015. At most, this term in the Option Agreement can only be construed as a mere license, which also does not convey any interest in land. *Minnesota Valley Gun Club v. Northline Corp.*, 290 N.W. 222, 224 (Minn. 1940) ("[A] license is not an estate but a permission giving the licensee a personal legal privilege enjoyable on the land of another"). Glacier only becomes a lessee once it exercises the option. And even when (and if) it becomes a lessee, the Aggregate Mining & Lease Agreement gives Glacier the right to terminate it at any time. Hedge Affidavit, **Exhibit 1**, Aggregate Mining & Lease Agreement, at Article 4.1. However, Glacier has not exercised the option in the Option Agreement to commence the lease and may never do so. For example, even if the annexation ordinances are approved, it is very possible that the City may decline to grant a conditional use permit, which the City will require to be obtained before any mining may take place pursuant to the City's Municipal Code. And even if the City of Ortonville were to grant a conditional use permit in the future, Glacier may decide not to develop the Petitioned Properties due to changed circumstances due to unworkable conditions attached to the CUP or the economy, marketplace or several other possible pitfalls that may be encountered in their potential development.

As a result, Glacier, as an optionee, is not a "property owner" as defined in Minn. Stat. § 414.011, subd. 5. Glacier is not the "fee owner of land," and the Township has not argued Glacier holds a fee interest. *Id.* Similarly, Glacier is not "the beneficial owner of land whose interest is primarily one of possession and enjoyment." *Id.* As explained by the Minnesota Supreme Court in *Blee* and the Minnesota state legislature in Minn. Stat. § 414.011, subd. 5³, only parties with actual and present legal interests in real property that are primarily one of

³ As the Township notes on page 12 of its Objection Letter, in 1978 the Minnesota state legislature amended the definition of "beneficial owner" in Minn. Stat. § 414.011, subd. 5 by deleting the phrase "in

possession and enjoyment, such as “vendees under a contract for deed, and mortgagors,” constitute “beneficial owner[s] of land whose interest is primarily one of possession and enjoyment.” Minnesota case law shows that optionees are completely opposite from vendees because optionees have absolutely no legal interest in real property, let alone an “interest [that] is primarily one of possession and enjoyment.” Therefore, optionees cannot possibly be interpreted to be a “beneficial owner of land whose interest is primarily one of possession and enjoyment” in Minn. Stat. § 414.011, subd. 5, which expressly includes “vendees and mortgagors.” See *Wayne v. MasterShield, Inc.*, 597 N.W.2d 917, 920 (Minn. Ct. App. 1999) (“[U]nder the doctrine of *ejusdem generis*, the general wording of a statute must be interpreted to include only matters of the same kind or class as those specifically enumerated.”).

A case from another state that specifically addressed this issue further confirms that optionees are not considered owners for purposes of signing an annexation petition. In *Elkins v. City and County of Denver*, 402 P.2d 617 (Colo. 1965), the Colorado Supreme Court examined whether an optionee could be counted as an owner in meeting the required percentage of property owners required to sign a petition to annex property by ordinance under the Colorado annexation statutes. In holding that the optionee was not an owner for purposes of the annexation statute, the Colorado Supreme Court reasoned that:

At the time he signed the petition he was the holder of an option to purchase 120 acres of land. He was under no obligation to exercise that option and could have abandoned the development at any time.

Elkins v. City and County of Denver, 402 P.2d 617, 621 (Colo. 1965).

contemplation of ultimate ownership” from the original definition of “the beneficial owner of land whose interest is primarily one of possession and enjoyment in contemplation of ultimate ownership.” See 1978 Ch. 705 Sec. 9. Contrary to the Township’s argument, the deletion of the phrase “in contemplation of ultimate ownership” does not evidence an intent to *broaden* the definition of “beneficial owner,” and the Township cites no legislative history or other authority to support this interpretation. Rather, the descriptive phrase “in contemplation of ultimate ownership” itself implies a broader range of potential “beneficial owners” of real property. By deleting this phrase from the definition of “beneficial owner,” the legislature unambiguously limited the definition of “beneficial owner of land” to only those “whose interest is primarily one of possession and enjoyment” in the present tense, as opposed to a “beneficial owner” with some possible contingent, future interest of possession and enjoyment. The legislature’s omission of this phrase must be given effect. See *Northland Country Club v. Comm’r of Taxation*, 241 N.W.2d 806, 809 (Minn. 1976) (holding that courts “cannot supply that which the legislature purposely omits”).

Because it is undisputed that Glacier has not exercised its option, Glacier cannot possibly be construed to be a “property owner” for purposes of the annexation statute. The same holds true with respect to Strata, who is not even a party to the option agreement and holds no other legal rights of possession or ownership to the Petitioned Properties. And even if the option had been exercised, the Township has cited no authority to demonstrate that a mere lessee would constitute a “property owner” for purposes of the annexation statutes, particularly when the lessee may unilaterally terminate the lease term in its own discretion, for any reason whatsoever, and at any time.

Last, The Township’s argument that the Hedges are “beneficial owners of land whose interest is primarily one of possession and enjoyment” of the other Petitioned Properties by virtue of the right to receive royalties from any future mining under the Aggregate Mining & Lease Agreement fails for the same reason. Until the option is exercised, the Hedges have no legal rights to receive royalty payments under the Aggregate Mining & Lease Agreement. And even if the option was exercised, it is speculative to assume the Petitioned Properties will be approved for a conditional use permit and subsequently developed. The same rationale applies to the Township’s argument with respect to the “superior rights and interests of Glacier” language in the deeds. This language has no effect until the option is exercised. And the fact the Hedges placed a restrictive covenant in the deeds limiting the grantees use to “agricultural purposes” does not make the Hedges a “beneficial owner of land whose interest is primarily one of possession and enjoyment.” The Township cites no authority to support this argument. In fact, a restrictive covenant “is a servitude or negative easement. It is not an ‘estate’ which is or may become possessory.” *Andrews v. Benson*, 476 N.W.2d 194, 196 (Minn. Ct. App. 1991). The grantees (the other Petitioners in this matter) are the fee holders and enjoy all primary rights of possession, use and enjoyment.

III. The Township’s “Aggregation” Argument is Contradicted By the Plain Language of Minn. Stat. § 414.033, subd. 2(3).

The Township’s argument that the Petitioned Properties are interrelated and should be combined for purposes of calculating the 120-acre limitation in Minn. Stat. § 414.033, subd. 2(3) is also without merit. A review of the Township’s argument shows that it has created it out of whole cloth and does not rely on any language in Minn. Stat. § 414.033, subd. 2(3). Because no such restriction may be read into the statute when the legislature has not explicitly created one, this argument must be rejected.

A. Rules of Statutory Interpretation Require That the Township’s Aggregation Argument Be Rejected.

“When the words of a statute, in their application to an existing situation, are clear and unambiguous, we must give effect to their plain meaning.” *Rockford*, 608 N.W.2d at 906. “If

the law is 'clear and free from all ambiguity,' the plain meaning controls and is not 'disregarded under the pretext of pursuing the spirit.'" *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 726 (Minn. 2010) (citing Minn. Stat. § 645.16); *see also Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 274 (Minn. 1995) ("Where the intention of the legislature is clearly manifested by plain unambiguous language . . . no construction is necessary or permitted."). Where a statute is unambiguous and its provisions are couched in plain and simple language, courts cannot insert a requirement into the statute. *See* Minn. Stat. § 645.16 (when a statute speaks for itself, there is no room for judicial construction); *Comm'r of Revenue v. Richardson*, 302 N.W.2d 23, 26 (Minn. 1981) (same). In construing a statute, the court will not insert restrictions or provisions that the legislature purposely omits or inadvertently overlooks. *See Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 667 N.W.2d 447, 450 (Minn. Ct. App. 2003); *Wolf Motor Co., Inc. v. One 2000 Ford F-350*, 658 N.W.2d 900, 903 (Minn. Ct. App. 2003).

Here, the only restriction the Minnesota legislature has imposed in Minn. Stat. § 414.033, subd. 2(3) relating to annexations by ordinance is as follows:

Except as provided for by an orderly annexation agreement, this clause may not be used to annex any property contiguous to any property previously annexed under this clause within the preceding 12 months if the property is owned by the same owners and annexation would cumulatively exceed 120 acres;

The Township's attorney acknowledges that this language in Minn. Stat. § 414.033, subd. 2(3) is clear and ambiguous, and that nowhere in this statute is there any additional limitation that would render the annexation ordinances in violation of the letter of this law. For example, the legislature did not chose to restrict a property owner from deeding portions of his or her property to another individual prior to filing a petition for annexation by ordinance, or require a property owner to own the property for a certain period of time before being eligible to petition for annexation by ordinance. Yet, the Township still attempts to argue that MBAU should read such a limitation into the statute when no such limitation exists. Such an argument is expressly precluded by statutory construction law, which provides that courts are not permitted to add language or insert restrictions into a statute that the legislature has deliberately or inadvertently omitted when the language of the statute is clear and unambiguous. *Wolf Motor*, 658 N.W.2d at 903; *Star Tribune Co.*, 667 N.W.2d at 450.

B. The Township's "Aggregation" Argument Has Been Rejected By the MBAU's Predecessor and the Minnesota Court of Appeals.

Not only is the Township's "aggregation" limitation argument contrary to basic canons of statutory interpretation, but a very similar argument has been raised by another Minnesota

township in the past and correctly rejected by the Minnesota Planning Board and the Minnesota Court of Appeals in a case called *Twp. of Franklin v. City of Delano*, 2004 Minn. App. LEXIS 662 (Minn. Ct. App. June 15, 2004) (unpublished op.) (attached hereto as **Exhibit B** to Roston Affidavit). Although the Township attempts to suggest in its Objection Letter that this case supports its argument, a close examination of the Court of Appeal's holding in *Franklin* shows that its holding actually contradicts the Township's position.

In *Franklin*, a property owner filed two separate annexation petitions with the City of Delano to have two adjoining parcels annexed into the city pursuant to Minn. Stat. § 414.033, subd. 2(3). At that time these annexation petitions were filed, the statute limited a petition to annexing 60 acres and did not prohibit a property owner from filing several annexation petitions of contiguous property he or she owned within the preceding 12 months. The Township of Franklin objected to the petitions, arguing that the two annexations were so related that they constituted the same annexation proceeding and therefore should be aggregated and rejected as exceeding the statutory 60-acre limit under Minn. Stat. § 414.033, subd. 2(3). After the Minnesota Planning Board rejected this argument and approved the two annexations, the Township of Franklin filed an appeal under the same theory. The Minnesota Court of Appeals also rejected the Township of Franklin's argument, explaining that the plain language of Minn. Stat. § 414.033, subd. 2(3) did not prohibit what the property owner had done and that the Court of Appeals would not read any such limitation into the statute without the express direction of the legislature:

Appellant argues that the independent annexations of the two parcels at issue are so related that they constitute the same annexation proceeding, and therefore should be aggregated. In effect, appellant urges this court to read into Minn. Stat. § 414.033 a proximity provision prohibiting the annexation of two independently annexable parcels when the parcels are "so related" and together would violate the parcel-size restriction. However, appellant failed to identify any support for its proffered statutory interpretation. In fact, no statutory provision permits, much less requires, aggregation of independently valid annexations by ordinance, however related. *See* Minn. Stat. 414.033. This court has held that it must not add language to a statute that the legislature has deliberately or inadvertently omitted. *Wolf Motor Co., Inc. v. One 2000 Ford F-350*, 658 N.W.2d 900, 903 (Minn. Ct. App. 2003). Appellant's aggregation theory is unsupported by Minnesota law.

Franklin, 2004 Minn. App. LEXIS 662 at *4-5.

The very reasoning employed by the Minnesota Court of Appeals in *Franklin* applies here as well. As noted by the Township, since *Franklin* was decided the Minnesota state legislature amended Minn. Stat. § 414.033, subd. 2(3) by increasing the maximum acres to 120 acres and limiting the same property owner or property owners to annexing a cumulative of 120 acres of contiguous property within the preceding 12 months. See 2006 Ch. 270, Sec. 8 and 2007 Ch. 90, Sec. 2. All of the annexation ordinances here comply with Minn. Stat. § 414.033, subd. 2(3) because no single set of property owner or owners seeks to annex contiguous property that cumulatively exceeds 120 acres. Like *Franklin*, neither the MBAU nor a Minnesota court may add any additional limitations not expressly stated in the statute by the legislature, as the Township argues should be done here. There is nothing in Minn. Stat. § 414.033, subd. 2(3) that prohibits a property owner from deeding parcels to other parties prior to submitting a petition for annexation by ordinance or requires a person to own property for a certain length of time before he or she may petition for annexation by ordinance. The fact the state legislature did not impose any such limitation when it modified the statute following *Franklin* further shows that no such additional limitation can be read into it. The legislature clearly could have imposed such a restriction, but chose not to do so. Because the legislature did not, the MBAU cannot now read one into it as the Township has suggested. In addition, the fact the other property owners are relatives of the Hedges is of no significance because nothing in Minn. Stat. § 414.033 “permits, much less requires, aggregation of independently valid annexations by ordinance, however related.” *Franklin*, 2004 Minn. App. LEXIS 662 at *5.⁴

The Township’s complaint regarding the shapes of the Petitioned Properties in the annexation ordinances is also without merit. Contrary to the Township’s argument, Minn. Stat. § 414.033, subd. 2 does not require that the annexed area have a particular shape, and the Township has cited no authority to support their “gerrymandering” argument. Case law from

⁴ Since Minn. Stat. § 414.033, subd. 2(3) is clear and unambiguous, no construction is necessary or permitted. *Phelps*, 537 N.W.2d at 274. However, even if the statute was ambiguous, the Township’s restrictive interpretation of annexation by ordinance would conflict with the spirit of Chapter 414, which is in part to promote the annexation of property. See *LaCrescent Twp.*, 515 N.W.2d at 611; *Governmental Research Bureau v. Borgen*, 28 N.W.2d 760, 765 (Minn. 1947) (stating that a statute should be construed to promote rather than to defeat the legislature’s purpose). Moreover, imposing the limitation the Township has asked for would contravene the strong public policy that disfavors placing restrictions on land owners’ ability to dispose of property as they wish. See *In re Turners Crossroad Dev. Co.*, 277 N.W.2d 364, 370 (Minn. 1979) (“[S]ocial policy [is] adverse to the placing of undue restrictions upon the freedom of alienation of land.”); *Barnes v. Gunter*, 127 N.W. 398, 398 (Minn. 1910) (“Limitations and restrictions on the use of property are not favored. It is contrary to public policy to tie up property with restrictions and prohibitions on its use.”); Minn. Stat. § 645.16(6) (stating that if the statute is ambiguous, the “consequences of a particular interpretation” may be considered).

other states that have addressed this issue holds that courts may not read annexation limitations relating to particular shape of a property when the annexation statute contains no such express limitations. *See, e.g., Bd. of Comm'r of the Cty. of Arapahoe v. City of Greenwood Vill.*, 30 P.3d 846, 849 (Colo. Ct. App. 2001) (“Courts will not read into the annexation statutes limitations relating to unusual or irregular shapes or patterns of territory annexed.”); *City of Claremore v. Twp. of Verdigris*, 50 P.3d 208, 212 (Okla. 2001) (“[T]he shape of annexed property is a political decision with which this Court will not interfere absent express statutory limitations relating to the shape of such property.”). Here, the only requirements related to the nature of the property in an annexation by ordinance under Minn. Stat. § 414.033, subd. 2(3) are that it “abuts the municipality,” be “120 acres or less,” and not be “presently served by public wastewater facilities or public wastewater facilities are not otherwise available.” As stated above, all of the annexation ordinances meet these requirements. As a result, the Township’s related “gerrymandering” argument must also be rejected.⁵

IV. The Petitioned Properties are Automatically “Deemed” “Urban or Suburban in Character or About to Become So” Because the Requirements of 414.033, subd. 2(3) Are Met.

The Township’s last argument that the annexation ordinances should also be struck down because the Petitioners and City have not shown that the Petitioned Properties are “urban or suburban in character or about to become so” is equally without merit. As the Township has acknowledged in its Objection Letter, Minn. Stat. § 414.033, subd. 2 specifically states that properties are automatically “deemed” “urban or suburban in character or about to become so” if all of the requirements of that subdivision are satisfied. Because the annexation ordinances meet the objective criteria of Minn. Stat. § 414.033, subd. 2(3), the Petitioned Properties, by operation of statute, are “deemed” “urban or suburban in character or about to become so.” As a result, this argument must also be denied.

The Township is simply wrong that Minn. Stat. § 414.033, subd. 2(3) requires an independent showing by the Petitioner and City that the property to be annexed is “urban or suburban in character or about to become so.” Minn. Stat. § 414.033, subd. 2 reads, in pertinent part:

Subd. 2. Conditions. A municipal council may by ordinance declare land annexed to the municipality *and any such land is*

⁵ At a minimum, the MBAU must approve the separate annexation ordinance of Gayle and Colleen Hedge (Ordinance No. 12-07) since they have always owned the property subject to that annexation ordinance, and as explained herein, neither Glacier nor Strata were required to sign any of the petitions as “property owners.”

deemed to be urban or suburban in character or about to become so if:

...

(3) the land abuts the municipality and the area to be annexed is 120 acres or less, and the area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available, and the municipality receives a petition for annexation from all the property owners of the land. Except as provided for by an orderly annexation agreement, this clause may not be used to annex any property contiguous to any property previously annexed under this clause within the preceding 12 months if the property is owned by the same owners and annexation would cumulatively exceed 120 acres; or

....

Id. (emphasis added).

Once again, the Township's argument flies in the face of basic rules of statutory interpretation, which require that the statute be construed in accordance with its plain and ordinary meaning. *Tuma v. Comm'r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986); *see* Minn. Stat. § 645.08(1)(2012) ("words and phrases are construed according to rules of grammar and according to their common and approved usage[.]"); *see also Advantage Capital Mgmt. v. City of Northfield*, 664 N.W.2d 421, 425 (Minn. Ct. App. 2003) ("The plain-meaning rule presupposes the ordinary use of words that are not technical or defined by statute, relies on conventional rules of grammar, and draws from the full context of the act or statutory provision.") (internal quotations omitted). The plain language of Minn. Stat. § 414.033, subd. 2, states that if property meets one of the enumerated requirements of Subdivision 2 and is annexed in accordance with the passage of an annexation ordinance, that property is "deemed to be urban or suburban in character or about to become so," without a separate finding of such. *See id.* Nothing could be more clear.

In addition, Minnesota courts applying Minn. Stat. § 414.033, subd. 2 have refused to require an annexing municipality or petitioning property owner independently show that the property in question is "urban or suburban in character or about to become so" in connection with an annexation by ordinance proceeding under Minn. Stat. § 414.033, subd. 2. The Minnesota Court of Appeals has repeatedly stated that the only requirements for annexation by ordinance under Minn. Stat. § 414.033, subd. 2 are "that at least one of the conditions enumerated in [subdivision 2] has been met and all of the procedural requirements of Minn. Stat. § 414.033, subd. 2b, have been met." *Gilbert*, 2002 Minn. App. LEXIS 117 at **8-9; *see also Franklin*, 2004 Minn. App. LEXIS 662 at *4.

The Honorable Timothy J. O'Malley
February 12, 2013
Page 23

In *Gilbert*, the Minnesota Court of Appeals specifically explained that an annexation by ordinance under Minn. Stat. § 414.033, subd. 2 contains the legislature's "presumptive determination" that the "presence of [the requirements of Minn. Stat. § 414.033, subd. 2] signifies appropriate conditions for annexation." *Id.* at *5. In other words, if the requirements of Minn. Stat. § 414.033, subd. 2 are met, the property is "deemed urban or suburban in character or about to become so." In addition, the *Gilbert* court specifically rejected the argument that the petitioners were required to also show compliance with the requirements of Minn. Stat. § 414.031, subd. 4, one of which is that there be a finding "that the subject area is now, or is about to become, urban or suburban in character." *See Gilbert*, 2002 Minn. App. LEXIS at *7 ("No statutory provision gives the board authority to consider the criteria set forth in sections 414.01, subd. 1, and 414.031, subd. 4, in annexations by ordinance under Minn. Stat. § 414.033, subd. 2.").

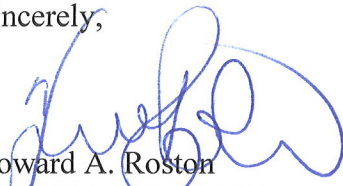
Accordingly, this argument raised by the Township must also be rejected.

CONCLUSION

For these reasons and because each of the annexation ordinances meet the objective criteria of Minn. Stat. § 414.033, subd. 2(3), the Petitioners respectfully request that the MBAU approve the above-referenced annexation ordinances.

Should you require any further information from the Petitioners regarding this matter, please feel free to contact me.

Sincerely,



Howard A. Roston
Direct Dial: 612.492.7441
Email: hroston@fredlaw.com

HAR/ras:5323849
Enclosure

cc: Paul Blackburn, Esq.
Benjamin Wilcox, Esq.
Gayle and Colleen Hedge
Alan Knippen and Kimberly Ann McClelland-Knippen
Geraldine Crookston
June Ziegler

AFFIDAVIT OF GAYLE HEDGE

STATE OF MINNESOTA)
) ss.
COUNTY OF BIG STONE)

GAYLE HEDGE, being first duly sworn, deposes and states:

1. My wife, Colleen Hedge, and I are petitioners of annexation ordinance number 12-07 that was enacted by the City of Ortonville, Minnesota on November 19, 2012. I have extensive and firsthand knowledge regarding the property that is described in this annexation ordinance and the properties described in annexation ordinances numbers 12-08, 12-09, 12-10, 12-11 and 12-12. I can also provide factual responses to the allegations made by attorney Paul Blackburn on behalf of Ortonville Township in his December 20, 2012 letter submitted to the Municipal Boundary Adjustment Unit (“MBAU”). I make this affidavit in support of the MBAU’s approval of the annexation ordinances noted above.

2. The underlying properties in all of the above annexation ordinances were previously owned by the Big Stone Canning Company (the “Canning Company”). In 1985, my wife, Colleen, and I purchased the Canning Company’s Ortonville land holdings and all of the manufacturing facilities, and buildings that were located on those lands (the “Canning Company Plant”). This land purchase involved a total of approximately 1,175 acres on the east and west sides of the Whetstone Diversion Channel (Minnesota River) (the “Canning Company Property”). When I purchased the Canning Company Property, it was one large parcel with the river channel running through the middle of it.

3. Of the approximate 1,175 total acres my wife and I purchased in 1985, approximately 478 acres are located on the east side of the Whetstone Diversion Channel. Those 478 acres are within both the limits of City of Ortonville (the “City”) and Ortonville Township (the “Township”), and are the subject of an Option Agreement and Aggregate Mining & Lease

Agreement my wife and I have with Glacier Resources, Ltd. ("Glacier"). Approximately 25 of those acres are located within the City near the City's southern municipal boundary, and the remaining acres are located in the Township and abut the City's southern municipal boundary. The annexation ordinances noted above include 448 acres of this property located in the Township (the "Petitioned Properties"). The 25 acres located in the City, along with other nearby and abutting properties already within the City, are zoned I-2 (General Industry). The Petitioned Properties within the Township are zoned by the County as mostly A1 and A2 (Agricultural) with a small portion zoned as O-S (Open Space). If the Petitioned Properties are annexed, they will be automatically zoned I-2 (General Industry) by operation of the City's Municipal Code.

4. The Township's statements regarding the Option Agreement and Aggregate Mining & Lease Agreement my wife and I have with Glacier are inaccurate. On April 26, 2006, my wife and I signed an Option Agreement and Aggregate Mining & Lease Agreement with Glacier, an aggregate resource holding company based in North Dakota. True and correct copies of the Option Agreement and Aggregate Mining & Lease Agreement are attached hereto as **Exhibits 1**. The original expiration date of the Option Agreement has been extended from March 21, 2011 to March 21, 2015 through two amendment agreements dated from March 21, 2011 and March 21, 2012. True and correct copies of the Agreements to Extend the Term of Option Agreement are attached hereto as **Exhibits 2 and 3**. I have redacted dollar amounts described in these agreements because they are confidential and irrelevant to the Township's objections to the annexation ordinances. If the MBAU believes the dollar amounts are relevant, I will provide the MBAU an unredacted copy for its confidential review.

5. Glacier has not exercised the option in the Option Agreement to convert the Option Agreement to an Aggregate Mining & Lease Agreement. As a result, the Aggregate Mining & Lease Agreement is not effective and may never become effective. In addition, I have confirmed with Glacier that it has not assigned any of its rights under the Option Agreement to Strata Corporation (“Strata”) or any other entity.

6. The Township’s allegations that the Petitioned Properties and the surrounding area are “rural” in nature are also not accurate, as they have a very long history of industrial and commercial uses. I was born and raised on farms near the City of Ortonville and have spent my entire 78 years in this community. In 1942, my father purchased a farm just southeast of the City which became my childhood home. My father’s farm and my childhood home were right across the road from the Canning Company Plant. During World War II, I worked for the Canning Company driving horse drawn sweet corn wagons, and in later years, driving horse drawn wagons and eventually tractors during the grain harvest. I did other field work for them, and was close friends with the Field Boss’s children, so I was very familiar with the Canning Company Property and the general activities of the Canning Company’s operations. In 1957, I began driving truck for the Canning Company part time, which in 1962 grew to full time employment and continued until 1976, when I started my own trucking company. I continued to haul products for the Canning Company for many more years until it closed the Canning Company Plant in approximately 1983. After we purchased the land in 1985 and continuing to this day, we continue to use several of the Canning Company Plant buildings as shops in our trucking business. I can state without hesitation that I am very familiar with the Canning Company Property, and that I have extensive firsthand knowledge of virtually every acre they contained.

7. The Canning Company was the major employer in our community for decades and used the Canning Company Property for commercial and industrial purposes, as well as agricultural purposes and employee housing. The Canning Company farmed and canned a variety of vegetable products, but gained national acclaim with its most famous and largest brand success “Butter Kernel” whole kernel canned sweet corn. The first canned sweet corn to ever be sold on the world market came from the Canning Company. Over the years, the Canning Company’s Ortonville operations were expanded to include a major distribution center, packaged potato salads and popular juice drinks (Hi-C and Hawaiian Punch were bottled for Coca-Cola Company and RJ Reynolds Food Division from the Canning Company Plant). During World War II, a German prisoner of war camp was built on the Canning Company Property. In 1944-1945, it housed approximately 360 prisoners who worked double shifts in the warehouse during canning season, or in crews shocking grain for area farmers supplying the Canning Company. For decades, the Canning Company was the largest employer in the area and in 1977 employed 400 workers year around plus another 116 seasonal workers during the corn packing season.

8. In addition to the use of the Canning Company Property for industrial canning and commercial farming operations, the Canning Company Property has been used continuously for mining purposes dating back to the late 1800’s. There are a total of four granite quarries and two gravel pits located on the Canning Company Property. The mining and processing operation at these quarries dates back to 1886 with what was then known as the “Baxter Quarry.” Two of the four quarries and one of the gravel pits, including the Baxter Quarry, are located on the Petitioned Properties. Ortonville Red Granite from the Baxter Quarry was used in the construction of many homes, commercial and public buildings throughout the region. Some of the more notable buildings include the Big Stone County Court House, the Minneapolis City

Hall, the Hennepin County Court House, four of the large columns holding prominent positions in the Minnesota State Capitol Building in St. Paul, and the cornerstone of the South Dakota State Capital building.

9. Additionally, two very prominent granite quarry mining and processing operations are located immediately east of the Petitioned Properties. These mining and processing plants are known as the Cold Springs Granite Quarry and the LG Everist Quarry, and are located in Ortonville Township. Both include very substantial active mining and processing plants that continue to this day to manufacture granite stone and crushed granite aggregate products for sale to the marketplace. Both of these granite mining and processing plants, as well as the former Canning Company Property (which my wife and I subsequently purchased), are located along the south side of US Hwy 7/75 and the Burlington Northern Santa Fe Railway's mainline and passing railroad tracks. As a result, the Petitioned Properties and surrounding areas have a substantial history of industrial and commercial use.

10. The Township's characterization of how and why I decided to split and transfer a portion of the Canning Company Property to my family members is also false. In August 2012, I found out that I had another cancerous tumor. Since I was 78 years old and my wife was 82, we thought we should contact a lawyer to update our estate plan. We learned that it was important to make any changes to our estate plan before the end of 2012 in light of pending changes to federal tax law. As a result, we decided to update our will, split some of the properties we owned and gift some of the parcels to family members, transfer the title of other property that we still farm into the entity G& C Hedge, FLP, provide cash gifts to our nieces and nephews, place our truck tractors and semi trailers into a separate entity known as Gayle Hedge Leasing, LLC,

and gift shares of our trucking company, Hedge & Herberg, Inc., into an Irrevocable Trust for the exclusive benefit of key employees.

11. Before finalizing my estate plan, I consulted with Glacier and Strata to determine if the property I was going to divide and gift to family members could be annexed into the City. I had previously discussed the possibility of annexation with a City official. At that time we looked into annexing the property, Glacier and Strata had already obtained a conditional use permit from Big Stone County to conduct future mining and processing operations on these properties if Glacier ever exercised its option in the Option Agreement. We believed the Township's "Interim Ordinance" was illegal and did not supersede the conditional use permit granted by Big Stone County. My family and I pursued annexation of these properties because we believed they would benefit, and therefore become more valuable, from the services that could be provided by the City, such as planning, environmental controls, water, sewer and electrical utility services, and police protection, none of which were available or offered by the Township. In addition, we believed that annexation of these properties was logical since they are only accessible through a route using a City street and these properties would be a natural extension to the adjoining properties we own that are already within the City limits. We also believed annexation into the City was appropriate given the historical use of the properties, which has included extensive commercial and industrial uses, and the possibility that Glacier may exercise its option in the Option Agreement sometime in the future to engage in mining and processing operations on these properties. Glacier's option gives it the right to develop other portions of the Canning Company Property already located within the City limits, so it made sense that all of these properties be joined and located solely within City limits. As previously noted, the Option Agreement covers the entire 478 acres of the Canning Company Property that

is located on the east side of the Whetstone Diversion Channel and within both the limits of City and the Township.

12. After consulting with Glacier and Strata regarding annexation, my wife and I then divided up the property and gifted by quit claim deeds five of the six parcels to other family members whose names are Alan Thomas Knippen and Kimberly Ann McClelland-Knippen (my step son and daughter-in-law) (one parcel), Geraldine Ann Crookston (my sister) (three parcels) and June Joanne Ziegler (my sister) (one parcel). My wife and I retained ownership of the remaining largest parcel. After my wife and I transferred the properties, we along with our family members holding the other five parcels filed separate petitions with the City to annex the properties by ordinance under Minn. Stat. § 414.033, subd. 2(3).

13. The Township's claim that my family members hold a "limited" interest in the properties that were transferred to them is incorrect. They are the fee owners of the properties and have all primary rights of possession, use and enjoyment. The fact that my wife and I placed a restrictive covenant in the deeds limiting their use to agricultural use does not change this fact. We inserted this restriction in the deeds in the event Glacier decided to exercise its option in the Option Agreement to use the properties in the future for mining and processing operations as set forth in the Aggregate Mining & Lease Agreement. In addition, Glacier has not exercised its option in the Option Agreement, so my family members' rights are not impacted at all by the Aggregate Mining & Lease Agreement. Finally, I have no other agreements (either verbal or written) with my family members regarding the Petitioned Properties, including to transfer the properties back to me and my wife as alleged by the Township in Mr. Blackburn's December

20th letter. They may use and sell them to others as they may wish.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Gayle Hedge
Gayle Hedge

Subscribed and sworn to before me
this 11 day of February 2013.

Kathleen Korth
Notary Public



EXHIBIT 1

Exhibit # 1

Option Agreement

COPY

This OPTION AGREEMENT (hereinafter referred to as "Option Agreement") is made and entered into this 26th day of April, 2006 (hereinafter referred to as "Anniversary Date") by and between Gayle E. and Colleen M. Hedge, a husband and wife, residing at 320 Park Street, Ortonville, MN 56278 telephone (320) 839-2370 (hereinafter referred to as "LANDOWNER") and Glacier Resources, Ltd., a North Dakota corporation located at PO Box 13471, 728 Red Dot Place, Grand Forks, ND 58208 telephone (701) 746-7491 (hereinafter referred to as "GLACIER").

WITNESSETH:

WHEREAS, LANDOWNER warrants being the rightful owner of Real Property and the underlying Aggregate (Sand, Gravel, Stone, Bedrock, Granite, etc.) Mineral Rights and Aggregate Reserves, consisting of approximately 478 acres situated in Ortonville Township, Big Stone County, Minnesota, legally described and depicted in Exhibit A attached hereto and incorporated herein (hereinafter referred to as "Property"); and

WHEREAS, GLACIER desires to obtain an option to purchase the aggregate mineral rights and to mine, extract and remove (ship via rail or truck) all of the aggregate reserves located on such Property which may be suitable to GLACIER, on a per ton of aggregate removed royalty basis, as described in the Aggregate Mining & Lease Agreement attached hereto as Exhibit B including but not limited to all granular soil materials, sand, gravel, rock, boulders, stone, bedrock and granite of every type and quality suitable for use as general trade and construction materials (hereinafter referred to as "Aggregates") from and off said Property, the exact amount and location being now uncertain and undetermined; and

WHEREAS, LANDOWNER desires to grant such an option to GLACIER.

NOW, THEREFORE, in consideration of the sums set forth below to be paid by GLACIER to LANDOWNER, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Option. LANDOWNER hereby grants to GLACIER, its successors and assigns, for the period beginning on the date hereof and ending on March 31, 2011 (hereinafter referred to as "Expiration Date"), the exclusive right and option to purchase the Aggregates according to the terms and conditions described in the attached Aggregate Mining & Lease Agreement for the initial sum of _____ dollars due upon the execution of this Option Agreement, plus the sum of _____ dollars per each subsequent year, payable within 30 days following the anniversary date of this Option Agreement (the "Option Payments"), and LANDOWNER shall be entitled to retain all such amounts paid should this Option Agreement be terminated or expire.
2. Permitted Activities. During the term of this Option Agreement, GLACIER or its agents shall have the right to enter and utilize the Property for any exploratory purposes and activities desired by GLACIER, including but not limited to surveying, measuring, mapping, drilling test holes (prospecting), testing the suitability of materials, and other activities associated with GLACIER's exploration and investigation of the Property to help GLACIER to determine the suitability of the Property for use as a future Aggregate mining, processing and shipping source. Additionally, GLACIER shall be permitted to pursue and to take all necessary actions to make application for any permits which may be required by various governmental agencies or bodies to permit GLACIER to mine, extract, process and remove Aggregates from the property in the future.
3. GLACIER's Indemnification. GLACIER's authorization to conduct permitted activities is permitted as long as said inspections do not unreasonably interfere with the landlord's use of the property. GLACIER shall indemnify and hold harmless the landlord from any and all claims arising from, out of, or in connection with such entry and inspection. Such indemnity and hold harmless duties shall include, but not be limited to, indemnity against all costs, expenses and liabilities, including attorney's fees incurred by the LANDOWNER.

REDACTED

4. Conversion from Option Agreement to an Aggregate Mining & Lease Agreement. At any time during the term of this Option Agreement and prior its Expiration Date, GLACIER at its sole and absolute discretion shall enjoy the option to enter into the attached Aggregate Mining & Lease Agreement by providing LANDOWNER with written notice of such intent, and such Aggregate Mining & Lease Agreement shall then commence within five (5) days of such notice. Should GLACIER take such actions to exercise such Aggregate Mining & Lease Agreement, this Option Agreement and any future Option Payments which may remain unpaid, shall then be terminated in its entirety.
5. Right to Terminate Option Agreement. Should GLACIER, at its sole discretion, and at any time during the term of this Option Agreement, determine that the execution of an Aggregate Mining & Lease Agreement would not be in its best interests, shall have the right and option to terminate this Option Agreement in its entirety and to not enter into the attached Aggregate Mining & Lease Agreement by providing LANDOWNER with written notice of such intent, and with such actions, GLACIER shall have no further obligations or liabilities to LANDOWNER, and LANDOWNER shall have no further obligations or liabilities to GLACIER.
6. Title Evidence. LANDOWNER shall provide current evidence of title in the form of an updated Abstract or Torren's Certificate showing marketable title in LANDOWNER. GLACIER will have thirty (30) days to review said documentation. Should title not be marketable, LANDOWNER will take all steps necessary to make title marketable to the satisfaction of GLACIER. If title cannot be made marketable, LANDOWNER agrees to return all sums paid by GLACIER.

This Option Agreement shall be binding upon both parties as well as their heirs and/or successors in interest. There are no other agreements or understandings expressed or implied which shall be binding to either party, unless specifically agreed to in written form by both parties. In witness whereof, all parties have executed this Option Agreement the day and year first above written.

Signatures:

Gayle E. Hedge
Gayle E. Hedge, LANDOWNER

Colleen M. Hedge
Colleen M. Hedge, LANDOWNER

GLACIER RESOURCES, LTD.

James R. Bradshaw
James R. Bradshaw
President
Glacier Resources, Ltd

NOTARY STATEMENTS:

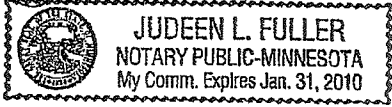
State of Minnesota
County of Big Stone

On this 26th day of April, 2006 before me, a Notary Public, within and for said county, personally appeared Gayle E. and Colleen M. Hedge to me known to be the persons who did execute the above and foregoing instrument and acknowledged that they did execute the above and foregoing instrument and that they did execute the same as their free act and deed.

My commission expires 1/31/2010

(Notary Seal)

Judeen L. Fuller
Notary Public



State of Minnesota
County of Big Stone

On this 26th day of April, 2006 before me, a Notary Public, within and for said county, personally appeared James R. Bradshaw, to me known to be the persons who did execute the above and foregoing instrument and acknowledged that he did execute the above and foregoing instrument and that he did execute the same as his free act and deed and with full authority on behalf of the corporate entity recited herein.

My commission expires 1/31/2010

(Notary Seal)

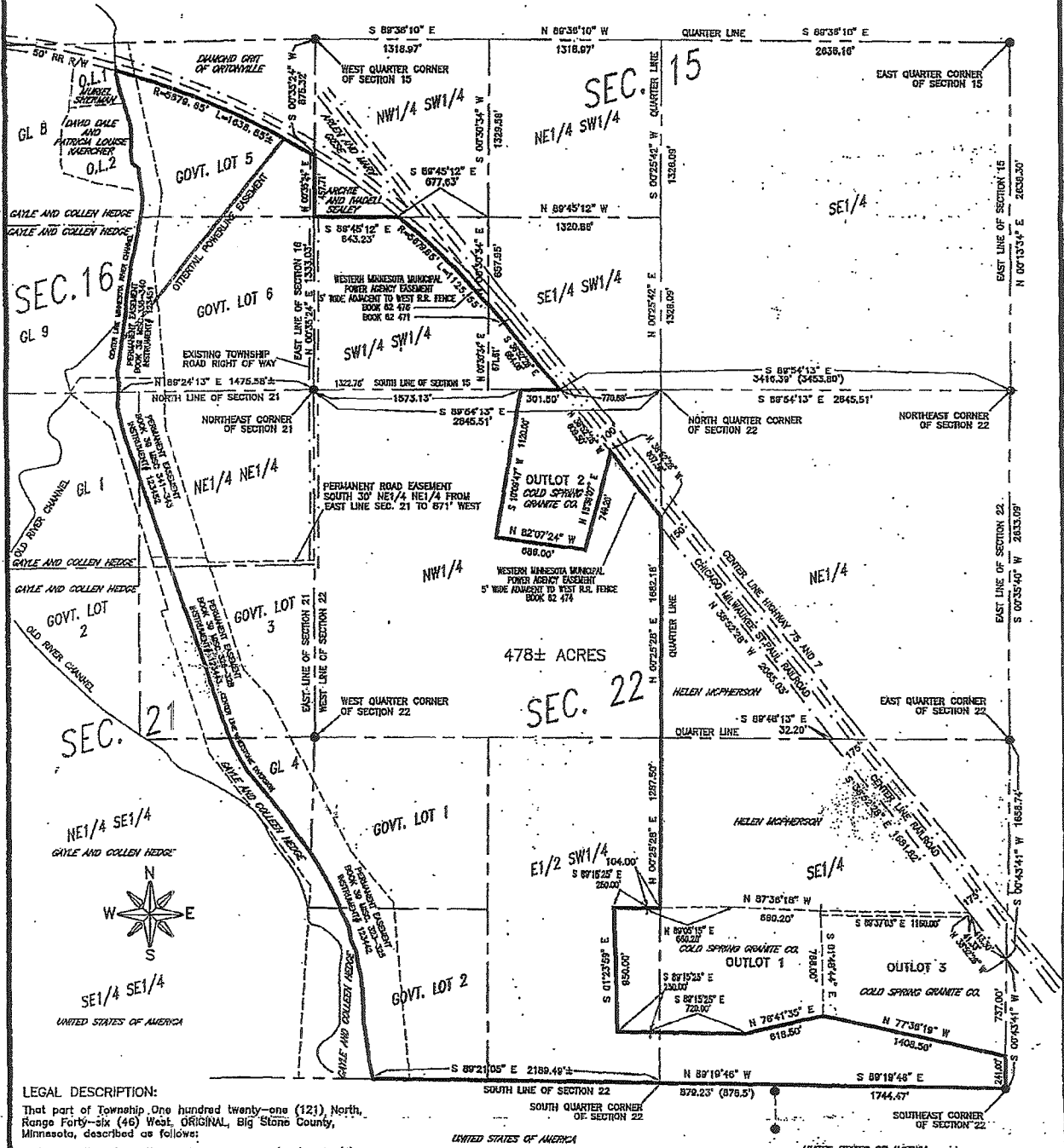
Judeen L. Fuller
Notary Public



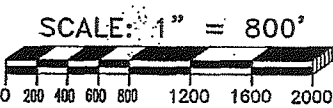
Exhibit A

CERTIFICATE OF SURVEY

Part of the South Half of the Southwest Quarter of Section 15, Part of Government Lot 5 and 6 of Section 16, Part of the West Half and part of the South Half of the Southeast Quarter of Section 22, and Part of the East Half of Section 21 Township 121 North, Range 46 West, Big Stone County, Minnesota



LEGAL DESCRIPTION:
That part of Township One hundred twenty-one (121), North, Range Forty-six (46) West, ORIGINAL, Big Stone County, Minnesota, described as follows:
The South Half of the Southwest Quarter (S1/2 SW1/4) lying southwesterly of the railroad right of way in Section Fifteen (15) of said Township.
Government Lot Five (5) lying southerly of the railroad and easterly of the center of the Whitelane Diversion Channel and Government Lot Six (6) easterly of the Whitelane Diversion Channel, all being located in Section Sixteen (16) of said Township.
That part of Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4), Government Lot One (1), Government Lot Three (3), and Government Lot Four (4), all being located easterly of the center of the Whitelane Diversion Channel, and all being located in Section Twenty-one (21) of said Township.
That part of the Northwest Quarter (NW1/4) lying southerly of the railroad right of way, EXCEPTING Outlot 2; Government Lots One (1) and Two (2) lying easterly of the center line of the Whitelane Diversion Channel; and the East Half of the Southwest Quarter (E1/2 SW1/4) and the South Half of the Southeast Quarter (S1/2 SE1/4), EXCEPT Outlots One (1) and Two (2), all being located in Section Twenty-two (22) of said Township.
Said tract contains 478 acres more or less and is subject to any easements of record.



- LEGEND**
- = FOUND CORNER MONUMENT
 - = SET 5/8" REBAR WITH CAP STAMPED "RLS 19092"
 - (50') RECORD DISTANCE

Surveyors Certificate
I, Roy Marhart, do hereby certify that this survey and drawing was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the Laws of the State of Minnesota.
Roy Marhart 1-7-05
Roy Marhart - MN Reg. No. 19092

Exhibit B

Aggregate Mining & Lease Agreement

COPY

This Aggregate Mining & Lease Agreement is made and entered into this 26th day of April, 2006 (hereinafter referred to as "Anniversary Date") by and between Gayle E. and Colleen M. Hedge, a husband and wife, residing at 320 Park Street, Ortonville, MN 56278 telephone (320) 839-2370 (hereinafter referred to as "LANDOWNER") and Glacier Resources, Ltd., a North Dakota corporation located at PO Box 13471, 728 Red Dot Place, Grand Forks, ND 58208 telephone (701) 746-7491 (hereinafter referred to as "GLACIER").

RECITALS:

WHEREAS, LANDOWNER warrants being the rightful owner of Real Property and the underlying non-metallic Aggregate (Sand, Gravel, Stone, Bedrock, Granite, etc.) Mineral Rights and Aggregate Reserves, consisting of approximately 478 acres situated in Ortonville Township, Big Stone County, Minnesota, legally described and depicted in Exhibit A (Certificate of Survey dated January 7, 2005) attached hereto and incorporated herein (hereinafter referred to as "Property"); and

WHEREAS, GLACIER and its affiliated company, Strata Corporation, is a miner and producer of construction aggregate, ready mix concrete, concrete products and asphalt pavement, and GLACIER desires to develop a stone quarry (Aggregate) mining, processing and shipping operation upon LANDOWNER's Property; and

WHEREAS, GLACIER desires to purchase from LANDOWNER and LANDOWNER desires to sell to GLACIER, any and all Aggregate including but not limited to all granular soil materials, sand, gravel, rock, boulders, stone, bedrock and granite of every type and quality suitable for use as general trade and construction materials (hereinafter referred to as "Aggregates") from and off said Property, the exact amount and location being now uncertain and undetermined;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

- 1.1 "Aggregate" means granular soil materials, sand, gravel, rock, boulders, stone, bedrock and granite of every type and quality which is suitable for use as general trade and construction materials.
- 1.2 "Commencement Date" means the date of execution of this Aggregate Mining & Lease Agreement.
- 1.3 "Reclamation Plan" means a detailed erosion control, soil contour and re-vegetation plan that LANDOWNER and GLACIER agree to prepare prior to the initiation of mining. This document will become the basis for reclamation of all disturbances created from the proposed mining operation.
- 1.4 "Expiration Date" means December 31, 2060, subject to extensions as provided in Article 4 of this Aggregate Mining & Lease Agreement unless earlier terminated pursuant to this Aggregate Mining & Lease Agreement.
- 1.5 "Property" means the real property owned in fee by Landowner(s) and legally described and depicted on the attached Exhibit A which consists of approximately 478 acres.
- 1.6 "Initial Lease Term" means the initial term of this Aggregate Mining & Lease Agreement; specifically, from the Commencement Date through and including December 31, 2060, subject to any extensions as provided in this Aggregate Mining & Lease Agreement unless earlier terminated pursuant to this Aggregate Mining & Lease Agreement.
- 1.7 "Mining Rights" means those rights set forth in Article 3 herein.

- 1.8 "Overburden" means topsoil, subsoil, clay and silts that must be removed from the surface in order to mine the underlying Aggregate.
- 1.9 "Permit, Permits or Permitting" means the process of applying for, granting, maintenance and the completion of all the required governmental reviews and approvals necessary for the commencement and continuance of Aggregate mining, processing and removal (shipping).

ARTICLE 2 PROPERTY

- 2.1 The property covered by this Aggregate Mining & Lease Agreement is legally described in **Exhibit A** (Certificate of Survey dated January 7, 2005).
- 2.2 GLACIER shall have priority over all others (including LANDOWNER) of which portions or areas of the Property it desires to utilize for its mining, processing and removal operations. Once GLACIER identifies the specific property(s) it plans to utilize, GLACIER shall identify and document those areas by fencing or other agreeable means.
- 2.3 LANDOWNER shall enjoy the option to utilize for themselves, and/or sublease to others, those portions or areas of the Property which are not being utilized by GLACIER, only for the agricultural uses of livestock grazing, pasture, feedlot and haying operations. LANDOWNER shall not, without the written permission of GLACIER, utilize, sell, lease or allow to be acquired by others, any portions of the Property for any other purpose other than the specified agricultural uses above.
- 2.4 Both parties acknowledge that those properties which may be being utilized by GLACIER may be different than those properties needed for mining operations in the future, due to potential expansion and/or depletion of the mining and processing areas. Therefore, every three (3) years, GLACIER shall prepare a Future Property Needs report and present it to the LANDOWNER. This Future Property Needs report shall be the basis for which LANDOWNER shall plan and implement future agricultural operations, uses, and subleases with others.
- 2.5 Should such a Future Property Needs report identify property which has been utilized for agricultural purposes in the past, but is forecast to be needed by GLACIER in the future, LANDOWNER agrees to allow GLACIER to expand/utilize such areas without restriction or encumbrance, and GLACIER shall provide LANDOWNER with a written One (1) Year Advance Notice to discontinue agricultural operations upon such property prior to GLACIER expanding onto such additional property. GLACIER shall not be liable for any costs or damages associated with such discontinuance of those agricultural operations. In the event GLACIER fails to provide the one (1) year notice required herein then GLACIER agrees to be responsible for any valid and reasonably determined losses incurred by LANDOWNER related thereto.

ARTICLE 3 MINING RIGHTS & USE OF PROPERTY

- 3.1 LANDOWNER hereby leases and grants to GLACIER, its designated Agents and/or Employees the exclusive right to test for or prospect for Aggregate Reserves and to set up and operate any type of drilling, blasting, excavating, mining, crushing, de-sanding, screening, conveying, washing, mixing, bituminous/cement/concrete plants, scaling, loading, unloading, hauling and shipping related equipment, and to construct ponds, railroad track and/or haul road(s) on the Property as is required to suitably mine, process and remove the Aggregate materials, and to import and utilize any blend or additive materials such as cement, asphalt oil, hydrated lime, fly ash, bentonite, chemical additives, blend rock and/or sand, or other special blend materials from other sources (at no additional cost) as may be required to produce and/or enhance the desired finished product(s). It is further agreed that off-site Recycled Asphalt Materials or Recycled Concrete Materials may be brought onto the property for processing and blending with aggregates sourced from this property (at no additional cost). While it is intended that the aggregate to be processed shall be that extracted from the property, it is possible that a situation may arise in the future in which other off-site aggregates may need to be processed on the property. Should such a situation arise, it is agreed that no other off-site aggregates may be processed on the property without the LANDOWNER's prior knowledge and consent. Any and all aggregate materials imported onto the property will only be utilized to blend with and/or

enhance those aggregates sourced from this property, in an effort to enhance the total volume of virgin (on-site) aggregates removed from this property.

- 3.2 LANDOWNER hereby grants to GLACIER, its designated Agents and/or Employees the right of free ingress and egress to and from the point(s) where such Aggregate materials are to be removed from and transported to GLACIER's choice of destination. It is expressly provided and understood that GLACIER shall be the sole judge as to the point or points from which Aggregate materials shall be removed from, and the haul road and/or railroad track routes traveled to access the destination point(s), with reasonable consideration given to the location of these routes so as to avoid or to disturb no more Property than is deemed necessary for the efficient and practical transportation route of the Aggregates. All Aggregates shall be removed at the expense of GLACIER (or its Agents).
- 3.3 Should it be required that the Aggregate materials to be removed require the addition of water or that water is required to wash these materials, LANDOWNER agrees to permit such water to be secured from any natural sources that may be available upon this property, without additional cost to GLACIER (or its Agents), other than the development costs of such water, which shall be at the sole expense of GLACIER.
- 3.4 It is also hereby expressly understood and agreed that upon the expiration of this Aggregate Mining & Lease Agreement, that any remaining stockpiles of "processed" Aggregate materials produced by GLACIER (or its Agents) shall remain the property of GLACIER, and that GLACIER (or its Agents) shall continue to have rights of free ingress and egress to remove these materials from such stockpiles until such stockpiles are depleted, all to be paid for at the Royalty rate(s) as provided in this Aggregate Mining & Lease Agreement. Any and all equipment, improvements, buildings or fixtures that may be required by GLACIER (or its Agents), shall remain the property of GLACIER (or its Agents), and shall be removed by GLACIER (or its Agents) upon completion of this Agreement.
- 3.5 Prior to any mining or disturbances to the Property, GLACIER shall develop a Reclamation Plan (also known as an "End Use Plan") and shall provide LANDOWNER a copy of such Reclamation Plan, and LANDOWNER shall have the right to approve such Reclamation Plan, prior to its implementation by GLACIER (or its Agents). This Reclamation Plan shall provide for, and specify the specific areas to be mined and disturbed, including any pond(s), railroad tracks and/or haul roads, the methods and plan to reclaim all such disturbances, the timeframe of such reclamation efforts, as well as the disposition of any waste, excess and/or processed Materials left on site. This Reclamation Plan may be amended or modified by mutual agreement of the parties from time to time as changing conditions may require and may also be utilized in the application for and continued maintenance of any governmental permits or licenses that may be required. Overburden soils shall be saved and utilized for future reclamation purposes, and may not be sold to others unless agreed to by both parties. It is agreed that GLACIER shall not be required to import any off-site soil materials for purposes of reclamation.
- 3.6 GLACIER, or its designated Agents, shall use the property exclusively for those lawful purposes related to the aggregate mining, processing, and transportation operations and business activities as described and incorporated herein. GLACIER, or its designated Agents, at its/their sole expense, shall have the right to make any alterations and improvements required by these operations and/or business activities, such as the construction of buildings, maintenance facilities, fueling stations, railroad tracks, haul roads, water and settling ponds, soil or waste rock structures or berms, etc. Upon expiration of this Aggregate Mining & Lease Agreement, subject to any extensions in term, or upon release of certain properties following satisfactory reclamation, GLACIER, or its Agents, shall have Twenty Four (24) months to remove all its personal property including without limitation, any improvements (equipment, facilities, railroad lines, buildings, etc) and/or aggregate stockpiles (inventory) it may have constructed upon such property.
- 3.7 GLACIER shall provide assurances and safeguards to LANDOWNER that any property it has utilized is safe and free from environmental hazards before releasing such property back to LANDOWNER following satisfactory reclamation.

ARTICLE 4 LEASE TERM

- 4.1 The term of this Aggregate Mining & Lease Agreement shall begin on the date of this Aggregate Mining & Lease Agreement (the "Commencement Date") and will continue uninterrupted until all commercially mineable Aggregate located upon the Property has been depleted, as determined at the sole discretion of GLACIER, or until December 31, 2060 (the "Expiration Date"), whichever is earlier, or until terminated as provided for in this Aggregate Mining & Lease Agreement.
- 4.2 If, on the Expiration Date of the Initial Lease Term, the total volume of commercially mineable aggregate has not been removed, then this Aggregate Mining & Lease Agreement may be extended, at the option of GLACIER, for an indefinite term. The extensions shall be granted in ten (10) year terms. The twenty four (24) month period for removal of personal property and aggregate stockpiles shall be applicable in the Initial Lease Term or any extension thereof.

ARTICLE 5 ROYALTY PAYMENTS

- 5.1 It is agreed that Royalty payments to the LANDOWNER shall be based upon the quantity of aggregate **removed** from the Property, and not upon the quantity of aggregate mined, processed, made or stockpiled in inventory. All such Royalty payment(s) made to LANDOWNER shall be based upon Tons (2,000 pounds), less any foreign substances such as asphalt oil, hydrated lime, cement or water that may be added to the aggregate prior to its removal from the Property, and that all such quantities shall be verified by certified scale weights or by other acceptable means of accurately determining quantities that may be agreeable to both parties. All such royalty payments shall be paid to LANDOWNER by GLACIER on a calendar quarterly basis, within 30 days following the end of the calendar quarter in question.
- 5.2 GLACIER shall pay Royalties to the LANDOWNER at the Base Royalty rate of
per Ton of Aggregate removed from the Property. This Base Royalty rate shall be subject to annual adjustments, beginning with the second (2nd) year of operation, when GLACIER shall adjust the Per Ton Royalty Rate annually, subject to any percentage point changes in the U.S. Department of Labor's Producer Price Index for the Non-Seasonally Adjusted Nonmetallic Mineral Commodity of Crushed and Broken Stone (Series ID: WPU13210121). Any such adjustments shall become effective beginning June 1st (or as soon after June 1st as data becomes available) of the following year, and shall continue until June 1st of the subsequent year, and shall be based upon the final (not preliminary) PPI for the prior calendar year (final adjustment calculations are typically published by U.S. Department of Labor 4-5 months following the end of a calendar year). Due to the virtual impossibility of attempting to predict the fairness and/or competitiveness of royalty rates far into the future, this Royalty Rate Adjustment clause will be subject to review and negotiation for any extensions in term beyond the initial fifty (50) year term of this Aggregate Mining & Lease Agreement. It is the intent of the parties that the formula set forth above shall apply unless otherwise mutually agreed upon by the parties.
- 5.3 In addition to the above Base Royalty rate, GLACIER shall pay LANDOWNER an Additional Royalty in the amount of
per Ton of Aggregate removed from the Property. This Additional Royalty shall be terminated in its entirety on December 31, 2035 or at the completion of the initial (first) 25 year period this Aggregate Mining & Lease Agreement is in effect, whichever date is sooner. This Additional Royalty shall not be subject to any adjustment or increase as set for in paragraph 5.2 above.
- 5.4 GLACIER shall be obligated to pay LANDOWNER minimum annual (January 1 through December 31) Royalty payment(s) in the amount of
By January 31st of each subsequent year, GLACIER shall determine if the prior calendar year Royalty payments equaled or exceeded this minimum annual Royalty obligation, and if they did not, GLACIER shall be obligated to pay the deficient amount by the end of the following month (February). Any such minimum annual Royalty payments shall be credited towards future Royalty payments that may become due. This minimum annual Royalty payment amount shall be pro-rated during the first (initial) year this Aggregate Mining & Lease Agreement becomes effective, based upon the percent of calendar year this Aggregate Mining & Lease Agreement was applicable.

- 5.5 LANDOWNER shall have the right to inspect GLACIER's (or its Agents) books and records, during normal business hours, to insure the accuracy of all royalty payments.
- 5.6 A LENDER/LANDOWNER/LESSEE AGREEMENT AND CONSENT shall be executed by GLACIER, STRATA CORPORATION, LANDOWNER and GLACIER's and STRATA CORPORATION's primary lending institution, stating that should GLACIER ever enter into a situation where this Aggregate Mining & Lease Agreement may be terminated due to the default provisions (Article 12), such lending institution shall continue to have the rights to remove any of the properties owned by GLACIER or STRATA CORPORATION, including any aggregate inventories, provided that LANDOWNER will be promptly paid any and all Royalties (at the then current Royalty rate) that may become due once such aggregate inventories are removed. In exchange, LANDOWNER agrees to grant such lending institution the right of free ingress and egress upon the Property for the purpose of removing any of GLACIER's or STRATA CORPORATION's property, including any aggregate inventories.

ARTICLE 6 PERMITTING

- 6.1 GLACIER shall be responsible for and agrees to pay any and all fees incidental to the development and maintenance of any required governmental permits or approvals that may be required for GLACIER to conduct its business operations. LANDOWNER agrees to cooperate with GLACIER and to use commercially reasonable efforts to assist GLACIER to obtain and maintain any such permits or approvals, said efforts by LANDOWNER in assisting GLACIER to be at GLACIER'S expense.
- 6.2 GLACIER shall be responsible for compliance with all regulations, laws, ordinances, rules or other requirements with respect to its lawful use of the Property in the operation of its business activities.

ARTICLE 7 INSURANCE & TAXES

- 7.1 GLACIER, or its designated Agents, shall pay for and maintain (a) commercial liability insurance insuring GLACIER, its designated Agents, and LANDOWNER against all claims for personal injury, death or property damage occurring upon, in, on or about the Property in an amount not less than Two Million Dollars (\$2,000,000) for injury or death sustained by one or more persons as a result of any one occurrence and One Million Dollars (\$1,000,000) for damage to property for any one occurrence, said policy of insurance to name the LANDOWNER as an additional insured in regard to this Property; (b) workers' compensation insurance within the statutory limits covering GLACIER's or its designated Agents employees; and (c) automobile liability in at least the amount of One Million Dollars (\$1,000,000). All policies of insurance shall be in a form and substance reasonably satisfactory to GLACIER and LANDOWNER, as applicable, shall be written with reputable insurance companies reasonably satisfactory to GLACIER and LANDOWNER and shall provide for at least thirty (30) days written notice to the other party prior to cancellation or reduction in coverage. GLACIER shall provide LANDOWNER with copies of all applicable insurance policies or certificates.

LANDOWNER shall pay for and maintain a general liability policy insuring LANDOWNER, their designated agents and GLACIER or its designated agents and/or its employees against all claims for personal injury, death or property damage occurring upon, in, on or about the Property in an amount not less than One Million Dollars (\$1,000,000.00) for injury or death sustained by one or more persons as a result of one occurrence and for damage to property for any one occurrence; said policies shall name GLACIER as an additional insured in regard to the property. All policies of insurance shall be in a form and substance reasonably satisfactory to GLACIER and LANDOWNER, as applicable, and shall be written with reputable insurance companies reasonably satisfactory to GLACIER and LANDOWNER and shall provide for at least thirty (30) days written notice to the other party prior to cancellation or reduction in coverage. LANDOWNER shall provide GLACIER with copies of all applicable insurance policies or certificates.

- 7.2 LANDOWNER shall pay for all applicable Real Estate and/or Property Taxes up to a commercial land valuation. GLACIER shall pay for any increases above the base (present) valuation and tax rate of the Property which is the result of GLACIER's commercial business activities, buildings and/or improvements it has added to the Property.
- 7.3 GLACIER shall be responsible for all Aggregate Taxes and/or Sales Taxes that may be applicable.

**ARTICLE 8
LANDOWNER TO DEFEND GLACIER,
GLACIER TO DEFEND LANDOWNER**

- 8.1 That LANDOWNER, their heirs, executors and administrators, successors and assigns, covenant and agree to warrant and defend the sale of aggregate in accordance herewith to GLACIER, its successors and assigns, against each and every person or entity claiming ownership of the same, lawfully or otherwise. GLACIER further agrees to save LANDOWNER harmless from any and all claims or causes of action arising out of GLACIER's operation in conjunction with the leased premises. GLACIER shall forward a certificate of liability insurance to the LANDOWNER. GLACIER shall be required to secure the area. Likewise, GLACIER agrees to save LANDOWNER harmless from any and all claims or causes of action arising out of GLACIER's operations in connection with the leased premises.

**ARTICLE 9
CONDEMNATION**

- 9.1 If all or any part of the properties covered by this agreement are taken for public purposes or purchased under the threat of condemnation, both parties agree to cooperate with one another to maximize the respective awards of each of their interests, including separate valuation awards for each parties current and future losses. Should such condemnation actions result in making it logistically or financially impractical for GLACIER to continue normal business operations, GLACIER shall be released from all future payment and other obligations specified within this Aggregate Mining & Lease Agreement.

**ARTICLE 10
ASSIGNMENT AND SUBLEASING**

- 10.1 All agreements between the parties shall be binding upon the heirs, successors or assignees in interest of either party. Either party shall not assign or sublease the property without the other parties' prior written consent, and which consent shall not be unreasonably withheld, provided that such assignee or sub-lessee assumes in full, the obligations of the other party and this agreement in its entirety. Prior to assignment LANDOWNER shall be provided satisfactory evidence that assignee is capable of fulfilling the obligations of GLACIER. In the event of an assignment, GLACIER shall not be released from any financial obligations then currently owed to LANDOWNER.

**ARTICLE 11
STRATA APPROVED AS OPERATING ENTITY**

- 11.1 The parties hereto acknowledge that Strata Corporation has entered into an agreement with the Glacier Resources Ltd. (GLACIER) to be directly involved in the exploration, mining, removal and transportation of the aggregate materials and the parties acknowledge that agreement and the removal of material and conducting of operations on the property by Strata Corporation and consent thereto.

**ARTICLE 12
DEFAULT**

- 12.1 If at any time during the term of this Aggregate Mining & Lease Agreement, LANDOWNER deems GLACIER in default of any requirement, condition or term thereof, LANDOWNER shall

give GLACIER written notice of said default. GLACIER shall have sixty (60) days to cure said default or contest the same. If GLACIER fails to cure any valid or uncontested default within the allowed sixty (60) day period, LANDOWNER shall be entitled to pursue all available legal remedies, including termination of the Aggregate Mining & Lease Agreement.

ARTICLE 13 ARBITRATION OF ANY DISPUTES

- 13.1 Any controversy, claim or dispute between the parties arising out of or relating to the Aggregate Mining & Lease Agreement or any related agreement or any breach hereof or thereof may be referred to final and binding resolution by either party and the officers for either party who have authority to reach agreement on any matters in dispute upon written request by either party specifying in reasonable detail the nature of the dispute. In the event that such officers are unable to resolve the dispute within thirty (30) days after the initial request for dispute resolution, the dispute shall be settled by final and binding arbitration before a sole arbitrator in the headquarters city of the non-initiating party pursuant to the then current commercial rules of the American Arbitration Association and the federal substantive and procedural law of arbitration. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each party will bear its own attorney's fees and costs related to the arbitration. Unless otherwise determined by the arbitrator, the cost and expense of the arbitration shall be borne equally by the parties. Any disputes between the parties that cannot be resolved shall be submitted by either party to arbitration and the parties agree that arbitration of those claims shall be binding on the parties as to their relationship and agreement going forward on the issue so submitted.

ARTICLE 14 ENVIRONMENTAL MATTERS

Except as permitted under applicable law, during the term of this Aggregate Mining & Lease Agreement, LANDOWNER and GLACIER agree not to handle, manufacture, treat, store, use or generate any Environmentally Regulated Materials, as defined in this Article on the Property, except as GLACIER may be required to do so to conduct the business in a manner that complies in all respects with applicable Federal, State and local regulations, rules and laws and in accordance with all applicable permits. Each party agrees to indemnify, defend and hold the other party harmless from and against all damages, liabilities and expenses actually incurred by the indemnified party arising from any breach of this Article less any benefit of insurance proceeds actually received. To the best of LANDOWNERS knowledge, no Environmentally Regulated Materials exist on the Property. LANDOWNER agrees to indemnify and hold GLACIER harmless from and against all damages and expenses actually incurred by GLACIER arising from any Environmentally Regulated Materials existing on the property on the commencement date of this Aggregate Mining & Lease Agreement.

- a. The term "ENVIRONMENTAL AND OCCUPATIONAL SAFETY AND HEALTH LAW" as used in this Aggregate Mining & Lease Agreement means any common-law or duty, case law or ruling, statute, rule, regulation, law, ordinance or code, whether local, state, federal or otherwise in effect, that (i) regulates, creates standards for or imposes liability or standards or conduct concerning any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof or relates in any way to emissions or releases into the environment or ambient environmental conditions, or conduct affecting such matters or (ii) is designed to provide safe and healthful working conditions or reduce occupational safety and health hazards. Such laws include, but are not limited to, the National Environmental Policy Act, 42 U.S.C. Sections 4321 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Federal Water Pollution Control Act 33, U.S. C. Section 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001, the Hazard Communication Act, 29 U.S.C. Sections 651 et seq., the Occupational Safety and Health Act, 29, U.S.C. Sections 751 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136, Minnesota Statutes Chapters 115A, 115D, 116 and any case law interpretations, amendments or restatements thereof or similar enactment thereof as is now or at any time hereafter may be in effect, as well as their state and local counterparts.

- b. The term "ENVIRONMENTALLY REGULATED MATERIALS" as used in the Aggregate Mining & Lease Agreement means any element, compound, pollutant, contaminant, substance, material or waste, or any mixture thereof designated, listed, referenced, regulated or identified pursuant to any Environmental and Occupational Safety and Health Law.
- c. Prior to releasing any portion of the Property back to LANDOWNER, GLACIER shall prepare a Phase I Environmental Site Assessment. GLACIER shall be responsible for mitigating any contamination on any areas of the Property which GLACIER occupied or was in control of.

ARTICLE 15 ENTIRE SUBLEASE

This Aggregate Mining & Lease Agreement and the Exhibits attached hereto set forth all of the covenants, promises, conditions and understandings between LANDOWNER and GLACIER affecting the Property and there are no covenants, promises, conditions or understandings, either oral or written, between them except as herein set forth or referenced.

ARTICLE 16 SEVERABILITY

If any term, condition or provision of this Aggregate Mining & Lease Agreement is invalid, illegal or unenforceable, all other terms, conditions, and provisions of this Aggregate Mining & Lease Agreement shall remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to a party. Upon such determination that a term or other provision is invalid, illegal or unenforceable, the parties shall negotiate in a mutually acceptable manner in order that the transactions contemplated hereby by consummated as originally contemplated to the fullest extent possible.

ARTICLE 17 AMENDMENT

Neither this Aggregate Mining & Lease Agreement nor any Exhibit hereto, may be amended except by an instrument in writing, signed by the parties hereto.

ARTICLE 18 PLURALS AND GENDER

The singular of all terms used herein shall include the plural, the plural shall include the singular, and the use of any gender herein shall include all other genders, where the context so requires.

ARTICLE 19 COUNTERPARTS

This Aggregate Mining & Lease Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same Aggregate Mining & Lease Agreement.

ARTICLE 20 GOVERNING LAW

This Aggregate Mining & Lease Agreement shall be governed by and construed according to the laws of the State of Minnesota.

**ARTICLE 21
BROKERS**

LANDOWNER AND GLACIER each represent to the other that they have not used a broker in this Aggregate Mining & Lease Agreement transaction and that no broker's commission or finder's fee is due as a result. LANDOWNER agrees to indemnify and hold harmless GLACIER from any claim of a broker's commission or finder's fee arising out of such conduct. GLACIER agrees to indemnify and hold LANDOWNER harmless from any claim of a broker's commission or finder's fee arising out of its conduct.

**ARTICLE 22
RECORDATION AND SURVEY**

LANDOWNER and GLACIER may, at any time, record a Memorandum of this Aggregate Mining & Lease Agreement with the County Recorder of Big Stone County, Minnesota. LANDOWNER and GLACIER shall not record a copy of this Aggregate Mining & Lease Agreement in such records. LANDOWNER and GLACIER shall execute a Memorandum of this Aggregate Mining & Lease Agreement in the form set forth as Exhibit C attached hereto.

**ARTICLE 23
LANDOWNERS CONSENT**

This Aggregate Mining & Lease Agreement and each party's obligations hereunder are conditions and contingent upon the full execution and delivery of this Aggregate Mining & Lease Agreement by each party.

**ARTICLE 24
NOTICES**

All notices, consents, demands and requests which may be or are required to be given by either party to the other shall be in writing and sent by United States Registered or Certified Mail, Return Receipt Requested, or served personally addressed as follows:

To LANDOWNER: Gayle and Colleen Hedge
 320 Park Street
 Ortonville, MN 56278-1233

With Copy to: David C. McLaughlin
 Attorney at Law
 25 N W 2nd Street, Suite 102
 Ortonville, MN 56278

To GLACIER: Glacier Resources, Ltd.
 P.O. Box 13471
 728 Red Dot Place
 Grand Forks, ND 58208-2371
 Attn: James R. Bradshaw

(Signatures and Notary Statements Follow)

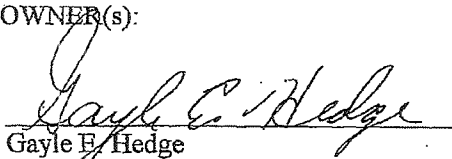
Signatures:

Dated this 26th day of April, 2006.

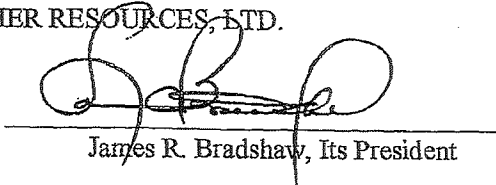
LANDOWNER(s):

GLACIER RESOURCES, LTD.

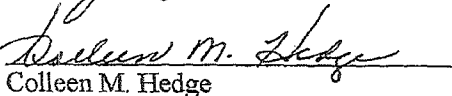
By:


Gayle E. Hedge

By:

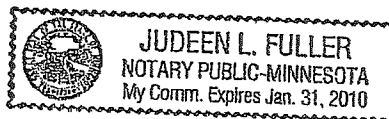

James R. Bradshaw, Its President

By:


Colleen M. Hedge

[illegible]

Indira K. Fuller
NOTARY PUBLIC



STATE OF Minnesota)
COUNTY OF Big Stone) ss.

Notary Public

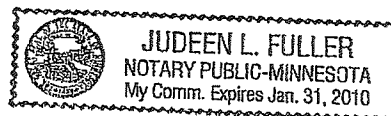


EXHIBIT 2

Agreement to Extend the Term of Option Agreement

This Agreement to Extend the Term of Option Agreement (hereinafter referred to as "Extended Option Agreement") is made and entered into this 21st day of March, 2011 and is by and between Gayle E. and Colleen M. Hedge, a husband and wife, residing at 320 Park Street, Ortonville, MN 56278 telephone (320) 839-2370 (hereinafter referred to as "LANDOWNER") and Glacier Resources, Ltd., a North Dakota corporation located at PO Box 13471, 728 Red Dot Place, Grand Forks, ND 58208 telephone (701) 746-7491 (hereinafter referred to as "GLACIER").

WITNESSETH:

WHEREAS, LANDOWNER warrants being the rightful owner of Real Property and the underlying Aggregate (Sand, Gravel, Stone, Bedrock, Granite, etc.) Mineral Rights and Aggregate Reserves, consisting of approximately 478 acres situated in Ortonville Township, Big Stone County, Minnesota, legally described and depicted in Exhibit A attached hereto and incorporated herein (hereinafter referred to as "Property"); and

WHEREAS, LANDOWNER and GLACIER entered into an Option Agreement on April 26, 2006, a copy of which is attached hereto as Exhibit #1 (hereinafter referred to as "Original Option Agreement"), in which LANDOWNER granted to GLACIER the option to purchase the aggregate mineral rights and to mine, extract and remove (ship via rail or truck) all of the aggregate reserves located on such Property which may be suitable to GLACIER, on a per ton of aggregate removed royalty basis, as described in the Aggregate Mining & Lease Agreement, a copy of which is attached hereto as Exhibit C, including but not limited to all granular soil materials, sand, gravel, rock, boulders, stone, bedrock and granite of every type and quality suitable for use as general trade and construction materials (hereinafter referred to as "Aggregates") from and off said Property, the exact amount and location being now uncertain and undetermined; and

WHEREAS, the Term of such Original Option Agreement was set to end or expire on March 31, 2011, and that LANDOWNER and GLACIER now desire to extend the Term or Expiration Date of such Original Option Agreement.

NOW, THEREFORE, in consideration of the sum of _____ paid by GLACIER to LANDOWNER, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Extend the Term of Option Agreement. To extend the Expiration Date (Term) of such Original Option Agreement for an additional period of twelve (12) months, to now become March 31, 2012 instead of its original Expiration Date of March 31, 2011.
2. Conversion from Extended Option Agreement to an Aggregate Mining & Lease Agreement. At any time during the term of this Extended Option Agreement and prior its (extended) Expiration Date of March 31, 2012, GLACIER at its sole and absolute discretion shall enjoy the option to enter into the attached Aggregate Mining & Lease Agreement by providing LANDOWNER with written notice of such intent, and such Aggregate Mining & Lease Agreement shall then commence within five (5) days of such notice. Should GLACIER take such actions to exercise such Aggregate Mining & Lease Agreement, this Extended Option Agreement and any future Option Payments which may remain unpaid, shall then be terminated in its entirety.
3. All other terms and conditions of Original Option Agreement to remain in full force and effect. That all other terms and conditions of such Original Option Agreement shall remain in full force and effect, including the requirement that GLACIER shall continue to make payment to LANDOWNER as described in such Original Option Agreement the amount of _____ dollars payable within 30 days following the anniversary date of such Original Option Agreement.

This Extended Option Agreement shall be binding upon both parties as well as their heirs and/or successors in interest. There are no other agreements or understandings expressed or implied which shall be binding to either party, unless specifically agreed to in written form by both parties. In witness whereof, all parties have executed this Extended Option Agreement the day and year first above written.

Signatures:

Gayle E. Hedge
Gayle E. Hedge, LANDOWNER

Colleen M. Hedge
Colleen M. Hedge, LANDOWNER

GLACIER RESOURCES, LTD.

James R. Bradshaw
James R. Bradshaw
President
Glacier Resources, Ltd

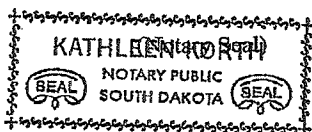
NOTARY STATEMENTS:

State of South Dakota
County of Grant

On this 18 day of March, 2011 before me, a Notary Public, within and for said county, personally appeared Gayle E. and Colleen M. Hedge to me known to be the persons who did execute the above and foregoing instrument and acknowledged that they did execute the above and foregoing instrument and that they did execute the same as their free act and deed.

My commission expires 5 / 6 / 2014

Kathleen Korth
Notary Public



State of North Dakota
County of Grand Forks

On this 21st day of MARCH, 2011 before me, a Notary Public, within and for said county, personally appeared James R. Bradshaw, to me known to be the persons who did execute the above and foregoing instrument and acknowledged that he did execute the above and foregoing instrument and that he did execute the same as his free act and deed and with full authority on behalf of the corporate entity recited herein.

My commission expires 11 / 17 / 17

Michele Leddige
Notary Public

(Notary Seal)

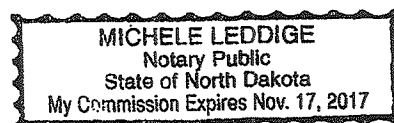


EXHIBIT 3

Agreement for Revised Extension of Option Agreement

This Agreement for Revised Extension of Option Agreement (hereinafter referred to as "**Revised Extension of Option Agreement**") is made and entered into this 21st day of March, 2012 and is by and between Gayle E. and Colleen M. Hedge, a husband and wife, residing at 320 Park Street, Ortonville, MN 56278 telephone (320) 839-2370 (hereinafter referred to as "**LANDOWNER**") and Glacier Resources, Ltd., a North Dakota corporation located at PO Box 13471, 728 Red Dot Place, Grand Forks, ND 58208 telephone (701) 746-7491 (hereinafter referred to as "**GLACIER**").

WITNESSETH:

WHEREAS, LANDOWNER warrants being the rightful owner of Real Property and the underlying Aggregate (Sand, Gravel, Stone, Bedrock, Granite, etc.) Mineral Rights and Aggregate Reserves, consisting of approximately 478 acres situated in Ortonville Township, Big Stone County, Minnesota, legally described and depicted in **Exhibit A** attached hereto and incorporated herein (hereinafter referred to as "**Property**"); and

WHEREAS, LANDOWNER and GLACIER entered into an original Option Agreement on April 26, 2006, a copy of which is attached hereto as **Exhibit #1** (hereinafter referred to as "**Original Option Agreement**"), in which LANDOWNER granted to GLACIER the option to purchase the aggregate mineral rights and to mine, extract and remove (ship via rail or truck) all of the aggregate reserves located on such Property which may be suitable to GLACIER, on a per ton of aggregate removed royalty basis, as described in the Aggregate Mining & Lease Agreement, a copy of which is attached hereto as **Exhibit B**, including but not limited to all granular soil materials, sand, gravel, rock, boulders, stone, bedrock and granite of every type and quality suitable for use as general trade and construction materials (hereinafter referred to as "**Aggregates**") from and off said Property, the exact amount and location being now uncertain and undetermined; and

WHEREAS, the Term of such Original Option Agreement was set to end or expire on March 31, 2011, and that LANDOWNER and GLACIER agreed to extend the Term or Expiration Date of such Original Option Agreement through the mutual agreement and execution of an Extended Option Agreement (hereinafter referred to as "**Extended Option Agreement**"), a copy of which is attached hereto as **Exhibit C**, which was made and entered into on March 21, 2011, and extended the terms and conditions of the Original Option Agreement an additional twelve (12) months until March 21, 2012.

WHEREAS, the Term of such Extended Option Agreement was set to end or expire on March 21, 2012, and that LANDOWNER and GLACIER now desire to extend the Term or Expiration Date of such Extended Option Agreement (again) through the execution of this Revised Extension of Option Agreement.

NOW, THEREFORE, in consideration of the sum of _____ paid by GLACIER to LANDOWNER, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Extend the Term of Extended Option Agreement. To extend the Expiration Date (Term) of such Extended Option Agreement for an additional period of thirty six (36) months, to now become **March 21, 2015** instead of its original Expiration Date of March 21, 2012.
2. Conversion from Revised Extension of Option Agreement to an Aggregate Mining & Lease Agreement. At any time during the term of this Revised Extension of Option Agreement and prior its (re-extended) Expiration Date of March 21, 2015, GLACIER at its sole and absolute discretion shall enjoy the option to enter into the attached Aggregate Mining & Lease Agreement by providing LANDOWNER with written notice of such intent, and such Aggregate Mining & Lease Agreement shall then commence within five (5) days of such notice. Should GLACIER take such actions to exercise such Aggregate Mining & Lease Agreement, this Revised Extension of Option Agreement and any future Option Payments which may remain unpaid, shall then be terminated in its entirety.

3. All other terms and conditions of Original Option Agreement to remain in full force and effect.
That all other terms and conditions of such Original Option Agreement shall remain in full force and effect, including;

- a. The requirement that GLACIER shall continue to make payment to LANDOWNER as described in such Original Option Agreement the amount of _____ dollars payable within 30 days following the anniversary date of such Original Option Agreement, and
- b. Should GLACIER, at its sole discretion, and at any time during the term of this Revised Extension of Option Agreement, determine that the execution of an Aggregate Mining & Lease Agreement would not be in its best interests, shall have the right and option to terminate this Revised Extension of Option Agreement in its entirety and to not enter into the attached Aggregate Mining & Lease Agreement by providing LANDOWNER with written notice of such intent, and with such actions, GLACIER shall have no further obligations or liabilities to LANDOWNER, and LANDOWNER shall have no further obligations or liabilities to GLACIER.

This Revised Extension of Option Agreement shall be binding upon both parties as well as their heirs and/or successors in interest. There are no other agreements or understandings expressed or implied which shall be binding to either party, unless specifically agreed to in written form by both parties. In witness whereof, all parties have executed this Revised Extension of Option Agreement the day and year first above written.

Signatures:

Gayle E. Hedge
Gayle E. Hedge, LANDOWNER

Colleen M. Hedge
Colleen M. Hedge, LANDOWNER

GLACIER RESOURCES, LTD.
James R. Bradshaw
James R. Bradshaw
President
Glacier Resources, Ltd

NOTARY STATEMENTS:

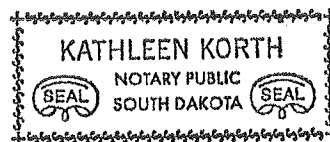
State of South Dakota
County of Grant

On this 19 day of March, 2012 before me, a Notary Public, within and for said county, personally appeared Gayle E. and Colleen M. Hedge to me known to be the persons who did execute the above and foregoing instrument and acknowledged that they did execute the above and foregoing instrument and that they did execute the same as their free act and deed.

My commission expires 5/16/2014

Kathleen Korth
Notary Public

(Notary Seal)



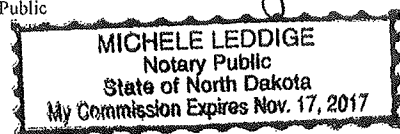
State of North Dakota
County of Grand Forks

On this 21st day of MARCH, 2012 before me, a Notary Public, within and for said county, personally appeared James R. Bradshaw, to me known to be the persons who did execute the above and foregoing instrument and acknowledged that he did execute the above and foregoing instrument and that he did execute the same as his free act and deed and with full authority on behalf of the corporate entity recited herein.

My commission expires 11/17/2017

Michele Leddige
Notary Public

(Notary Seal)



AFFIDAVIT OF HOWARD ROSTON

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

HOWARD A. ROSTON, being first duly sworn upon oath, deposes and states as follows:

1. I am an attorney licensed to practice law in the State of Minnesota.
2. I am the attorney for the Petitioners in the following matters:

A-7829 Ortonville/Ortonville Township
(Ordinance No. 12-07; Hedge Property; 118.26 acres)
A-7830 Ortonville/Ortonville Township
(Ordinance No. 12-08; McLelland-Knippen Property; 111.28 acres)
A-7831 Ortonville/Ortonville Township
(Ordinance No. 12-09; Ziegler Property; 102.71 acres)
A-7832 Ortonville/Ortonville Township
(Ordinance No. 12-10; Crookston Property; 3.98 acres)
A-7833 Ortonville/Ortonville Township
(Ordinance No. 12-11; Crookston Property; 65.52 acres)
A-7834 Ortonville/Ortonville Township
(Ordinance No. 12-12; Crookston Property; 48.61 acres)

3. Attached hereto as **Exhibit A** is a true and correct copy of the Minnesota Court of Appeals' unpublished decision, *Gilbert v. Minnesota State Office of Strategic and Long-Range Planning*, 2002 Minn. App. LEXIS 117 (Minn. Ct. App. Jan. 29, 2002).
4. Attached hereto as **Exhibit B**, is a true and correct copy of the Minnesota Court of Appeals' unpublished decision, *Twp. of Franklin v. City of Delano*, 2004 Minn. App. LEXIS 662 (Minn. Ct. App. June 15, 2004)

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Howard A. Roston

Subscribed and sworn to before me
this 13th day of February, 2013.

Notary Public



EXHIBIT A

LEXSEE

**Dr. Barry and Judy Gilbert, et al., Appellants, vs. Minnesota State Office of
Strategic and Long-Range Planning and the City of Rochester, Respondents.**

CX-01-1221

COURT OF APPEALS OF MINNESOTA

2002 Minn. App. LEXIS 117

January 29, 2002, Filed

NOTICE: [*1] THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

PRIOR HISTORY: Olmsted County District Court. File No. C8-01-0378. Hon. Clement H. Snyder.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: In an annexation dispute, appellant landowners challenged the order of the Olmsted County District Court, Minnesota, granting summary judgment in favor of respondents, the city and the planning office.

OVERVIEW: The city approved an annexation ordinance, and the planning office determined that it lacked the power to review the city's annexation action. The landowners contended that: (1) the planning office's refusal to interfere with the annexation was based on the planning office's misreading of [Minn. Stat. §§ 414.01, .031, and .033](#) (2000); and (2) the planning office's decision was arbitrary or capricious because the annexation was allowed even though it was contrary to the considerations listed in [Minn. Stat. § 414.033, subd. 10](#) (2000). The appellate court held that the order was proper as: (1) no statutory provision gave the planning office authority to consider the criteria set forth in [Minn. Stat. §§ 414.01, subd. 1, and 414.031, subd. 4](#) (2000), in annexations by ordinance under [Minn. Stat. § 414.033, subd. 2](#) (2000); and (2) the planning office was not required to conduct hearings regarding policy objectives.

OUTCOME: The appellate court affirmed the order.

CORE TERMS: annexation, ordinance, planning, township, planning board, statutory criteria, summary judgment, board order, surrounded, municipal, notice, annex, statutory provision, plain meaning, procedural requirements, public hearing, properly filed, discretionary, municipality, residents, signifies, neighborhoods, objecting

LexisNexis(R) Headnotes

Civil Procedure > Appeals > Standards of Review > De Novo Review

Governments > Legislation > Interpretation

[HN1] Interpretation of a statute and its application to undisputed facts present questions of law reviewed de novo. When a statute's words are clear and unambiguous, the plain meaning is given effect. [Minn. Stat. § 645.16](#) (2000). Related parts of a statute are considered together to give the words their plain meaning.

Governments > Local Governments > Administrative Boards

Governments > Local Governments > Boundaries

[HN2] The Minnesota legislature has provided two mechanisms for cities to annex land: annexation by board order by [Minn. Stat. § 414.031](#) (2000), and annexation by ordinance by [Minn. Stat. § 414.033](#) (2000). Each method has different procedures and requirements. For example, annexations by board order require the state planning

board to hold hearings and make a decision based upon its consideration of the factors listed in [Minn. Stat. § 414.031, subd. 4\(a\)-\(n\)](#) (2000). [Minn. Stat. § 414.031, subds. 3, 4](#) (2000). Annexations by ordinance are permitted in limited circumstances and transfer the notice and hearing requirements to the municipality that is seeking to annex certain land. The legislature determined that the presence of these circumstances signifies appropriate conditions for annexation. This presumptive determination is what explains the streamlined approval process for annexations by ordinance. Among these limited circumstances is when the land to be annexed is completely surrounded by land within the municipal limits. [Minn. Stat. § 414.033, subd. 2\(2\)](#) (2000).

Governments > Local Governments > Boundaries

[HN3]If the property, qualifies for annexation by ordinance, two procedural requirements must be met. First, the municipality must hold a public hearing with written notice. [Minn. Stat. § 414.033, subd. 2b](#) (2000). Second, any annexation ordinance passed must be properly filed with the planning board, the township, the county auditor, and the secretary of state. Minn. Stat. § 414.044, subd. 7 (2000).

Governments > Local Governments > Boundaries

[HN4]See [Minn. Stat. § 414.033, subd. 10](#) (2000).

Governments > Local Governments > Boundaries

[HN5]Under the language of [Minn. Stat. § 414.033, subd. 10](#) (2000), the planning board's authority to request information is discretionary. The only references to these considerations in annexation by ordinance are contained within [Minn. Stat. § 414.033, subds. 3 and 5](#) (2000). No statutory provision gives the board authority to consider the criteria set forth in [Minn. Stat. §§ 414.01, subd. 1, and 414.031, subd. 4](#) (2000), in annexations by ordinance under [Minn. Stat. § 414.033, subd. 2](#) (2000).

Governments > Local Governments > Boundaries

[HN6]In Minnesota, the planning board reviews the ordinance to ensure that at least one of the conditions enumerated in [Minn. Stat. § 414.033, subd. 2](#) (2000), has been met and all of the procedural requirements of [Minn. Stat. § 414.033, subd. 2b](#) (2000) have been met.

COUNSEL: Kenneth R. Moen, Dunlap & Seeger,

Rochester, MN (for appellants).

Mike Hatch, Attorney General, Kenneth E. Raschke, Jr., Assistant Attorney General, St. Paul, MN, and Terry L. Adkins, Rochester City Attorney, David M. Goslee, Assistant City Attorney, Rochester, MN (for respondents).

JUDGES: Considered and decided by Harten, Presiding Judge, Randall, Judge, and Amundson, Judge.

OPINION BY: R. A. RANDALL

OPINION

UNPUBLISHED OPINION

R. A. RANDALL, Judge

In this annexation dispute, the district court granted respondents summary judgment affirming the state planning office's determination that it lacked the power to review the city's annexation action. Appellants allege that the state planning office's refusal to interfere with the annexation was based on the office's misreading of [Minn. Stat. §§ 414.01, .031, and .033](#) (2000). Appellants also allege that the planning office's decision was arbitrary or capricious because the annexation was allowed even though it was [*2] contrary to the considerations listed in [Minn. Stat. § 414.033, subd. 10](#). We affirm.

FACTS

At issue is the fate of approximately 918 acres of land within Rochester Township (the township) that is completely surrounded by the City of Rochester (the city). The Rochester City Council conducted a hearing regarding the city's proposal to annex this land. At the hearing, representatives of appellant landowners and the township testified that the proposed annexation did not fulfill the criteria listed in [Minn. Stat. §§ 414.01, subd. 1, .031, subd. 4](#) (2000). They also testified that there was substantial political opposition to the annexation from the residents of the township who would become residents of the city. At the conclusion of the hearing, the city approved an annexation ordinance.

The city then filed the annexation ordinance with the Minnesota State Office of Strategic and Long-Range Planning (planning office). Shortly thereafter, appellants filed an objection to the annexation with the planning office, arguing that: (1) the evidence received at the

hearing did not demonstrate compliance with the statutory criteria, [*3] (2) the objecting neighborhoods were better served by the township, (3) the township would suffer undue hardship by approval of the ordinance, (4) the increase in revenue to be received by the city did not bear any reasonable relation to the monetary value of benefits conferred upon the objecting neighborhoods, and (5) the annexation ordinance failed to distinguish between areas of the annexation that would benefit from annexation and those that would not.

After the city filed its response, the planning office approved the annexation ordinance noting that there was no statutory provision for objection, and so it was without authority to conduct further review.

¹ It therefore declined to request additional material about the propriety of the annexation. Appellants appealed this decision to the district court, which granted summary judgment in favor of the city. This appeal followed.

1 In oral argument, the planning office reiterated its position that it is without authority to mandate a contested hearing.

[*4] DECISION

Appellants challenge the grant of summary judgment in support of the planning board's determination that they were without authority to consider whether the statutory criteria set forth in Minn. Stat. §§ 414.01, subd. 1, 414.031, subd. 4 (2000) were met, arguing that Minn. Stat. § 414.033, subd. 10 (2000) gives the planning board such authority. [HN1] Interpretation of a statute and its application to undisputed facts present questions of law reviewed de novo. Lefto v. Hoggbreath Enters., Inc., 581 N.W.2d 855, 856 (Minn. 1998). When a statute's words are clear and unambiguous, the plain meaning is given effect. Minn. Stat. § 645.16 (2000). Related parts of a statute are considered together to give the words their plain meaning. Chanhasen Estates Residents Ass'n v. City of Chanhasen, 342 N.W.2d 335, 339 (Minn. 1984); see also Minn. Stat. § 645.16 (2000) (statute must be considered as a whole to harmonize and give effect to all provisions).

[HN2] The legislature has provided two mechanisms for cities to annex land: annexation by [*5] board order by Minn. Stat. § 414.031 (2000), and annexation by ordinance by Minn. Stat. § 414.033 (2000). Rockford Tp. v. City of Rockford, 608 N.W.2d 903, 906 (Minn. App. 2000). Each method has different procedures and

requirements. *Id.* For example, annexations by board order require the state planning board to hold hearings and make a decision based upon its consideration of the factors listed in Minn. Stat. § 414.031, subd. 4(a)-(n). Minn. Stat. § 414.031, subds. 3,4 (2000). Annexations by ordinance are permitted in limited circumstances and transfer the notice and hearing requirements to the municipality that is seeking to annex certain land. Rockford Tp., 608 N.W.2d at 906. The legislature determined that the presence of these circumstances signifies appropriate conditions for annexation. This presumptive determination is what explains the streamlined approval process for annexations by ordinance. Among these limited circumstances is when the land to be annexed is "completely surrounded by land within the municipal limits." [*6] Minn. Stat. § 414.033, subd. 2(2). The land at issue here is completely surrounded by land within the municipal limits.

[HN3] If the property, qualifies for annexation by ordinance, two procedural requirements must be met. First, the municipality must hold a public hearing with written notice. Minn. Stat. § 414.033, subd. 2b (2000). The parties do not dispute that a public hearing with proper notice was held. Second, any annexation ordinance passed must be properly filed with the planning board, the township, the county auditor, and the secretary of state. Minn. Stat. § 414.044, subd. 7 (2000). There is no dispute that the ordinance was properly filed.

Appellants continue to argue that the planning board must consider the annexation in light of the statutory criteria set forth in sections 414.01, subdivision 1, and 414.031, subdivision 4. According to appellants, Minn. Stat. § 414.033, subd. 10, provides a mechanism for the board to approve or disapprove of an annexation ordinance by consideration of these same factors. This section states:

[HN4] The municipal board may, at its [*7] discretion, require the city or property owners to furnish additional information concerning an annexation by ordinance to inform the board about the extent to which the proposed annexation conforms to the statutory criteria set forth in sections 414.01, subdivision 1 and 414.031, subdivision 4.

Minn. Stat. § 414.033, subd. 10. Appellants argue that the fact that the board has authority to request this information signifies that it is authorized, and even compelled, to consider such information. We disagree.

[HN5]Under the language of this section, the board's authority to request this information is discretionary. Further, the only references to these considerations in annexation by ordinance are contained within [Minn. Stat. § 414.033, subdivisions 3 and 5](#). No statutory provision gives the board authority to consider the criteria set forth in [sections 414.01, subd. 1](#), and [414.031, subd. 4](#), in annexations by ordinance under [Minn. Stat. § 414.033, subd. 2](#).

Appellants next argue that these criteria must be considered because without doing so, [section 414.033, subd. 10](#), is rendered superfluous. But, [*8] as noted, consideration of [section 414.031, subd. 4](#), criteria is required in annexation by ordinance proceedings that meet the requirements of [Minn. Stat. § 414.033, subs. 3, 5](#). The land here does not fit within these provisions. As for the board's discretionary authority to request additional information regarding [Minn. Stat. § 414.01](#),

[subd. 1](#), this section outlines the overall purpose of the board, and the public policies that the legislature has determined that the board shall pursue. [Minn. Stat. § 414.01, subd. 1](#). But the board is simply not *required* to conduct hearings regarding these policy objectives. To do so would obviate the distinction between annexation by ordinance and annexation by board order.

Lastly, appellants argue that without authority to review annexations by ordinance for conformity with [Minn. Stat. § 414.031, subd. 4](#), the provision for board approval of an annexation ordinance is meaningless. That is not exactly correct. [HN6]The board reviews the ordinance to ensure that at least one of the conditions enumerated in [Minn. Stat. § 414.033 \[*9\] , subd. 2](#), has been met and all of the procedural requirements of [Minn. Stat. § 414.033, subd. 2b](#), have been met.

Affirmed.

EXHIBIT B



Cited

As of: Jan 30, 2013

Township of Franklin, petitioner, Appellant, vs. City of Delano, Respondent.

A03-1751, A03-1911

COURT OF APPEALS OF MINNESOTA

2004 Minn. App. LEXIS 662

June 15, 2004, Filed

NOTICE: [*1] THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

PRIOR HISTORY: Wright County; Hon. Bruce R. Douglas Judge. District Court File Nos. C4-03-942 and C8-03-2869.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: After the Minnesota planning agency approved two annexations of appellant township's land by respondent city, the township appealed pursuant to [Minn. Stat. § 414.07](#) (2002). In consolidated appeals a trial court in Wright County (Minnesota), granted summary judgment to the City, affirming the agency's approval. The township appealed.

OVERVIEW: In two separate annexation proceedings the city annexed two parcels in the township. In each case the city approved the annexation following public hearing, the Minnesota planning agency reviewed and approved the annexation, the township contested the agency's approval, and the trial court granted summary judgment affirming the agency's approval. On appeal the court affirmed. The court rejected the township's claim that the annexations, when considered together, exceeded the 60-acre annexation limit in [Minn. Stat. § 414.033](#),

[subd. 2\(3\)](#) (2002) because no statutory provision permitted, much less required, aggregation of independently valid annexations by ordinance, however related. The court also rejected the township's claim that the agency was obligated to look beyond the face of municipal documentation supporting the annexations by ordinance, holding that the plain language of [Minn. Stat. § 414.033, subd. 2](#) (2002) permitted annexations by ordinance with no further inquiry when the statutory criteria were met.

OUTCOME: The court affirmed.

CORE TERMS: annexation, planning, ordinance, statutory criteria, parcel, independently, aggregation, municipal, board order, undisputed, summary judgment, consolidated appeals, agency decision, annexation-by-ordinance, documentation, municipality, aggregated, obligated, tribunal, annexed, annex

LexisNexis(R) Headnotes

Governments > Local Governments > Boundaries

[HN1] [Minn. Stat. § 414.01, subd. 1](#) (2002) delegates state jurisdiction over municipal boundary adjustments to the Minnesota Director of the Office of Strategic and Long-Range Planning. That authority was transferred to the Minnesota Department of Administration pursuant to

[Minn. Stat. § 16B.37](#) (2002).

*Administrative Law > Agency Adjudication > Decisions
> General Overview*

*Civil Procedure > Appeals > Standards of Review > De
Novo Review*

*Environmental Law > Litigation & Administrative
Proceedings > Judicial Review*

[HN2]Where a trial court acts as an appellate tribunal with respect to an agency decision, a reviewing court will independently review the agency decision.

Governments > Local Governments > Boundaries

[HN3]The legislature has provided two mechanisms for cities to annex land: annexation by board order and annexation by ordinance. [Minn. Stat. §§ 414.031, .033](#) (2002). Each method has unique procedures and requirements. For example, annexations by board order require the Minnesota planning agency to hold hearings and make a decision based upon its consideration of the factors listed in [Minn. Stat. § 414.031, subd. 4\(a\)-\(h\)](#). [Minn. Stat. § 414.031, subds. 3, 4](#). In contrast, annexations by ordinance are permitted in limited circumstances where specific statutory criteria are met and transfer the notice and hearing requirements from the Minnesota planning agency to the municipality that is seeking to annex the land. [Minn. Stat. § 414.033, subds. 2, 6](#). Among these limited circumstances is when (1) the land to be annexed abuts the city; (2) the land does not exceed 60 acres; (3) the land is not presently served by public sewer facilities; and (4) the city receives a petition for annexation from all property owners of the land. [Minn. Stat. § 414.033, subd. 2\(3\)](#). The Minnesota planning agency reviews the annexation to determine whether the statutory criteria are met.

Governments > Local Governments > Boundaries

[HN4]No statutory provision permits, much less requires, aggregation of independently valid annexations by ordinance, however related. [Minn. Stat. § 414.033](#) (2002).

Governments > Legislation > Interpretation

[HN5]A court must not add language to a statute that the legislature has deliberately or inadvertently omitted.

Governments > Local Governments > Boundaries

[HN6]See [Minn. Stat. § 414.033, subd. 2](#) (2002).

COUNSEL: Michael Puklich, Patrick J. Neaton, Neaton, Puklich & Klassen, Minnetonka, MN (for appellant).

Mark J. Johnson, Gregerson, Rosow, Johnson & Nilan, Ltd., Minneapolis, MN ; and.

Kenneth E. Raschke, Jr., Assistant Attorney General, St. Paul, MN (for respondent).

JUDGES: Considered and decided by Toussaint, Chief Judge; Kalitowski, Judge; and Wright, Judge.

OPINION BY: TOUSSAINT

OPINION

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant Township of Franklin appeals the district court's grant of summary judgment to respondent City of Delano in two consolidated appeals arising from annexation disputes. These consolidated appeals each involve one of two adjacent parcels of appellant's land that respondent acquired in two independent annexation-by-ordinance proceedings. In each case (1) respondent approved the annexation following public hearing; (2) Minnesota Planning¹ reviewed and approved the annexation in accordance with its statutory function; (3) appellant [*2] contested Minnesota Planning's approval to the district court pursuant to [Minn. Stat. § 414.07](#) (2002); and (4) the district court, acting as an appellate tribunal, granted summary judgment affirming Minnesota Planning's approval. It is undisputed that each parcel independently met the statutory criteria for annexation by ordinance.

¹ [Minn. Stat. § 414.01, subd. 1](#) (2002)

[HN1]delegates state jurisdiction over municipal boundary adjustments to the Director of the Office of Strategic and Long-Range Planning. That authority was transferred to the Department of Administration pursuant to [Minn. Stat. § 16B.37](#) (2002). For convenience, this opinion will use the term "Minnesota Planning" to refer to the state agency that took action in these matters.

Appellant argues that the two annexations are so related that they constitute the same annexation proceeding, and therefore should be aggregated and rejected as exceeding the statutory 60-acre limit [*3] under [Minn. Stat. § 414.033, subd. 2\(3\)](#) (2002). Appellant also argues that Minnesota Planning is obligated to look beyond the face of municipal documentation supporting an annexation by ordinance. Because (1) there is no support for appellant's aggregation theory; (2) Minnesota Planning appropriately reviewed and approved the annexations; and (3) it is undisputed that each annexation independently met the statutory criteria, we affirm.

DECISION

I.

Standard of Review

[HN2]Where a trial court acts as an appellate tribunal with respect to an agency decision, this court will independently review the agency decision. [In re Hutchinson](#), 440 N.W.2d 171, 175 (Minn. App. 1989), review denied (Minn. Aug. 9, 1989).

II.

The Annexation Statutes

[HN3]The legislature has provided two mechanisms for cities to annex land: annexation by board order and annexation by ordinance. [Minn. Stat. §§ 414.031, .033](#) (2002). Each method has unique procedures and requirements. For example, annexations by board order require Minnesota Planning to hold hearings and make a decision based upon its consideration of [*4] the factors listed in [Minn. Stat. § 414.031, subd. 4\(a\)-\(h\)](#). *Id.* § 414.031, subds. 3, 4. In contrast, annexations by ordinance are permitted in limited circumstances where specific statutory criteria are met and transfer the notice and hearing requirements from Minnesota Planning to the municipality that is seeking to annex the land. *Id.* § 414.033, subds. 2, 6; [Rockford Twp. v. City of Rockford](#), 608 N.W.2d 903, 906 (Minn. App. 2000). *Id.*, subd. 2. Among these limited circumstances is when (1) the land to be annexed abuts the city; (2) the land does not exceed 60 acres; (3) the land is not presently served by public sewer facilities; and (4) the city receives a petition for annexation from all property owners of the land. [Minn. Stat. § 414.033, subd. 2\(3\)](#). Minnesota Planning reviews the annexation to determine whether the statutory criteria

are met.

III.

Appellant's Aggregation Theory

Appellant argues that the independent annexations of the two parcels at issue are so related that they constitute the same annexation proceeding, and therefore should be aggregated. In effect, appellant [*5] urges this court to read into [Minn. Stat. § 414.033](#) a proximity provision prohibiting the annexation of two independently annexable parcels when the parcels are "so related" and together would violate the parcel-size restriction. However, appellant failed to identify any support for its proffered statutory interpretation. In fact, [HN4]no statutory provision permits, much less requires, aggregation of independently valid annexations by ordinance, however related. See [Minn. Stat. § 414.033](#). This court has held that [HN5]it must not add language to a statute that the legislature has deliberately or inadvertently omitted. [Wolf Motor Co., Inc. v. One 2000 Ford F-350](#), 658 N.W.2d 900, 903 (Minn. App. 2003). Appellant's aggregation theory is unsupported by Minnesota law.

IV.

Minnesota Planning's Scope of Review

Appellant argues that Minnesota Planning is obligated to look beyond the face of municipal documentation supporting an annexation by ordinance. The record demonstrates that Minnesota Planning interprets the annexation-by-ordinance statute to give it no authority to "examine, or pass judgment on, the wisdom, [*6] planning policies, motivations, or other substantive issues relating to such annexations." Instead, it examines each annexation by ordinance to determine if the objective statutory criteria are met under [Minn. Stat. § 414.033](#).

Minnesota Planning acted within its statutory role when it approved the annexations by ordinance after determining that the objective criteria for each were met. In contrast to its review of annexations by board order, Minnesota Planning is not required by statute to undertake a substantive review of annexations by ordinance. Compare [Minn. Stat. § 414.031](#) with [Minn. Stat. § 414.033](#). Rather, the plain language of the statute permits annexations by ordinance, with no further

inquiry, when the statutory criteria are met. Minn. Stat. § 414.033, subd. 2 [HN6] ("A municipal council may by ordinance declare land annexed to the municipality . . . if [the statutory criteria are met]"). Here, it is undisputed

that the statutory criteria were met with respect to each parcel.

Affirmed.

WILCOX LAW OFFICE

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February 11, 2013

The Honorable Timothy J. O'Malley
Assistant Chief Administrative Law Judge
Office of Administrative Hearings
Municipal Boundary Adjustment Unit
P.O. Box 64620
St. Paul, MN 55164-0620

VIA EMAIL
tim.omalley@state.mn.us

Re: A-7829 Ortonville/Ortonville Township
(Ordinance No. 12-07; Hedge Property; 118.26 acres)
A-7830 Ortonville/Ortonville Township
(Ordinance No. 12-08; Mclelland-Knippen Property; 111.28 acres)
A-7831 Ortonville/Ortonville Township
(Ordinance No. 12-09; Ziegler Property; 102.71 acres)
A-7832 Ortonville/Ortonville Township
(Ordinance No. 12-10; Crookston Property; 3.98 acres)
A-7833 Ortonville/Ortonville Township
(Ordinance No. 12-11; Crookston Property; 63.52 acres)
A-7834 Ortonville/Ortonville Township
(Ordinance No. 12-12; Crookston Property; 48.61 acres)

Dear Judge O'Malley:

I represent the City of Ortonville ("City"), and am sending this letter in response to your request for additional information regarding the above referenced City ordinances to annex properties currently within Ortonville Township ("Township"). The City has reviewed the objections to these ordinances that were submitted by the Township, and this letter contains the City's answer to the Township's objections.

SUMMARY OF ISSUES

1. Were Glacier Resources, Ltd. ("Glacier"), Gayle E. Hedge and Colleen M. Hedge ("The Hedges"), or Strata Corporation ("Strata") beneficial owners of the subject properties and required to be represented in the petitions filed for the annexations by ordinance, and if so would inclusion of supposed beneficial owners result in the subject area exceeding the 120 acre limitation in Minn. Stat. § 414.033, subd. 2(3)?

2. Does the intended use of the property meet the requirement of “urban or suburban in character or about to become so” of Minn. Stat. § 414.033, subd. 2?

SUMMARY OF ANSWERS

1. All property owners, based on the definitions in Minn. Stat. § 414.011 and *Blee v. City of Rochester et al.*, 109 N.W.2d 44 (Minn. 1961), were represented in the petitions for annexation. Only the new fee owners of the properties have an interest which is “primarily one of possession and enjoyment”. Neither Glacier, the Hedges, nor Strata can be considered “beneficial owners” of the properties in question because of an existing unexercised option for Glacier to lease property from the Hedges, and therefore the 120 acre limitation is not exceeded.
2. The use of the properties meets the requirement of “urban or suburban in character or about to become so” of Minn. Stat. § 414.033, subd. 2 because each parcel meets the conditions of Minn. Stat. § 414.033, subd. 2(3), and based on the language of the statute “any such land is *deemed* to be urban or suburban in character or about to become so” if it meets these conditions.

ANSWER

I. All Property Owners of the Properties At Issue Were Represented in the Petitions Filed for Annexation by Ordinance.

On April 26th, 2006, a Memorandum of Lease was executed by the Hedges and Glacier. This Memorandum of Lease is attached hereto as **Exhibit 1**. The Hedges were owners of all of the property in question at the time, and this Memorandum of Lease was created to show the understanding of the parties with respect to an Option Agreement signed by the parties. This Option Agreement is attached hereto as **Exhibit 2**. This Option Agreement grants Glacier an option to enter into a lease of the property in question, but this option has yet to be exercised. Because the option has not been exercised, The Aggregate Mining & Lease Agreement referenced in the Memorandum of Lease is not currently in effect even though it has been executed.

On September 27, 2012, the Hedges transferred five of the six parcels to the current owners of the properties. This transfer was subject to the rights of the Hedges and Glacier contained in the Option Agreement, Memorandum of Lease, and the Aggregate Mining & Lease Agreement, the term of which would begin if Glacier were to exercise its option. Each of the six parcels is less than 120 acres in size, abuts the City, and is not presently served by public wastewater facilities. Each of the fee owners of these parcels of property submitted petitions for annexation by ordinance to the City.

Minnesota Statutes section 414.033, subdivision 2 allows a municipal council to declare land annexed to the municipality by ordinance if certain criteria are met. After receiving the petitions from each of the fee owners of the six parcels of land in question, the City chose to annex the six parcels of land by ordinance. The City based its annexation on the criteria listed in subdivision 2(3) of section 414.033, which reads:

Subd. 2. Conditions. A municipal council may by ordinance declare land annexed to the municipality and any such land is deemed to be urban or suburban in character or about to become so if:

...

(3) the land abuts the municipality and the area to be annexed is 120 acres or less, and the area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available, and the municipality receives a petition for annexation from all the property owners of the land. Except as provided for by an orderly annexation agreement, this clause may not be used to annex any property contiguous to any property previously annexed under this clause within the preceding 12 months if the property is owned by the same owners and annexation would cumulatively exceed 120 acres;

The Township, in its argument, contends that the Option Agreement which grants Glacier the option to enter into a mining lease with the Hedges classifies Glacier and the Hedges as beneficial owners of all of the properties in question. If this were true, it would mean that the condition of § 414.033 requiring the municipality to receive a

petition from “all the property owners of the land” would not have been met. However, based on the language of Minnesota Statutes and case law, the Township’s contention is unfounded.

Minnesota Statutes section 414.011, subdivision 5 defines “Property Owner” as “the fee owner of land, or the beneficial owner of land *whose interest is primarily one of possession and enjoyment.*” (emphasis added). If the Hedges, Glacier, or Strata had an interest that was primarily one of possession and enjoyment, they would be the type of beneficial owner of the land contemplated by sections 414.011 and 414.033. However, this is not the case. The Hedges currently possess one of the six parcels of land, and signed the petition for its annexation. The other five parcels are owned by Alan Knippen and Kimberly McClelland-Knippen (one parcel), June Ziegler (one parcel), and Geraldine Crookston (three parcels), as described in detail on **Exhibit 3**, attached hereto. A map of each of these parcels is attached hereto as **Exhibit 4**.

Glacier currently holds only an option to enter into a lease agreement on the land. The Hedges do not retain possession or enjoyment of any of the parcels save the one that the remains in their name. Strata is not a party in the Option Agreement.

The Minnesota Supreme Court discussed what could be considered an “owner” of land in *Blee v. City of Rochester et al.*, 109 N.W.2d 44 (Minn. 1961). This case involved an annexation by ordinance by the city of Rochester, MN, which was initiated after a petition by the landowners. The question in this case was whether a vendor on a contract for deed could be considered a beneficial owner of the property and therefore required to sign the petition. The Court stated that although “the meaning of the word [owner] varies according to the context of the statute in which it is used and the purpose which is

intended to be accomplished”, *Id.* at 45, the word in this situation “refers to ... the person whose interest is *primarily one of possession and enjoyment...*” *Id.* at 46 (emphasis added), language which is mirrored in Minn. Stat. § 414.011, subd. 5. The *Blee* court continued, “We do not consider it as including those who may have a right or lien to enforce against such property because of a collateral pecuniary claim.” *Blee* at 46.

Based on the definition of the word “owner” in *Blee v. Rochester*, it is clear that even if the Aggregate and Mining Lease were in effect, the Hedges and Glacier would not be considered owners of the parcels in question. Neither party’s interest in the property would be one of possession and enjoyment. Glacier would only have the right to become a tenant under the lease, and in this situation, though, there only exists an option to enter into a lease agreement.

The Minnesota Supreme Court has commented on option agreements in a number of cases with the conclusion that an option agreement does not grant the optionee any interest in the property. In *City of Minneapolis v. Republic Creosoting Co. et al.*, 201 N.W. 414 (Minn. 1924), when referring to an option to purchase goods, the Court said, “An option is a privilege given by the owner of a property at his election. It secures the privilege to buy, and is not of itself a purchase.” *Id.* at 416 (Citing *Western Union Tel. Co. v. Brown*, 253 U.S. 101 (1920)). In *Vogt v. Ganlisle Holding Co. et al.*, 15 N.W.2d 91 (Minn. 1944) the Court stated that an optionee “was not obligated to purchase the property but was afforded an opportunity and privilege of doing so should he desire to comply with the conditions by a time certain.” *Id.* at 93. In *Wurdeman v. Hjelm*, 102 N.W.2d 811 (Minn. 1960), the Court stated, “An option to purchase land does not before acceptance vest in the holder of the option an interest in the land.” *Id.* at 818.

Glacier, the optionee in the contract in question, is not under any obligation to exercise its option. Since Glacier has not exercised its option, it has no vested interest in the land. The Hedges' interest in the land as optionors on the agreement is not one of possession or enjoyment, only a right to receive payments due under the lease that would take effect if and only if Glacier exercised its option.

It is clear that Glacier is not a property owner of any of the parcels in question, as defined by Minnesota Law. It is also clear that according to this appropriate definition of property owner, the Hedges are only owners of one of the six parcels. Therefore, all property owners required by Minn. Stat. § 414.033 were represented in the petitions presented to the City. Since there is not a property owner in possession of more than 120 acres of the property in question, the requirements of § 414.033 are satisfied.

II. The properties meet the requirement of “urban or suburban in character or about to become so” of Minn. Stat. § 414.033, subd. 2.

The Township, in its argument, contends that the parcels are not “urban or suburban in character or about to become so” as required by Minn. Stat. 414.033, subd. 2. because a) “the property would be used as an aggregate mine, which use is not typically an urban or suburban land use, but is far more often a rural land use” (Argument at 3) and b) “the size of the combined Properties to the City mean that the proposed annexations would extend the City’s boundaries well beyond an area of land that could reasonably be described as ‘urban or suburban in character or about to become so’”. *Id.* Even if these arguments were true, they have no bearing on the annexation by ordinance because of the plain language of the statute.

Minnesota Statutes section 414.033, subd. 2 clearly states, "...any such land is *deemed to be urban or suburban in character or about to become so...*" (emphasis added) if the subdivision's conditions are met. The conditions that the City based its ordinances on, as stated previously, are found in § 414.033, subd. 2(3):

1. the land abuts the municipality and the area to be annexed is 120 acres or less, and
2. the area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available, and
3. the municipality receives a petition for annexation from all the property owners of the land.

If these conditions are met, the statute plainly says that the property is *deemed to be* "urban or suburban in character or about to become so."

Section 414.01, Subdivision 6 of Minnesota Statutes defines "abut," "abuts," and "abutting" as "areas whose boundaries at least touch one another at a *single point*, including areas whose boundaries would touch but for an intervening roadway, railroad, waterway or parcel of publicly owned land." Although some of the parcels in question may abut the City at only a small area of their border, all of the parcels clearly abut the City. Each of these parcels is under 120 acres. Geraldine Crookston owns three of the six parcels, but the total acreage of these three parcels is under 120 acres. The first of § 414.033, subd. 2(3)'s requirements is satisfied by each of the parcels.

None of the parcels in question are currently served by public wastewater facilities. This fact satisfies the second requirement of § 414.033, subd. 2(3).

Finally, the property owners of each of the properties in question signed petitions for annexation and delivered said petitions to the city. As detailed in section I of this

answer, each of the property owners was represented in these petitions. The final requirement of § 414.033, subd. 2(3) is satisfied.

Because each of the statute's requirements is met for each of the properties, each of these parcels is *deemed* to be "urban or suburban in character or about to become so." § 414.033, subd. 2.

The Township argues that the intended use of the parcels in question somehow removes them from the "deemed urban or suburban in character or about to become so" status that § 414.033, subd. 2(3) grants. It is the position of the Township that since the five of the properties will have a primarily agricultural use and one is the site of a current mining operation their intended use is rural.

In the State of Minnesota, there are numerous examples of aggregate mines that exist inside city limits. The Township states that aggregate mining is "typically a rural land use" (Argument at 18), but in fact there are a number of aggregate mines within the city limits of various Minnesota cities, several of which exist within the Twin Cities metro area. A mining operation is typically an industrial use rather than a rural land use, and when these parcels are annexed into the City, they will be zoned industrial.

There are also a multitude of examples of Minnesota cities with land zoned for agricultural use within city limits. It is a common practice to have land zoned agricultural when said land is intended for eventual industrial use.

The Township's arguments about the intended use of the land are moot, however, due to the fact that the plain language of § 414.033, subd. 2 states that parcels of land that meet the statute's criteria are deemed to be urban or suburban in character or about to

become so. Since each of the parcels in question meet all of the criteria of subdivision 2(3), each parcel is deemed to be urban or suburban in character.

CONCLUSION

Each of the property owners of each of the parcels in question filed a petition with the City for annexation by ordinance. Since the Hedges are only the property owners on one of the parcels and Glacier's only interest in any of the property in question is based on an unexercised option, all property owners were represented in these petitions. Each of the property owners owns an area less than 120 acres.

Since every one of the six parcels abuts the city of Ortonville and none are presently served by public wastewater, every element of Minnesota Statutes section 414.033, Subdivision 2(3) is satisfied. Because these conditions are met, each parcel is deemed by §414.033, subd. 2(3) to be "urban or suburban in character or about to become so". Because of these facts, the City of Ortonville is well within its jurisdiction to annex each of the six parcels to the municipality by ordinance.

Very Truly Yours,

WILCOX LAW OFFICE, P.A.



Benjamin R. Wilcox

cc: City of Ortonville
Paul Blackburn, Esq.
Howard Roston, Esq.

EXHIBIT 1

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, made and entered this 26th day of April, 2006, is to record the understanding of the parties with respect to a certain Option Agreement and Aggregate Mining & Lease Agreement which has been executed and covering certain property located in the County of Big Stone and State of Minnesota, and more fully described as follows:

/(EXHIBIT A)
SEE ATTACHED SURVEY FOR LEGAL DESCRIPTION

The grant of option commences on 26 April 2006 covers the property above described, and extends through March 31, 2011. The initial lease term commences on the date of conversion from the Option Agreement to an Aggregate Mining & Lease Agreement, covers the property above described, and extends through December 31, 2060 together with the option to extend for an indefinite term beyond the initial lease term, via optional ten (10) year increments thereafter and an additional two (2) year term to remove stockpiled material and improvements. If the Option is not exercised prior to March 31, 2011, Lessee's rights are extinguished.

LESSEE is granted a non-exclusive right of ingress and egress over all roads, streets, alleys, sidewalks and ways either public or private, bounding or serving the premises covered by the Lease.

The other terms, covenants, conditions and provisions of said Aggregate Mining & Lease Agreement are contained in the written document executed by the undersigned parties.

This Memorandum of Lease is made for the purpose of recording the understanding of the parties upon the public records of Big Stone County, Minnesota. Any conflict between the terms of this Memorandum and the Option Agreement or the Aggregate Mining & Lease Agreement will be resolved in favor of the terms of the Option and Agreement, or in the event the Option has been exercised the terms of the Aggregate Mining & Lease Agreement shall control.

IN WITNESS WHEREOF, the parties have hereunto caused this Memorandum of Lease to be executed this 26th day of April, 2006.

LESSORS/LANDOWNERS:

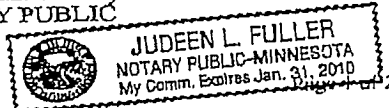
Gayle E. Hedge
GAYLE E. HEDGE

Colleen M. Hedge
COLLEEN M. HEDGE

STATE OF MINNESOTA)
) ss.
COUNTY OF BIG STONE)

On this 26th day of April, 2006, before me, the undersigned, a Notary Public in and for the State of Minnesota, personally appeared GAYLE E. HEDGE and COLLEEN M. HEDGE, known to me to be the persons who did execute the above and foregoing instrument.

Judeen L. Fuller
NOTARY PUBLIC



LESSEE:

GLACIER RESOURCES, LTD.

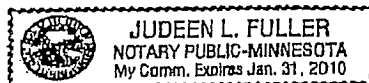
By:


James R. Bradshaw, Its President

STATE OF Minnesota)
COUNTY OF Big Stone) ss.

On this 26th day of April, 2006, before me, the undersigned, a Notary Public in and for the State of Minnesota, personally appeared JAMES R. BRADSHAW, known to me to be the person who did execute the above and foregoing instrument and acknowledged to me that he did execute the above and foregoing instrument as an officer of Glacier Resources, Ltd. and with full authority on behalf of the corporation recited herein.


NOTARY PUBLIC



COPY

Option Agreement

This OPTION AGREEMENT (hereinafter referred to as "Option Agreement") is made and entered into this 26th day of April, 2006 (hereinafter referred to as "Anniversary Date") by and between Gayle E. and Colleen M. Hedge, a husband and wife, residing at 320 Park Street, Ortonville, MN 56278 telephone (320) 839-2370 (hereinafter referred to as "LANDOWNER") and Glacier Resources, Ltd., a North Dakota corporation located at PO Box 13471, 728 Red Dot Place, Grand Forks, ND 58208 telephone (701) 746-7491 (hereinafter referred to as "GLACIER").

WITNESSETH:

WHEREAS, LANDOWNER warrants being the rightful owner of Real Property and the underlying Aggregate (Sand, Gravel, Stone, Bedrock, Granite, etc.) Mineral Rights and Aggregate Reserves, consisting of approximately 478 acres situated in Ortonville Township, Big Stone County, Minnesota, legally described and depicted in Exhibit A attached hereto and incorporated herein (hereinafter referred to as "Property"); and

WHEREAS, GLACIER desires to obtain an option to purchase the aggregate mineral rights and to mine, extract and remove (ship via rail or truck) all of the aggregate reserves located on such Property which may be suitable to GLACIER, on a per ton of aggregate removed royalty basis, as described in the Aggregate Mining & Lease Agreement attached hereto as Exhibit B including but not limited to all granular soil materials, sand, gravel, rock, boulders, stone, bedrock and granite of every type and quality suitable for use as general trade and construction materials (hereinafter referred to as "Aggregates") from and off said Property, the exact amount and location being now uncertain and undetermined; and

WHEREAS, LANDOWNER desires to grant such an option to GLACIER.

NOW, THEREFORE, in consideration of the sums set forth below to be paid by GLACIER to LANDOWNER, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Grant of Option.** LANDOWNER hereby grants to GLACIER, its successors and assigns, for the period beginning on the date hereof and ending on March 31, 2011 (hereinafter referred to as "Expiration Date"), the exclusive right and option to purchase the Aggregates according to the terms and conditions described in the attached Aggregate Mining & Lease Agreement for the initial sum of _____ dollars due upon the execution of this Option Agreement, plus the sum of _____ dollars per each subsequent year, payable within 30 days following the anniversary date of this Option Agreement (the "Option Payments"), and LANDOWNER shall be entitled to retain all such amounts paid should this Option Agreement be terminated or expire.
2. **Permitted Activities.** During the term of this Option Agreement, GLACIER or its agents shall have the right to enter and utilize the Property for any exploratory purposes and activities desired by GLACIER, including but not limited to surveying, measuring, mapping, drilling test holes (prospecting), testing the suitability of materials, and other activities associated with GLACIER's exploration and investigation of the Property to help GLACIER to determine the suitability of the Property for use as a future Aggregate mining, processing and shipping source. Additionally, GLACIER shall be permitted to pursue and to take all necessary actions to make application for any permits which may be required by various governmental agencies or bodies to permit GLACIER to mine, extract, process and remove Aggregates from the property in the future.
3. **GLACIER's Indemnification.** GLACIER's authorization to conduct permitted activities is permitted as long as said inspections do not unreasonably interfere with the landlord's use of the property. GLACIER shall indemnify and hold harmless the landlord from any and all claims arising from, out of, or in connection with such entry and inspection. Such indemnity and hold harmless duties shall include, but not be limited to, indemnity against all costs, expenses and liabilities, including attorney's fees incurred by the LANDOWNER.

REDACTED

4. Conversion from Option Agreement to an Aggregate Mining & Lease Agreement. At any time during the term of this Option Agreement and prior its Expiration Date, GLACIER at its sole and absolute discretion shall enjoy the option to enter into the attached Aggregate Mining & Lease Agreement by providing LANDOWNER with written notice of such intent, and such Aggregate Mining & Lease Agreement shall then commence within five (5) days of such notice. Should GLACIER take such actions to exercise such Aggregate Mining & Lease Agreement, this Option Agreement and any future Option Payments which may remain unpaid, shall then be terminated in its entirety.
5. Right to Terminate Option Agreement. Should GLACIER, at its sole discretion, and at any time during the term of this Option Agreement, determine that the execution of an Aggregate Mining & Lease Agreement would not be in its best interests, shall have the right and option to terminate this Option Agreement in its entirety and to not enter into the attached Aggregate Mining & Lease Agreement by providing LANDOWNER with written notice of such intent, and with such actions, GLACIER shall have no further obligations or liabilities to LANDOWNER, and LANDOWNER shall have no further obligations or liabilities to GLACIER.
6. Title Evidence. LANDOWNER shall provide current evidence of title in the form of an updated Abstract or Torren's Certificate showing marketable title in LANDOWNER. GLACIER will have thirty (30) days to review said documentation. Should title not be marketable, LANDOWNER will take all steps necessary to make title marketable to the satisfaction of GLACIER. If title cannot be made marketable, LANDOWNER agrees to return all sums paid by GLACIER.

This Option Agreement shall be binding upon both parties as well as their heirs and/or successors in interest. There are no other agreements or understandings expressed or implied which shall be binding to either party, unless specifically agreed to in written form by both parties. In witness whereof, all parties have executed this Option Agreement the day and year first above written.

Signatures:

Gayle E. Hedge
Gayle E. Hedge, LANDOWNER
Colleen M. Hedge
Colleen M. Hedge, LANDOWNER

GLACIER RESOURCES, LTD.

James R. Bradshaw
James R. Bradshaw
President
Glacier Resources, Ltd

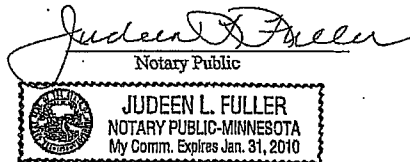
NOTARY STATEMENTS:

State of Minnesota
County of Big Stone

On this 26th day of April, 2006 before me, a Notary Public, within and for said county, personally appeared Gayle E. and Colleen M. Hedge to me known to be the persons who did execute the above and foregoing instrument and acknowledged that they did execute the above and foregoing instrument and that they did execute the same as their free act and deed.

My commission expires 1/31/2010

(Notary Seal)



State of Minnesota
County of Big Stone

On this 26th day of April, 2006 before me, a Notary Public, within and for said county, personally appeared James R. Bradshaw, to me known to be the persons who did execute the above and foregoing instrument and acknowledged that he did execute the above and foregoing instrument and that he did execute the same as his free act and deed and with full authority on behalf of the corporate entity recited herein.

My commission expires 1/31/2010

(Notary Seal)

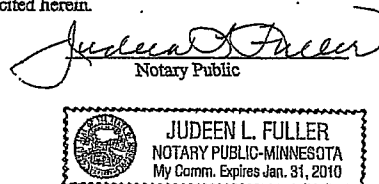
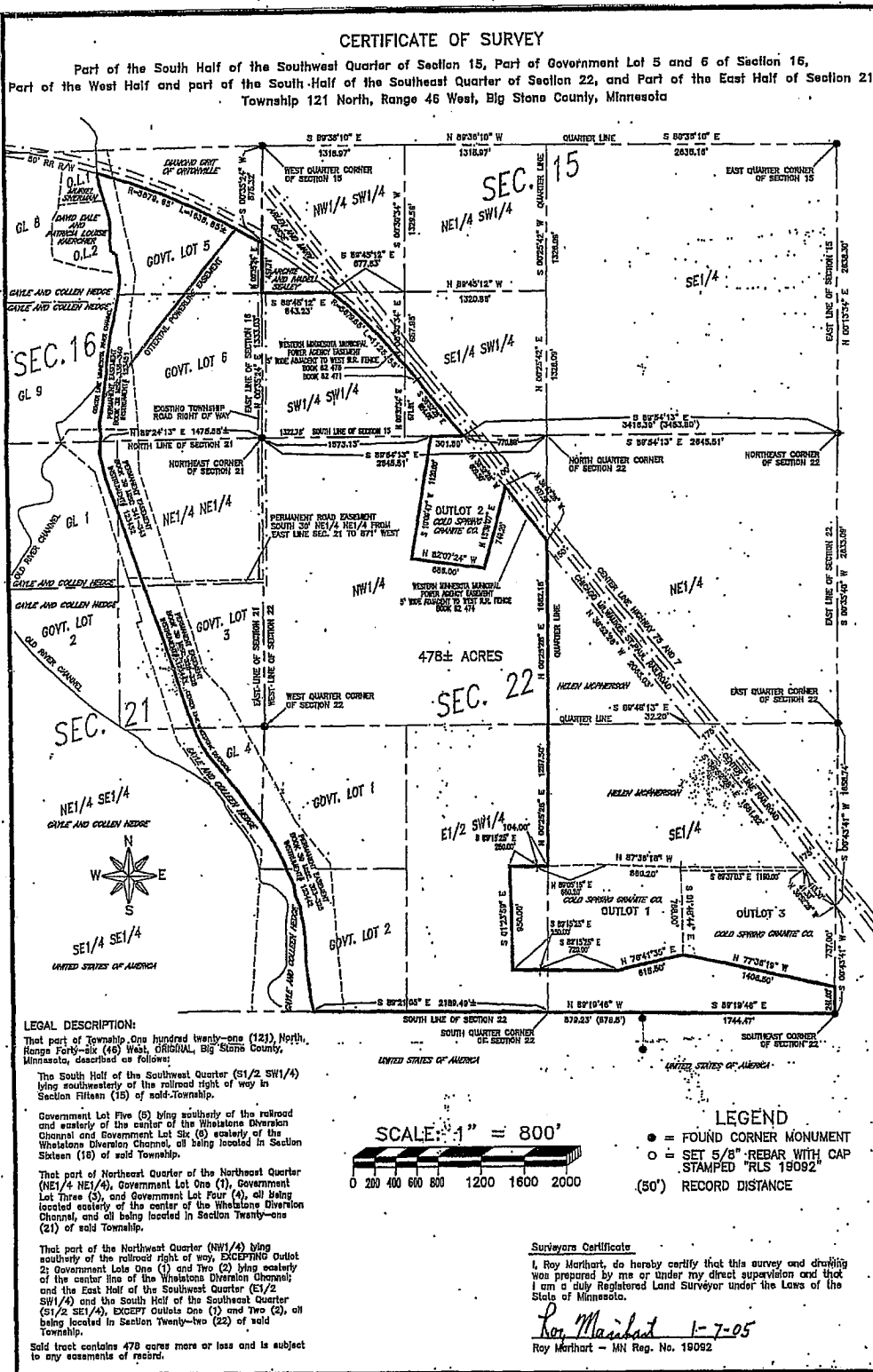


Exhibit A



Parcel #1: (Ordinance No. 12-07; Hedge Property; 118.26 acres)

Lot H of the South Half of the Southwest Quarter (S1/2 SW1/4) of Section Fifteen (15) and of the West Half (W1/2) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 118.26 acres.

Parcel #2: (Ordinance No. 12-08; Mclelland-Knippen Property; 111.28 acres)

Lot J of the South Half of the Southwest Quarter (S1/2 SW1/4) of Section Fifteen (15) and of the West Half (W1/2) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 111.28 acres.

Parcel #3 (Ordinance No. 12-09; Ziegler Property; 102.71 acres)

Lot K of the Southwest Quarter of the Southwest Quarter (SW1/4 SW1/4) of Section Fifteen (15), of Government Lots Three (3) and Four (4) of Section Twenty-one (21), of the West Half (W1/2) of Section Twenty-two (22), and of the South Half of the Southeast Quarter (S1/2 SE1/4) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 102.71 acres.

Parcel #4 (Ordinance No. 12-10; Crookston Property; 3.98 acres)

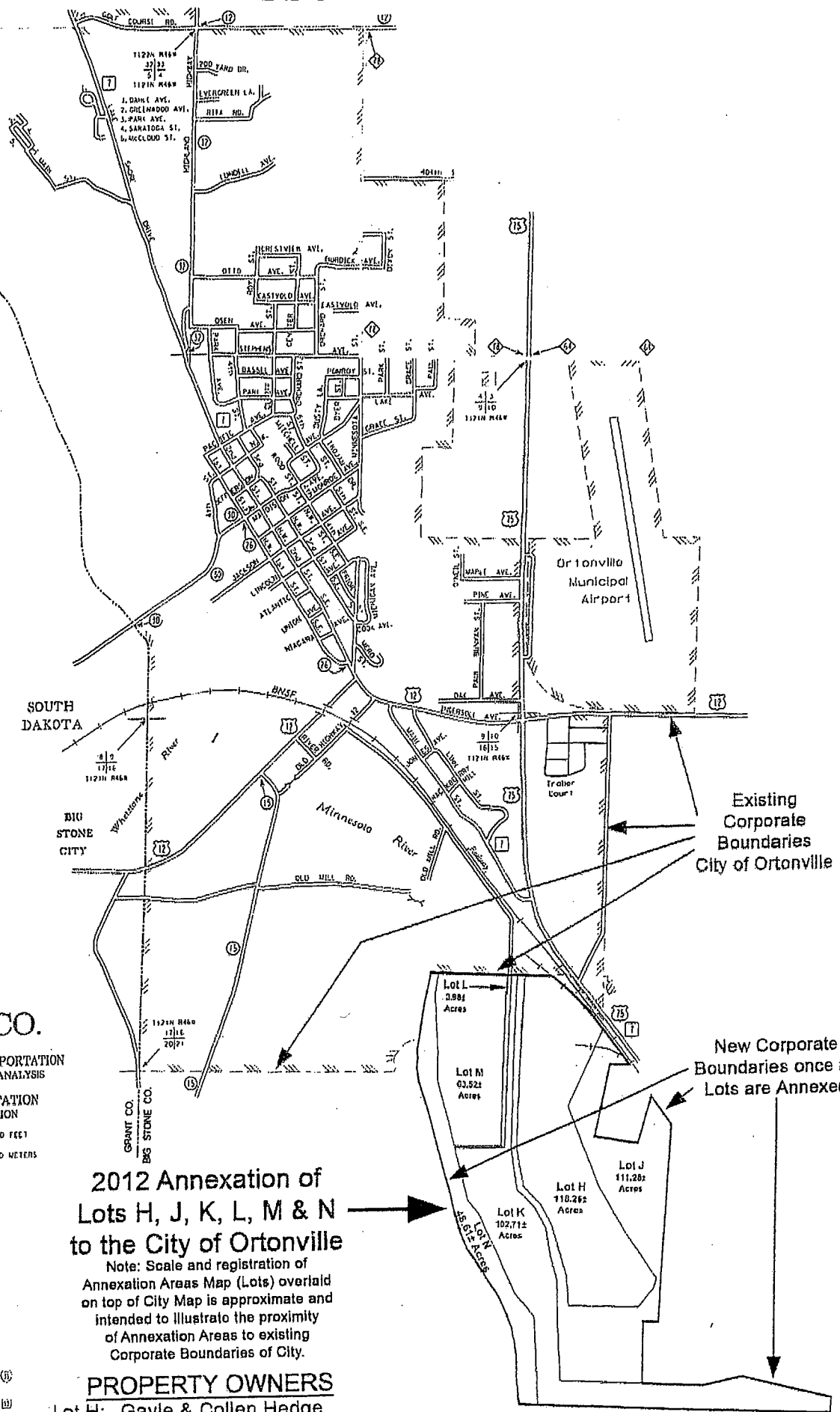
Lot L of the Southwest Quarter of the Southwest Quarter (SW1/4 SW1/4) of Section Fifteen (15), of Government Lot Six (6) of Section Sixteen (16), of the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-one (21), and of the Northwest Quarter of the Northwest Quarter (NW1/4 NW1/4) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 3.98 acres.

Parcel #5 (Ordinance No. 12-11; Crookston Property; 63.52 acres)

Lot M of Government Lot Six (6) of Section Sixteen (16) and of the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-one (21), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 63.52 acres.

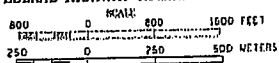
Parcel #6 (Ordinance No. 12-12; Crookston Property; 48.61 acres)

Lot N of Government Lot Six (6) of Section Sixteen (16), of Government Lots One (1), Three (3) and Four (4) and the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-one (21), and of Government Lots One (1) and Two (2) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 48.61 acres.

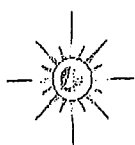


MUNICIPALITIES OF BIG STONE CO.

PREPARED BY THE
MINNESOTA DEPARTMENT OF TRANSPORTATION
OFFICE OF TRANSPORTATION DATA & ANALYSIS
IN COOPERATION WITH
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION



2011
BASIC DATE - 2011



LEGEND

- INTERSTATE TRUNK HIGHWAY.....(1)
- U.S. TRUNK HIGHWAY.....(2)
- STATE TRUNK HIGHWAY.....(3)
- COUNTY STATE AID HIGHWAY.....(4)
- COUNTY ROAD.....(5)
- PUBLIC ROAD.....(6)
- PRIVATE ROAD.....(7)
- CORPORATE LIMITS.....(8)

2012 Annexation of Lots H, J, K, L, M & N to the City of Ortonville

Note: Scale and registration of
Annexation Areas Map (Lots) overlaid
on top of City Map is approximate and
intended to illustrate the proximity
of Annexation Areas to existing
Corporate Boundaries of City.

PROPERTY OWNERS

- Lot H: Gayle & Collen Hedge
- Lot J: Alan & Kimberly Knippen (son)
- Lot K: June Ziegler (sister)
- Lot L: Geraldine Crookston (sister)
- Lot M: Geraldine Crookston (sister)

Existing
Corporate
Boundaries
City of Ortonville

New Corporate
Boundaries once all
Lots are Annexed



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101

Mailing Address:
P.O. Box 64620
St. Paul, Minnesota 55164-0620

Voice: (651) 361-7900
TTY: (651) 361-7878
Fax: (651) 361-7936

January 16, 2013

Susan Lundell, Deputy City Clerk
Ortonville City Hall
315 Madison Ave.
Ortonville, MN 56278

VIA E-MAIL
sue.lundell@cityofortonville.org

RE: A-7829 Ortonville/Ortonville Township
(Ordinance No. 12-07; Hedge Property; 118.26 acres)
A-7830 Ortonville/Ortonville Township
(Ordinance No. 12-08; Mclelland-Knippen Property; 118.28 acres)
A-7831 Ortonville/Ortonville Township
(Ordinance No. 12-09; Ziegler Property; 102.71 acres)
A-7832 Ortonville/Ortonville Township
(Ordinance No. 12-10; Crookston Property; 3.98 acres)
A-7833 Ortonville/Ortonville Township
(Ordinance No. 12-11; Crookston Property; 63.52 acres)
A-7834 Ortonville/Ortonville Township
(Ordinance No. 12-12; Crookston Property; 48.61 acres)

Dear Ms. Lundell,

On December 14, 2012, the City of Ortonville filed six annexations by ordinance (ABO) with the Office of Administrative Hearings-Municipal Boundary Adjustment Unit (MBAU). Those six are referenced above. Each seeks MBAU approval under Minn. Stat. § 414.033, subd. 2(3), which states:

Subd. 2. Conditions. A municipal council may by ordinance declare land annexed to the municipality and any such land is deemed to be urban or suburban in character or about to become so if:

...

(3) the land abuts the municipality and the area to be annexed is 120 acres or less, and the area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available, and the municipality receives a petition for annexation from all the property owners of the land. Except as provided for by an orderly annexation agreement, this clause may not be used to annex any property contiguous to any property previously annexed

Susan Lundell
January 16, 2013
Page Two

under this clause within the preceding 12 months if the property is owned by the same owners and annexation would cumulatively exceed 120 acres; or

On December 28, 2012, Ortonville Township submitted objections to the six ABOs. Pursuant to your request, the documents setting forth the Township's objections have been forwarded to you. The Township makes specific objections and asserts that the ABOs do not comply with Minn. Stat. § 414.033. Among those objections, the Township alleges the following defects:

- 1) The beneficial owners of the subject properties were not represented in the petitions filed for the ABOs, and inclusion of those beneficial owners as petitioners would result in the subject area exceeding the 120 acre limitation in Minn. Stat. § 414.033, subd. 2(3).
- 2) The intended use of the property does not meet the requirement of "urban or suburban in character or about to become so" of Minn. Stat. § 414.033, subd. 2.

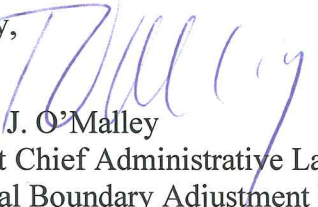
The Township has supported its objections with filings including a recorded Memorandum of Lease governing use of the subject area, quit claim deeds, and the Environmental Assessment Worksheet (EAW) for a quarry project.

The issues raised by the Township call into question whether the ABOs can be approved by the MBAU under Minn. Stat. § 414.033. Under subpart 10 of that statute:

The chief administrative law judge may require the city or property owners to furnish additional information concerning an annexation by ordinance to inform the chief administrative law judge about the extent to which the proposed annexation conforms to the statutory criteria set forth in sections 414.01, subdivision 1, and 414.031, subdivision 4.

I am requiring additional information. The City of Ortonville and the petitioning property owners have until Wednesday, January 30, 2013, to submit information responding to the Township's objections. At a minimum, this additional information should specifically address the two issues described above. Additionally, please include in the submission a copy of the lease agreement identified in the Memorandum of Lease.

Sincerely,


Timothy J. O'Malley
Assistant Chief Administrative Law Judge
Municipal Boundary Adjustment Unit

Attachment

c: Paul Blackburn, Attorney at Law (January 16, 2013 letter only)

Paul Blackburn
Attorney at Law
P.O. Box 17234
Minneapolis, MN 55417
612-599-5568 / paul@paulblackburn.net

REC'D BY
MBA

DEC 28 2012

December 20, 2012

VIA EMAIL: tim.omalley@state.mn.us

Timothy J. O'Malley
Assistant Chief Judge
Office of Administrative Hearings
Municipal Boundary Adjustment Unit
P.O. Box 64620
St. Paul, MN 55164-0620

**Re: A-7829 Ortonville/Ortonville Township
(Ordinance No. 12-07; Hedge Property; 118.26 acres)
A-7830 Ortonville/Ortonville Township
(Ordinance No. 12-08; McClelland-Knippen Property; 111.28 acres)
A-7831 Ortonville/Ortonville Township
(Ordinance No. 12-09; Ziegler Property; 102.71 acres)
A-7832 Ortonville/Ortonville Township
(Ordinance No. 12-10; Crookston Property; 3.98 acres)
A-7833 Ortonville/Ortonville Township
(Ordinance No. 12-11; Crookston Property; 63.52 acres)
A-7834 Ortonville/Ortonville Township
(Ordinance No. 12-12; Crookston Property; 48.61 acres)**

Dear Judge O'Malley:

On November 19th, 2012, the City of Ortonville ("City") enacted ordinances to annex six properties totaling 448.3 acres that are within Ortonville Township ("Township"). On December 14th, 2012, the City filed six corresponding petitions for annexation by ordinance, pursuant to Minn. Stat. § 414.033 Subd. 2(3) ("Subdivision 2(3)"), with the Municipal Boundaries Adjustment Unit of the Office of Administrative Hearings ("OAH"), which has docketed these petitions as A-7829 through 7834 (together, "Petitions"). This letter is the Township's combined objection to all of the Petitions, and to each part of every Petition.

SUMMARY

The City asserts jurisdiction over these annexations pursuant to Subdivision 2(3), but for the reasons detailed below the annexations do not fall within this subdivision's jurisdictional bounds. As a consequence, the Petitions are jurisdictionally defective and the City has no authority under law to annex these properties by ordinance or to submit the Petitions to OAH, and the OAH has no authority to approve them. *Township of Thomastown v. City of Staples*, 323 N.W. 2d. 742, 745-746 (Minn. 1982) (affirming District Court order to vacate); *see also Township of Franklin*, 2004 Minn. App. LEXIS at *4-5 (Minn. Ct. App. June 15, 2004) (unpublished) (the state "examines each annexation by ordinance to determine if the objective statutory criteria are met under Minn. Stat. § 414.033."). Instead, the City must seek

annexation under Minn. Stat. § 414.031. *See Rockford Township v. City of Rockford*, 608 N.W.2d 903, 906 (Minn. App. 2000). Accordingly, the Township requests that the OAH deny the City's Petitions.

To support its allegations, the Township provides evidence of the following:

- the properties described in dockets A-7829 through A-7834 (together "Properties") were formed in September of this year through division of a 448.3 acre property ("Hedge Property") owned by Gayle E. Hedge and Colleen M. Hedge (together the "Hedges");
- the land comprising the Properties has been under development since 2006 as a mine site, such that the Properties are all encumbered by an Option Agreement and an Aggregate Mining & Lease Agreement ("Mining Lease") between Glacier Resources, Ltd. ("Glacier") and the Hedges;
- the Mining Lease includes an initial term beginning upon execution of the Option Agreement and continuing through 2060, that may be extended at Glacier's sole discretion for an unlimited number of ten year periods, such that the Mining Lease is a perpetual lease;
- Glacier has assigned some or all of its rights under the Option Agreement and Mining Lease to its affiliate, Strata Corporation ("Strata") (together "Mining Companies");
- the Hedges divided the Hedge Property by means of quit claim deeds granted as gifts by the Hedges to a number of their close relatives (together, "New Fee Owners");
- the New Fee Owners have nominal rights to possess and enjoy their Properties due to the superior rights afforded to the Mining Companies by the Option Agreement and Mining Lease;
- the quit claim deeds limits the only possible non-mining use of the Properties to agricultural uses, subject to the superior rights of Mining Lease;
- under the terms of the quit claim deeds provided by the Hedges to the New Fee Owners, the New Fee Owners have no right to receive payments under the Option Agreement or Mining Lease, as this right has been expressly reserved by the Hedges to themselves;
- if the annexation proceeds, mine development will continue and the Properties will be managed primarily as a single mine site for the benefit of the Mining Companies and the Hedges; the New Fee Owners will receive no benefit for this use;
- even though fee ownership of the Hedge Property has been divided among the New Fee Owners, beneficial ownership of the Properties remains almost entirely unified within the possession of the Hedges and the Mining Companies, such that the New Fee Owners hold the Properties primarily for the benefit of the Hedges and the Mining Companies, making the Hedges and the Mining Companies the primary beneficial owners of the Properties;
- neither the Hedges nor the Mining Companies signed the property owners' petitions to the City for annexation of each of the Properties (the Hedge's submitted a petition for only the single lot the deed for which they retained, but the Mining Companies did not sign this property owner petition or any other petition);
- the Properties are contiguous to each other, cumulatively exceed 120 acres, and their annexation is sought within the same 12-month period; and
- the Properties' boundaries have been severely gerrymandered so that they appear to comply with Subdivision 2(3)'s requirement that all properties "abut" the City's boundary.

In short, the evidence indicates that the Hedge's divided the Hedge Property primarily to avoid Subdivision 2(3)'s 120 acre limit, and did so in a manner that retained almost all of the beneficial interest in the Properties to themselves and the Mining Companies.

When a fee owner holds a property primarily for one or more beneficial owners, the Municipal Boundary Adjustments Act, Minn. Stat. § 414.01 *et seq.* (“Chapter 414”), considers the beneficial owners to be the “property owners,” as this term is defined by Minn. Stat. § 414.011 Subd. 5.

Subdivision 2(3) requires that all property owners of land sought to be annexed submit a petition for annexation. Here, the beneficial owners did not submit such petitions, only the New Fee Owners did, such that “all the property owners of land” have not submitted petitions for annexation to the City. Where statutory requirements have not been met, the OAH must deny the annexation or refuse to issue an order. *Thomastown*, 323 N.W. 2d. at 745-746.

All of the Properties are owned primarily by the same beneficial owners; therefore, for the purposes of Subdivision 2(3) the Properties are “owned by the same owners.” As the Properties also are contiguous to each other, “cumulatively exceed 120 acres,” and the City is seeking to annex all of them in the same 12-month period, the Properties may not be annexed pursuant to Subdivision 2(3). As such, the City’s Petitions are in violation of state law and must be denied. *Id.*

Approval of the City’s Petitions would for practical purposes void Subdivision 2(3)’s 120 acre limit, because any owner of a property larger than 120 acres that also abuts municipal land and is not served by wastewater facilities could seek annexation under Subdivision 2(3) merely by dividing the property into lots smaller than 120 acres, retaining most of the benefits of ownership, and transferring fee title to shell owners who hold their properties primarily for the benefit of the beneficial owners. The OAH may not permit such loophole to frustrate legislative intent. Since approval of the Petitions would frustrate the legislature’s prohibition on sequential annexations by the same property owners, the OAH may not approve the Petitions.

Also, the Properties are not “urban or suburban in character or about to become so . . .” Minn. Stat. § 414.033 Subd. 2. Irrefutable evidence indicates that the property would be used as an aggregate mine, which use is not typically an urban or suburban land use, but is far more often a rural land use. Further, the size of the combined Properties relative to the size of the City and the geographical relationship of the Properties to the City mean that the proposed annexations would extend the City’s boundaries well beyond an area of land that could reasonably be described as “urban or suburban in character or about to become so . . .” This factual dissonance with the presumption established through use of the word “deemed” in Minn. Stat. § 414.033 Subd. 2 indicates that this annexation does not fall within the legislature’s intended scope of Subdivision 2(3). As such, Subdivision 2 as a whole is inapplicable to the proposed annexations, and the City’s petitions are without foundation in law, as would be any OAH approval of them.

Finally, the Township asserts that the information in this letter is relevant to Minn. Stat. § 414.033 Subd. 10, which authorizes the OAH to require the City or property owners to furnish additional information about whether a proposed annexation conforms to statutory criteria. The Township recognizes that the OAH’s authority to review annexations by ordinance is limited to jurisdictional matters and does not include substantive review. *Thomastown*, 323 N.W. 2d. at 745-746 (1982), *cf.* *Gilbert v Minnesota Planning*, 2002 Minn. App. LEXIS 117, *7 (Minn. App. 2002) (unpublished). Since the issues raised by the Township relate entirely to jurisdictional matters, the OAH may use its investigatory authority here. Where substantial evidence of a violation of state law is presented indicating that a City is acting outside of the scope of its annexation by ordinance authority, but such evidence is deemed by itself insufficient to fully inform an OAH decision, the agency must exercise its Subdivision 10 discretion to seek additional information about possible violations of law. Although the OAH’s authority under Minn. Stat. § 414.033 Subd. 10 is discretionary, given the facts presented here, a failure to exercise this discretion would be arbitrary and capricious.

Even though Subdivision 2(3) does not provide a formal opportunity for or require township submission of an objection to the OAH,¹ the Township nonetheless files this objection pursuant to Minn. Stat. § 414.031, which is the appropriate section under which this annexation must be reviewed when a city lacks jurisdiction under Minn. Stat. § 414 Subd. 2. *Rockford*, 608 N.W.2d at 906. In addition, the Township asserts that approval of this annexation would violate the Minnesota Administrative Procedures Act, Minn. Stat. § 14.001 *et seq.*, and violate the Township's constitutional and statutory due process rights.

STATEMENT OF FACT

The Township retained a title agent to search the titles of the Properties, and the agent did so on or about November 20th, 2012. The title agent provided the Township with copies of all documents found related to the property from 2005 to present. The facts related to property ownership alleged herein are based on the documents found in this title search, as well as other publically available documents. It is possible that the Hedges and/or the Mining Companies have changed property ownership instruments in the period between the title search and filing of this objection. The Township reserves the right to revise its objections should additional relevant documents or information be discovered.

1. As described in a Memorandum of Lease filed with the Big Stone County Recorder on May 8, 2006 (attached as Exhibit A), on or about April 26, 2006, the Hedges entered into an Option Agreement and Mining Lease with Glacier for the Hedge Property, all of which is located within Ortonville Township, Big Stone County. According to a Certificate of Survey attached to the Memorandum of Lease, the legal description of the Hedge Property is:

That part of Township One hundred twenty-one (121) North, Range Forty-six (46) West, Original, Big Stone County, Minnesota, described as follows:

The South Half of the Southwest Quarter (S1/2 SW1/4) lying southwesterly of the railroad right of way in Section Fifteen (15) of said Township.

Government Lot Five (5) lying southerly of the railroad and easterly of the center of the Whetstone Diversion Channel and Government Lot six (6) easterly of the Whetstone Diversion Channel, all being located in Section Sixteen (16) of said Township.

That part of Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4), Government Lot one (1), Government Lot Three (3), and Government Lot four (4), all being located easterly of the center of the Whetstone Diversion Channel, and all being located in Section Twenty-one (21) of said Township.

That part of the Northwest Quarter (NW1/4) lying southerly of the Railroad right of way, EXCEPTING Outlot 2; Government Lots One (1) and Two (2) lying easterly of the center line of the Whetstone Diversion Channel; and the East Half of the Southwest Quarter (E1/2 SW1/4) and the South Half of the Southeast Quarter (S1/2 SE1/4, Except Outlots One

¹ Since all objections regardless of the annexation type are jurisdictional under M.A.R. § 6000.0500, the OAH has discretion to consider the Township's Objection as it would any other.

(1) and Three (3), all being located in Section Twenty-two (22) of said Township.

Said tract contains 478 acres more or less and is subject to any easements of record.

The Certificate of Survey also includes a map of the Hedge Property.

2. The Memorandum of Lease states that Option Agreement commenced on April 26, 2006, and terminated on March 31, 2011 (the Option Agreement has since been renewed twice, see paragraph 12, below, such that it is still in effect), and that upon exercising the Option Agreement the initial term of the Mining Lease would continue through December 31, 2060, with an irrevocable option to it extend it for an indefinite term beyond the initial lease term via optional ten-year increments, as well as a final two-year term should a further ten-year increment not be elected.

3. On December 20, 2010, Darren Wilke, the Environmental Officer for Big Stone County filed an Environmental Assessment Worksheet (“EAW”) with the Minnesota Environmental Quality Board for an aggregate mine that Stata proposed to construct on the Hedge Property (the EAW and Attachment A thereto, Strata’s Executive Summary, are attached as Exhibit B²). Among other things, the EAW states:

The quarry site is on private land perpetually leased by Strata Corporation from Gayle & Colleen Hedge, local residents and business owners. [EAW at 2 (emphasis added).]

The proposed granite quarry has been in the design phase since 2006. [EAW at 2.]

Total project acreage: One-hundred total acres including a 95.55 acre primary mine & processing area plus ancillary operations within a 478 acre private property parcel. Ancillary operations include a 1.09 mile long quarry access road, ±1,600 lineal feet of overland conveyor line with adjoining service road, and 9,170 ft of new railroad track with ±3,200 lineal feet of adjoining service road built off-site on BNSF property. Additionally, the project proposes to create a separate ±59 acre Rare Plant Protection Area in which several species of rare and/or endangered plants along with rare wetland features and pristine granite rock outcrops will be permanently protected by way of property gifting to the adjacent Big Stone National Wildlife Refuge. [EAW at 3 (emphasis added).]

4. The EAW includes a map of the “Final Project Design” as Figure 3. This map shows three quarry pit areas running roughly south to north through the center of the Hedge Property surrounded by a required buffer zone, as well as some of the ancillary facilities such as the rail spur and mitigation area.

² The remaining attachments to this 603 page document are available online at <http://www.bigstonecounty.org/environmental/strata/StrataEAW.zip>. The Township can provide a hard copy of this document upon request.

5. On December 21, 2011, the Big Stone County Planning Commission published its Notice that Strata had filed an Application for a Conditional Use Permit with the County (attached as Exhibit C) to construct and operate an aggregate mine on the Hedge Property.

6. On February 8, 2012, the Township: (1) enacted a Resolution to Study Development of Ordinances for a Comprehensive Plan, Zoning and Regulation of High-Impact Facilities in Ortonville Township (“Planning Resolution”), which resolution shows an intent to take over planning functions related to a number of land uses, including aggregate quarry development, as well as establishment of a committee and resources to do so; (2) established a Planning and Zoning Board to undertake the study required by the Resolution as well as other planning and zoning functions; and (3) enacted an Interim Ordinance Placing a Moratorium on New or Expanded High Impact Industrial, Agricultural and Commercial Facilities, Ordinance 2012-1 (“Interim Ordinance”), which prohibited establishment of new aggregate quarries for commercial purposes within Ortonville Township. (the Planning Resolution and Interim Ordinance attached as Exhibit D.)

7. Despite the Township’s Interim Ordinance, Big Stone County approved Strata’s CUP Application on May 15, 2012. Big Stone County Conditional Use Permit 11-4970 (“County CUP”) (attached as Exhibit E).

8. The CUP approved an alternative rail spur configuration (Alternative #3-C), County CUP at 8, which configuration is shown on a map submitted by Strata to the Big Stone County Commission on April 11, 2012, entitled “Alternative Rail Line Location” (attached as Exhibit F). This map shows the rail line running through the center of the Hedge Property along the eastern edge of the proposed quarry pits. This configuration means that the rail line appears to bisect lots H and J of the Properties and may limit agricultural access to portions of these lots. Since the Mining Companies have not submitted a City conditional use permit application, it is uncertain whether this map represents its preferred configuration, but the Township believes this is likely.

9. Rather than attempt to construct its mine pursuant to the County CUP, it appears that Strata and the Hedges elected to seek annexation of the Hedge Property into the City of Ortonville contemporaneously with an application for a City Conditional Use Permit for the proposed mine.

10. A title search for the Hedge Property disclosed among other things that on September 27, 2012, the Hedge Property was divided into the six Properties via five quit claim deeds marked by the Big Stone County Recorder as documents 170721 through 170725 (attached as Exhibit G), all executed and filed on the same day. The quit claim deeds transferred the Properties to the following individuals (together “New Fee Owners”) in the amounts shown:

New Fee Owners	Acres	Lot	Legal Description
Alan Thomas Knippen Kimberly Ann McClelland-Knippen 951 Colgate Street P. O. Box 93 Big Stone City, SD 57216	111.28	J	Lot J of the South Half of the Southwest Quarter (S1/2 SW1/4) of Section Fifteen (15) and of the West Half (W1/2) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 111.28 acres.
Geraldine Ann Crookston 8238 South High Court	3.98	L	Lot L of the Southwest Quarter of the Southwest Quarter (SW1/4 SW1/4) of Section Fifteen (15), of Government Lot Six (6) of Section Sixteen (16), of the Northeast Quarter of the Northeast

Centennial, CO 80122			Quarter (NE1/4 NE1/4) of Section Twenty-one (21), and of the Northwest Quarter of the Northwest Quarter (NW1/4 NW1/4) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 3.98 acres.
Geraldine Ann Crookston 8238 South High Court Centennial, CO 80122	63.52	M	Lot M of Government Lot Six (6) of Section Sixteen (16) and of the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-one (21), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 63.52 acres.
Geraldine Ann Crookston 8238 South High Court Centennial, CO 80122	48.61	N	Lot N of Government Lot Six (6) of Section Sixteen (16), of Government Lots One (1), Three (3) and Four (4) and the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-one (21), and of Government Lots One (1) and Two (2) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 48.61 acres.
June Joanne Ziegler 29 Cornell Drive Longmont, CO 80503	102.71	K	Lot K of the Southwest Quarter of the Southwest Quarter (SW1/4 SW1/4) of Section Fifteen (15), of Government Lots Three (3) and Four (4) of Section Twenty-one (21), of the West Half (W1/2) of Section Twenty-two (22), and of the South Half of the Southeast Quarter (S1/2 SE1/4) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 102.71 acres.

11. It is the Township's belief that Geraldine Ann Crookston and June Joanne Ziegler are Gayle Hedge's sisters, and that Alan Thomas Knippen and Kimberly Ann McClelland-Knippen are the Hedges' stepson and daughter-in-law, respectively.

12. All of the quit claim deeds contain the following identical terms:
- each deed is subject to the superior rights granted to the Mining Companies by the Mining Lease and Option Agreement;
 - each deed is subject to the rights and interests secured by an existing agricultural lease that expires on May 31, 2013;
 - each deed is limited to agricultural use except for development of a mine by the Mining Companies;
 - each deed reserves all payments under the Mining Lease and Option Agreement to the Hedges;
 - the Option Agreement was extended pursuant to documents entitled Agreements to Extend the Term of Option Agreement dated March, 21, 2011, and March 21, 2012; and
 - each deed was given as a gift.

13. The title search also disclosed a plot map filed with the Big Stone County Recorder on September 26, 2012, as document 170714, showing the newly formed Properties (“2012 Plot Map”) (attached as Exhibit H, edited to highlight location of lots). The 2012 Plot Map appears to be similar to the plot maps filed with the Petitions. The 2012 Plot Map and Petition maps shows that the Hedge Property has been divided into the following six gerrymandered lots, all of which appear to touch the City boundary:

Lot	Acres	Corresponding Fee Owners Based on Quit Claim Deed / Annexation Petition Acreage
H	118.26	Gayle Hedge Colleen Hedge
J	111.28	Alan Thomas Knippen Kimberly Ann McClelland-Knippen
K	102.71	June Joanne Ziegler
L	3.98	Geraldine Ann Crookston
M	63.52	Geraldine Ann Crookston
N	48.61	Geraldine Ann Crookston
TOTAL ACREAGE	448.36	

14. A comparison of the 2012 Plot Map and the 2010 Strata Project Map indicates that the Hedges have retained ownership of the core pit areas of the proposed mine, but have deeded to their relatives lands containing ancillary mine facilities, such as access roads, conveyors, railroad loading facilities, environmental mitigation areas, waste stockpiles, berms, and buffer zones.

15. On September 28, 2012, Vicki Oakes, the paid Community Development Coordinator for the City’s Economic Development Association (“EDA”) (the EDA is a City-appointed board established pursuant to the Minn. Stat. § 469.090 *et seq.*) submitted a memo describing a proposed annexation and conditional use permit process to the City Mayor and Council (“EDA Memo”) (attached as Exhibit I). This memo includes:

- a. a set of six petitions for annexation pursuant to Subdivision 2(3) executed by the New Fee Owners all dated September 27, 2012; and
- b. process timelines prepared by Strata’s “legal team” for the City’s annexation by ordinance process and conditional use permit approval process for the mine.

Thus, it appears that the Mining Companies either formulated or helped formulate the use of state law to annex the Properties to the City. The conditional use permit timeline prepared by Strata starts on November 5, 2012, and ends on January 7, 2013. The City annexation by ordinance timeline prepared by Strata starts on September 27, 2012, and ends on December 11, 2012.

16. The six petitions for annexation by ordinance attached to the EDA Memo were submitted by the following individuals for the property amounts and locations shown below. These lots are the same as the Properties.

Fee Owners	Acres	Legal Description
Gayle Hedge Colleen Hedge	118.26	Lot H of the South Half of the Southwest Quarter (S1I2 SW1I4) of Section Fifteen (15) and of the West Half (W1I2) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 118.26 acres.
Alan Thomas Knippen Kimberly Ann McClelland-Knippen	111.28	Lot J of the South Half of the Southwest Quarter (S1I2 SW1/4) of Section Fifteen (15) and of the West Half (W1I2) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 111.28 acres.
Geraldine Ann Crookston	3.98	Lot L of the Southwest Quarter of the Southwest Quarter (SW1I4 SW1/4) of Section Fifteen (15), of Government Lot Six (6) of Section Sixteen (16), of the Northeast Quarter of the Northeast Quarter (NE1I4 NE1/4) of Section Twenty-one (21), and of the Northwest Quarter of the Northwest Quarter (NW1I4 NW1I4) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 3.98 acres.
Geraldine Ann Crookston	63.52	Lot M of Government Lot Six (6) of Section Sixteen (16) and of the Northeast Quarter of the Northeast Quarter (NE1I4 NE1I4) of Section Twenty-one (21), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 63.52 acres.
Geraldine Ann Crookston	48.61	Lot N of Government Lot Six (6) of Section Sixteen (16), of Government Lots One (1), Three (3) and Four (4) and the Northeast Quarter of the Northeast Quarter (NE1I4 NE1/4) of Section Twenty-one (21), and of Government Lots One (1) and Two (2) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 48.61 acres.
June Joanne Ziegler	102.71	Lot K of the Southwest Quarter of the Southwest Quarter (SW1/4 SW1I4) of Section Fifteen (15), of Government Lots Three (3) and Four (4) of Section Twenty-one (21), of the West Half (W1I2) of Section Twenty-two (22), and of the South Half of the Southeast Quarter (S1I2 SE1I4) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 102.71 acres.
TOTAL ACREAGE	448.36	

17. The City of Ortonville has a land area of approximately 3.51 square miles or 2,246 acres. The City is approximately 3 miles long, north to south, and 1.5 miles wide, east to west. The proposed annexations would increase the land area of the City by approximately 20%. Since 1990, the City has annexed four properties by ordinance. These annexations added 7.20, 2.48, 0.02, and 29.45 acres to the City, totaling 39.15 acres. The total acreage of the Properties is 11 times larger than the total of all of the City's annexations by ordinance since 1990 combined. Annexation of the Properties would extend the City's boundaries approximately 1.5 miles south along State Highway 7/75, and would not include residential lots immediately to the north of the Properties. It appears that the combined annexation of the Properties would be one of the largest annexations of land by ordinance submitted at the same time to the OAH in the past two decades.

STATEMENT OF LAW

The City has asserted jurisdiction over its proposed annexations pursuant Subdivision 2(3), which in relevant part states :

Subd. 2. Conditions. A municipal council may by ordinance declare land annexed to the municipality and any such land is deemed to be urban or suburban in character or about to become so if:

* * *

(3) the land abuts the municipality and the area to be annexed is 120 acres or less . . . and the municipality receives a petition for annexation from all the property owners of the land. Except as provided for by an orderly annexation agreement, this clause may not be used to annex any property contiguous to any property previously annexed under this clause within the preceding 12 months if the property is owned by the same owners and annexation would cumulatively exceed 120 acres;

(Emphasis added). Whereas empirical evidence can determine whether a set of properties cumulatively exceed 120 acres and are contiguous with each other, and whether petitions to annex such properties have been submitted within 12 months of each other, whether or not a property is "owned by the same owners" depends primarily upon the terms of legal instruments that define land ownership interests, and these interests can be diverse and complex. Chapter 414 anticipates the great diversity of interests created through property transactions by providing a broad definition of "property owner," discussed below, which requires that OAH consider the relative degrees of ownership among all fee and beneficial owners.

Since the term "property owners" is necessarily broad, and the undefined phrase "owned by the same owners" is critical to determination of Subdivision 2(3)'s meaning, Subdivision 2(3) should be interpreted in accordance with Minn. Stat. § 645.16:

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.

When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:

- (1) the occasion and necessity for the law;
- (2) the circumstances under which it was enacted;
- (3) the mischief to be remedied;
- (4) the object to be attained;
- (5) the former law, if any, including other laws upon the same or similar subjects;
- (6) the consequences of a particular interpretation;
- (7) the contemporaneous legislative history; and
- (8) legislative and administrative interpretations of the statute.

In 2006, the legislature added the substance of Subdivision 2(3)'s last sentence, albeit with somewhat different language based on the state administrative structure existing at that time:

Except as provided for by an orderly annexation agreement, the director³ must not accept a petition from a property owner for more than one annexation per year of property contiguous to the parcel previously annexed under this clause;

2006 Ch. 270 Art. 2 Sec. 8 (footnote added). This 2006 amendment should be presumed to be a legislative response to *Township of Franklin v. City of Delano*, 2004 Minn. App. LEXIS 662, an unpublished decision in which a landowner sought annexation of two adjacent parcels that cumulatively totaled more acres than the statutory limit at that time (60 acres). *Id.* at *2. The City of Delano annexed the properties separately through two annexation hearings, and the Director of the Office of Strategic and Long Range Planning ("Minnesota Planning") approved the annexation. *Id.* The Court of Appeals upheld the approval on the basis that Subdivision 2(3) did not disallow such sequential annexations. *Id.* The Court specifically refused to read an implied prohibition on sequential annexations by ordinance, because it found no basis for such prohibition in Subdivision 2(3)'s language. *Id.* The 2006 amendment expressly added a prohibition on sequential annexations to Subdivision 2(3), thereby effectively overruling the *Franklin* decision.

In 2007, the legislature enacted Subdivision 2(3)'s current language to adapt the law to a transfer of annexation administration to the OAH. 2007 Chapter 90 Sec. 2. Nonetheless, the legislature's intent to prohibit sequential annexations meant to avoid Subdivision 2(3)'s acreage limit remains clear.

Two provisions within Subdivision 2(3) are at issue here:

- 1) the first sentence requires that a city receive petitions from "all the property owners of the land;" and
- 2) the last sentence forbids annexations if more than 120 acres of contiguous land is sought within 12 months and "the property is owned by the same owners."

Minn. Stat. § 414.011 Subd. 5 defines "property owner" as follows:

"Property owner" means the fee owner of land, or the beneficial owner of land whose interest is primarily one of possession and enjoyment. The term includes, but is not limited to, vendees under a contract for deed, and mortgagors. Any reference to a percentage of property owners shall mean in number.

³ This earlier language makes clear that the state "must not accept" a petition in violation of this sentence. Use of the passive voice in the current language prohibits both city petitions and state approval of petitions in violation of the subdivision.

(Emphasis added. See also M.A.R. Part 6000.0100 Subp. 4) Since the definition of “property owner” includes a “beneficial owner of land whose interest is primarily one of possession and enjoyment” and ownership interests include but are “not limited to” mortgagors and vendees under contract for deed, the statutory language is not precisely defined, thereby providing the OAH with discretion to determine property ownership in particular circumstances. However, the OAH may not adopt a narrow interpretation of property ownership that comprises only fee ownership or property interests leading to fee ownership. The legislature has made clear that the definition of “property owner” cannot be so limited. Prior to 1978, the definition of “property owner” was limited to beneficial owners “in contemplation of ultimate ownership.” In 1978, the legislature struck this language from the definition of “property owner.” 1978 Ch. 705 Sec. 9. Thus, a beneficial owner may be one who does not intend to take fee ownership. Given the wide range of substantial beneficial ownership interests that do not require eventual fee ownership, this broadening makes sense.

It is also important to note that property owners⁴ may be either the fee owners “or” the beneficial owners, but not both. Thus, the OAH must examine the relative degree of ownership between the fee owners and the beneficial owners to determine which set of owners are the “property owners” for the purposes of Subdivision 2(3).

With regard to the phrase, “the property is owned by the same owners,” it does not appear that a court has interpreted this language. Since this phrase is similar to the term “property owner,” defined in Minn. Stat. § 414.011 Subd. 5, which is used in the Subdivision’s first sentence, it must be interpreted consistently with this definition. *Rockford*, 608 N.W.2d at 905 (“Sections of a statute should be considered together to give the words their plain meaning; statute must be considered as a whole to harmonize and give effect to all provisions; the meaning of statutory language, plain or not, depends on context.” (Citations and quotations omitted)). This interpretation is consistent with the original statutory language prohibiting sequential annexations, which used the term “property owner” instead of “owned by the same owners.” 2006 Ch. 270 Art. 2 Sec. 8.

The overall structure of Minn. Stat. Chapter 414 shows a legislative intent to delineate circumstances in which a City may annex property with minimal state oversight from those circumstances where the state has retained to itself the right to decide the merits of an annexation. Annexations of properties larger than statutory maximums may only be approved pursuant to an OAH order after a state hearing. Minn. Stat. §§ 414.031, 414.0325, 414.033 Subd. 3, 5.

The Supreme Court has found that annexation by ordinance is the exception to the general rule that the state has retained jurisdiction over most annexations:

In establishing the intricate substantive and procedural standards for annexation, consolidation, incorporation, and detachment, embodied in detail in c. 414, and by creating the commission to administer these complex matters, it is clear that the legislature intended the commission to have virtually exclusive jurisdiction in determining the boundary changes of political subdivisions by annexation. To be more specific, the only annexations involving unincorporated property which do not require commission approval are those few annexations by municipal ordinance, as authorized by § 414.033.

⁴ Although the term “property owner” is singular, state law requires that it include the plural, as well. Minn. Stat. § 645.08; *Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431, 435 (2009). This result makes sense given the prevalence of divided ownership interests in real estate. Therefore, a parcel of land may have one or more fee owners as well as one or more beneficial owners.

Town of Stillwater v. Minn. Muni. Com'n, 300 Minn. 219, 216-217 (1974) (emphasis added); *see also*, e.g., *Franklin*, 2004 Minn. App. LEXIS 662, *4 (“annexations by ordinance are permitted in limited circumstances where specific statutory criteria are met . . .”) (Emphasis added). Although Subdivision 2(3) was adopted after the *Stillwater* decision, the subdivision’s tight restrictions in combination with its 2006 amendment prohibiting sequential annexations show that the legislature intended it to be another narrow exception that must not swallow the rule.

Finally, the legislature provided the OAH with investigatory power under Minn. Stat. § 414.033 Subd. 10. It is appropriate for OAH to use this power to investigate factual matters related to jurisdictional determinations made pursuant to Subdivision 2(3). Where substantial evidence of a potential abuse of Subdivision 2(3) is provided to OAH, it must exercise this authority.

ARGUMENT

I. The Hedges and the Mining Companies are the Primary Beneficial Owners of all of the Properties at Issue

There is ample evidence indicating that the Hedges and the Mining Companies are the primary beneficial owners of the Properties proposed for annexation.

A. The Mining Companies’ Beneficial Interests

The New Fee Owners own their Properties subject to the “superior rights” of the Mining Companies provided by the Option Agreement and Mining Lease. It appears that the Mining Companies would have an unfettered right to possess and control – in perpetuity – most of the elements of ownership of all of the Properties at issue. In this regard, the Option Agreement leading to the perpetual Mining Lease that allows limited ongoing agricultural use is for most practical purposes similar to a contract for deed leading to a title in fee subject to a condition or easement for limited agricultural use. In both cases, a current beneficial owner holds a substantial contractual right to possess land in perpetuity with a limited reservation allowing for a limited existing use to continue.

The Mining Companies’ rights allow them to construct an aggregate mine on the central property, but to do this they must control and manage the surrounding Properties for ancillary mining uses, including but not limited to access roads, aggregate conveyors, railroad loading facilities, waste depositories, berms, environmental mitigation areas, and required buffer zones between the proposed mine and adjacent homes and natural areas. Drawing a line immediately around the actual pits does not mean that the surrounding land is not a part of the mining operation. The primary use of the surrounding Properties would be as locations for these ancillary mining facilities. The value of this use has been captured entirely by the Mining Companies and the Hedges.

Without the encumbrance of the Option Agreement and Mining Lease, the New Fee Owners would have the option to pursue residential, commercial, or industrial developments on the Properties, but all of these development rights have been transferred to the Mining Companies by the Hedges. What remains in the possession of the New Fee Owners is the possibility of limited agricultural lease income for a limited time on some of the Properties and a remainder interest of likely little to no current value in what would be a former mine site. Even though the Mining Companies do not own the fee title to the Properties, the Option Agreement and perpetual Mining Lease transfer most of the bundle of interests that typically comprise real property ownership, including the right to possess, control, develop, alter, and earn most of the profits on land.

Since the Option Agreement and the perpetual Mining Lease are not publicly available, the full scope of the Mining Companies' rights to control the Properties is not definitely known by the Township, nor can it be known by OAH absent investigation. Given the descriptions of these rights in project development and recorded real estate documents and the typical impacts of mining on land, these rights can be presumed to be substantial. To determine the full scope of the Mining Companies' interests, OAH should request and review the Option Agreement, Mining Lease, and related documents.

The Mining Companies' contractual rights, project plans and documents, project permits, and long term commitment to developing a mine on the Hedge Property (most recently evidenced by its preparation of a process schedule for this annexation) indicate that the Mining Companies' have beneficial interests in the Properties that exceed the beneficial interests of the New Fee Owners. Thus, the Mining Companies' existing contractual rights make them beneficial owners of all of the Properties.

B. Hedges' Beneficial Interests

Through the quit claim deeds, the Hedges have retained for themselves all payments from the Option Agreement and Mining Lease for use of the Properties. As a result, the New Fee Owners would receive no income from the Mining Companies for the use of their Properties. Further, the New Fee Owners themselves could not develop their Properties and it is likely that their Properties' values would be adversely impacted by the mine, but these land values have also been captured by the Hedges through Option Agreement, Mining Lease, and quit claim deeds.

It may be possible for the New Fee Owners to earn limited incomes from agricultural rents on portions of their Properties for a limited period of time (all other use is prohibited by the quit claim deeds), but the quit claim deeds are silent as to the New Fee Owners' rights to receive rent from the existing agricultural lease or to receive rent from future agricultural leases, and presumably any agricultural income would be offset by property taxes. The gerrymandered shapes of the Properties, the proximity of the Properties to a mine and its impacts, issues of property access once the mine and its ancillary facilities are in operation, the lower quality of the land as pasture and its inability to be used for crops, and the Properties' status as a legally required buffer zone for the mine, all indicate that: (1) the agricultural value of the Properties will be limited; and (2) the primary value of the Properties is to allow mining of the central quarry area. The limited ability of the New Fee Owners to earn agricultural income likely pales in comparison to the income that would accrue to the Hedges from the leases of these Properties to the Mining Companies. If the OAH is retains doubt about the value of the ownership interests of the New Fee Owners relative to that of the combined interests of the Mining Companies and the Hedges, the OAH must investigate this matter pursuant to Minn. Stat. § 414.033 Subd. 10.

The limited value of the property interests granted in combination with the fact that the Hedges gave the deeds as gifts means that the New Fee Owners do not have a market-based expectation that they own a significant beneficial interest in their Properties. Moreover, should the Properties be annexed, their limited commercial value means that there would be no meaningful commercial impediment for their transfer back to the Hedges. The Properties could be reassembled following annexation without meaningful loss to the New Fee Owners. That the New Fee Owners are close relatives to the Hedges further indicates that they entered into ownership of their Properties primarily for the benefit of the Hedges.

It is clear that the New Fee Owners have very limited beneficial interests in their Properties relative to the beneficial interests held by the Hedges. As such, the New Fee Owners are not the primary beneficial owners of their Properties but instead hold the Properties primarily for the benefit of their relatives, the Hedges, and through them, the Mining Companies.

II. The Sole Purpose of the Division of the Hedge Property Is to Avoid Subdivision 2(3)'s 120 Acre Limit

An attempt by the City to annex the entire Hedge Property under Subdivision 2(3) would be patently illegal because the total size of the property (448.36 acres) is above the law's 120 acre limit. Since the Hedge Property is not owned by the City, not completely within municipal limits, and not subdivided into plats, the city also could not annex the entire property via ordinance pursuant to § 414.033 Subdivisions 2(1), (2) and (4), respectively. Therefore, the entire Hedge Property could be annexed only via OAH order pursuant to § 414.031, § 414.033 Subd. 3, or via an orderly annexation agreement under § 414.0325.

Apparently, the Hedges, Strata, and the City determined that it would be possible to annex the entire Hedge Property without an OAH hearing by breaking the property into lots smaller than 120 acres and annexing each lot pursuant to Subdivision 2(3). This strategy required that each lot be "owned" by a separate person. Further, this strategy required that each of these new owners have at least a fig leaf of residual beneficial interest in their Properties. Accordingly, the Hedges divided the original property into six gerrymandered lots each of which abuts the City, retained ownership of the central property that would contain the actual mine pits, deeded the remaining five "buffer zone" lots to their relatives (because these lots retain at least the appearance of having a beneficial value apart from the mine), and prepared annexation petitions for themselves and each of the New Fee Owners to submit to the City.

The complexity of this situation alone indicates that the property division was undertaken solely to avoid Subdivision 2(3)'s prohibition on sequential annexations.

The extremely limited nature of the property rights transferred to the New Fee Owners, the limited commercial value of these property rights, and the curtailed ability of the New Fee Owners to use their Properties due to the "superior rights" imposed by the Option Agreement and Mining Lease, indicate that the "gifts" given by the Hedges have no appreciable value and had no apparent purpose independent of the annexation process.

The 2012 Plot Map shows that the Properties' boundaries are severely gerrymandered so that each of them "abuts" the City boundary, to satisfy this condition in Subdivision 2(3). The result is that lots N and L are so long and narrow that it is unlikely that they could be used for any commercial purpose separately from other contiguous Properties. Further, Lots K and J also include long thin strips with no apparent purpose other than connecting more distant portions of the lots to the City. The tortured lot configurations indicate that the division of the property was not undertaken for any practical purpose and instead was undertaken solely to ostensibly comply with Subdivision 2(3).

Therefore, the division of the Hedge Property into six separate Properties appears to serve no purpose other than avoidance of a state annexation hearing. In these circumstances, approval of the City's Petitions would fly in the face of the legislature's intent to prohibit sequential annexations of properties under Subdivision 2(3) that instead should be subject to an annexation hearing under Minn. Stat. § 414.031.

III. The City's Petitions Violate Subdivision 2(3), because the City Has Not Received Petitions for Annexation from "All the Property Owners of the Land"

The City has received petitions for annexation only from the fee owners of the Properties and not from both the Hedges and the Mining Companies for each property, whose beneficial interests make them the "property owners" for the purposes of Subdivision 2(3). Therefore, the City has not received petitions

for annexation from “all the property owners of the land” for each property and is in violation of Subdivision 2(3).

IV. The City’s Petitions Constitute Impermissible Sequential Annexation Prohibited by Subdivision 2(3)

Unlike the circumstances in the *Franklin* decision, wherein the court found no evidence that the legislature prohibited sequential annexation, Subdivision 2(3) now contains an express prohibition on sequential annexations. Thus, the question before OAH is not whether a prohibition exists, but whether the City’s Petitions constitute prohibited sequential annexation. Given the statute’s express prohibition on sequential annexations by the same owners, the OAH should find that the legislature’s intent was to generally prohibit annexation of multiple properties that have been divided to avoid statutory limits and thereby impinge on state authority under Minn. Stat. § 414.031.

The facts here indicate that the Mining Companies and the Hedges have worked in concert to divide the Hedge Property so that the City’s Petitions appear to relate to properties owned by different owners so that the City could submit the Petitions under Subdivision 2(3). These facts include:

- division of the property shortly before submittal of the Petitions and only after the Township’s Interim Ordinance blocked development of the combined Hedge Property at the County level;
- the Properties were given as gifts by the Hedges to close relatives through quit claim deeds;
- almost all of the value of each of the Properties has been reserved to the Hedges and the Mining Companies, such that the New Fee Owners possess only a limited interest in each of the Properties;
- the Hedge Property was divided into pieces all smaller than 120 acres, Subdivision 2(3) statutory limit;
- the Properties have been severely gerrymandered so that they all abut the City, and this gerrymandering results in lot dimensions and shapes that bear no rational relationship to typical land development; and
- the preparation of annexation and conditional use permit processing schedules by the Strata “legal team” at the request of the City indicates that Strata worked in concert with the Hedges and the City to seek annexation under Subdivision 2(3).

It is difficult to imagine a clearer attempt to use property transactions to avoid Subdivision 2(3)’s 120 acre limit. Given the language of Subdivision 2(3), the broad definition of ‘property owner’ in Minn. Stat. § 414.011 Subd. 5, and the requirement in Minn. Stat. § 645.16 that OAH consider “the mischief to be remedied” and “the object to be obtained,” OAH has discretion to determine whether a set of proposed annexations are legitimately separate, or on the other hand whether complex ownership transactions mask a largely unified beneficial property interest behind fee ownership in an attempt to avoid an OAH hearing. Where the latter exists, OAH must deny a petition for lack of jurisdiction. Where the latter may exist but publically available evidence is inconclusive, the OAH has should investigate the division of ownership interests so that it can identify the “property owners.”

Here, the City seeks to annex six parcels that are “owned by the same owners,” are contiguous to each other, and cumulatively exceed 120 acres, all within the same 12 month period. Therefore, the City’s Petitions violate Subdivision 2(3)’s prohibition on sequential annexations and the OAH must deny them.

V. Approval of the Petitions Would Create Precedent Having the Practical Effect of Voiding Subdivision 2(3)'s 120 Acre Limit, Thereby Impermissibly Expanding City Authority Under Chapter 414

Should the OAH approve the City's Petitions, it would create precedent that would result in Subdivision 2(3)'s 120 acre limit having little to no practical effect, and certainly not the affect intended by the legislature. Almost any owner of an undeveloped property larger than 120 acres that abuts a municipal boundary could avoid a state hearing under Minn. Stat. § 414.031 or participation in orderly annexation agreements under Minn. Stat. § 141.0325 by:

- 1) dividing the property into lots smaller than 120 acres;
- 2) gerrymandering the lots sizes so they all abut the municipality;
- 3) deeding the lots to separate individuals;
- 4) retaining most of the property's beneficial value through leases, deed conditions, restrictive covenants, contracts, development agreements, and other types of legal instruments, leaving the fee owners with little residual value;
- 5) annexing the properties pursuant to Subdivision 2(3); and
- 6) if desired, reassembling the lots after annexation.

The existence of this tactical option would make Subdivision 2(3)'s 120 acre limit largely meaningless. An agency may not interpret state law so as to abrogate its effect, *Owens v. Federated Mutual Implement & Hardware Ins. Co.*, 328 N.W.2d 162, 164 (Minn. 1983) (statutes should be construed so that no word, phrase, or sentence is superfluous, void or insignificant). Therefore, an OAH decision allowing this tactic to succeed here and come into practice would be in violation of law.

Further, approval of the Petitions would in effect expand the annexation authority of cities beyond the legislature's intention that the state retain authority over most annexations and that annexation by ordinance actions be limited to use in narrow circumstances. *Stillwater*, 300 Minn. at 216-217; *Franklin*, 2004 Minn. App. LEXIS 662, *4. The overall structure of Chapter 414 shows that the annexation by ordinance exceptions must be interpreted strictly to protect the state's retained authority lest these exceptions swallow the rule.

The OAH must exercise its discretion in interpreting Subdivision 2(3) in accordance with the *Stillwater* decision and other more recent decisions to ensure that this legislatively defined narrow exception does not in law or in practice impinge on state authority under Minn. Stat. § 414.031. The OAH may not interpret Subdivision 2(3) so that its authority to fully investigate jurisdictionally relevant property ownership issues is restricted, and it may not limit the definition of "property owner" so as to allow land owners and cities to avoid a state hearing by obscuring the actual "property owners," those who own the greatest rights to possess and enjoy land, behind shell owners. Since the language of Chapter 414 provides the OAH with the administrative discretion necessary to protect its "virtually exclusive jurisdiction" over annexations, and it has the power and duty under law to do so, the OAH must exercise its discretion to give the maximum possible effect to the legislature's prohibition on the use of Subdivision 2(3) to accomplish sequential annexations. A failure by the OAH to take such action would be an abuse of discretion and violate the intent of Subdivision 2(3) as well as Chapter 414's balance of authority between the state and cities.

VI. The Petitions Are Void Because the Properties Are Not Urban or Suburban in Character or About to Become So

As a prerequisite to annexation by ordinance a city must find that a property is "urban or suburban in character or about to become so" Minn. Stat. § 414.033 Subd. 2. Here, irrefutable

evidence demonstrates that, if annexed, the land will become an aggregate mine. Land used for mining is not urban or suburban in character, but rather is typically a rural land use. The presence of two working aggregate mines in rural land immediately south of the Properties underscores this fact. The large numbers of mines in rural areas and the paucity of operating mines within city boundaries in Minnesota also indicate that aggregate mining is not “urban or suburban in character.” If anything, operating mines are incompatible with most urban and suburban land uses, as mines interfere with many such uses, and particularly with the quiet enjoyment of residential properties.⁵ While aggregate mining is categorized as an industrial activity, it is not typically an urban or suburban industrial activity, but is instead a rural industrial activity.

The City is expanding its boundaries by approximately 1.5 miles into the countryside, far beyond what could be considered a suburban area for a community of this size. Depending on how it is measured, the City’s current boundaries stretch at most approximately 3 miles north to south and 1.5 miles east to west. The core of the City, exclusive of an outlying airport and golf course and agricultural land between the City and the Properties, is closer to 1.5 miles long along Big Stone Lake and the Minnesota River and 1 mile wide from the lake to farm land. Further, the proposed annexation would not add to the width of the City but rather to its length, and it would increase the land area of the City by approximately 20%. As a consequence, the proposed annexations extend far into areas that cannot be reasonably described as suburban or urban, or even areas that are about to become suburban or urban.

Although Minn. Stat. § 414.033 states that land meeting the jurisdictional criteria in Subdivision 2(3) is “deemed” to be “urban or suburban in character or about to become so,” the fact that the Properties are not about to become urban or suburban in character, given any rational definition of these terms, demonstrates that the City is abusing Subdivision 2(3) by attempting to apply it inappropriately to annex too large an area of land.

Since the property at issue is not “urban or suburban in character or about to become so,” the City may not annex the property pursuant to Subdivision 2(3), and the OAH must deny the annexation or refuse to issue an order. *Thomastown*, 323 N.W. 2d. at 743, 745-746 (affirming order to vacate annexation under Minn. Stat. § 414.033 based in part on a finding by the district court that the property was not about to become urban or suburban in character).

VII. Should the State Not Consider the Evidence Provided by the Township To Be Conclusive, the ALJ Must Seek Evidence Necessary to Resolve this Matter Pursuant to Minn. Stat. § 414.033 Subd. 10

The Township asserts that the evidence provided in this letter forms a sufficient basis on which the OAH may deny the City’s Petitions. Should the OAH find that this evidence is not by itself sufficient in substance or form for a final determination, the Township’s evidence is nonetheless sufficient to require that the OAH use its investigatory authority under Minn. Stat. § 414.033 Subd. 10 to acquire evidence sufficient for a final determination. For example, the OAH may:

- acquire the Option Agreement and Mining Lease and all related documents to discover the terms of the commercial relationships between the Hedges, the Mining Companies, and the New Fee Owners, so that the property rights of each are known by OAH;

⁵ The Township and nearly all of its residents have provided many comments to Big Stone County, the Mining Companies, and the City expressing concern that the proposed mine is incompatible with the quiet enjoyment of residential properties immediately north of the Properties. The Petitions seek to annex land that is not urban or suburban in character or about to become so, while ignoring the adjacent residential land that is in fact more urban or suburban in character than the Properties.

- inquire as to whether any additional documentation or evidence exists regarding the transfer of the Properties to the New Fee Owners;
- question the New Fee Owners about the extent of their ownership interests;
- acquire documentation and other evidence from the City related to its approval of the Petitions and passage of its annexation ordinances to determine the extent of the City's efforts to comply with Chapter 414 and its knowledge about the property interests at issue; and/or
- acquire additional documents about the planned mine to confirm the nature of the Mining Companies' beneficial interests, their development intentions, the potential impact of the mine on the New Fee Owners Properties, and the relative values of the property rights held by different parties.

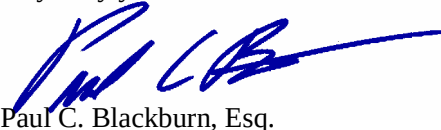
What the State cannot do is fail to fully investigate this matter, because doing so would be arbitrary and capricious and otherwise in violation of law, and it would violate the Township's statutory and constitutional due process rights.

Ultimately, a denial of the City's Petitions would not prevent the Properties from being annexed. Instead, a denial would allow the OAH to fully consider and decide on the merits of this geographically large and contentious annexation. The Township believes that the City has rushed into this decision without full consideration of the rights and interests of Township residents, and without the administrative infrastructure needed to regulate a mine of this magnitude. Part of the purpose of Chapter 414 is to ensure that annexations of large properties – that tend to have correspondingly large impacts on surrounding communities and landowners – are evaluated by an impartial decision maker after a formal hearing, rather than being left to the discretion of a city that does not represent the interests of all the Minnesotans who would be impacted. The Township requests that the procedural rights granted by law to it and its residents be upheld by the OAH.

For the foregoing reasons, the OAH must deny the City of Ortonville's Petitions to annex the Properties, or in the alternative seek additional information pursuant to Minn. Stat. § 414.033 Subd. 10 sufficient to determine the ownership of the Properties. Should the OAH seek additional information, or if new information comes to the Township's attention before an OAH decision, the Township reserves the right to submit additional information on this matter.

Thank you for your consideration. Should you have any questions, please contact me at your earliest convenience.

Very truly yours,



Paul C. Blackburn, Esq.

cc: Ortonville Township Board of Supervisors
Minnesota Attorney General

Exhibit A

1,
GLORIA ARNDT
BIG STONE COUNTY, MN
COUNTY RECORDER
160958

05/08/2006 9:30 AM

NEW RECORDING FEE 46.00

Pages

4

by: *Karol Stitesberg, Dep.*

MEMORANDUM OF LEASE

Between: Gayle E. Hedge and Colleen M. Hedge, as
Lessors/Landowners

Glacier Resources, Ltd., as Lessee

Drafted by: Sandra B. Dittus
Zimney Foster P.C.
Bremer Financial Center, Suite 200
3100 S. Columbia Road
PO Box 13417
Grand Forks ND 58208-3417

*# 46.00 R-1000000
Zimney Foster P.C.
PO Box 13417
Grand Forks ND 58208-3417*

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, made and entered this 26th day of April, 2006, is to record the understanding of the parties with respect to a certain Option Agreement and Aggregate Mining & Lease Agreement which has been executed and covering certain property located in the County of Big Stone and State of Minnesota, and more fully described as follows:

/(EXHIBIT A)
SEE ATTACHED SURVEY FOR LEGAL DESCRIPTION

The grant of option commences on 26 April 2006 covers the property above described, and extends through March 31, 2011. The initial lease term commences on the date of conversion from the Option Agreement to an Aggregate Mining & Lease Agreement, covers the property above described, and extends through December 31, 2060 together with the option to extend for an indefinite term beyond the initial lease term, via optional ten (10) year increments thereafter and an additional two (2) year term to remove stockpiled material and improvements. If the Option is not exercised prior to March 31, 2011, Lessee's rights are extinguished.

LESSEE is granted a non-exclusive right of ingress and egress over all roads, streets, alleys, sidewalks and ways either public or private, bounding or serving the premises covered by the Lease.

The other terms, covenants, conditions and provisions of said Aggregate Mining & Lease Agreement are contained in the written document executed by the undersigned parties.

This Memorandum of Lease is made for the purpose of recording the understanding of the parties upon the public records of Big Stone County, Minnesota. Any conflict between the terms of this Memorandum and the Option Agreement or the Aggregate Mining & Lease Agreement will be resolved in favor of the terms of the Option and Agreement, or in the event the Option has been exercised the terms of the Aggregate Mining & Lease Agreement shall control.

IN WITNESS WHEREOF, the parties have hereunto caused this Memorandum of Lease to be executed this 26th day of April, 2006.

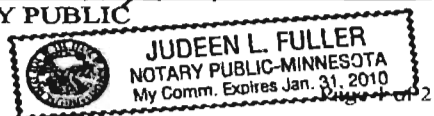
LESSORS/LANDOWNERS:

Gayle E. Hedge
GAYLE E. HEDGE
Colleen M. Hedge
COLLEEN M. HEDGE

STATE OF MINNESOTA)
) ss.
COUNTY OF BIG STONE)

On this 26th day of April, 2006, before me, the undersigned, a Notary Public in and for the State of Minnesota, personally appeared GAYLE E. HEDGE and COLLEEN M. HEDGE, known to me to be the persons who did execute the above and foregoing instrument.

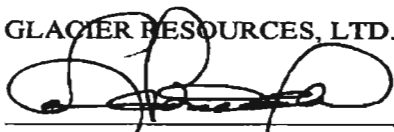
Judeen L. Fuller
NOTARY PUBLIC



LESSEE:

GLACIER RESOURCES, LTD.

By:


James R. Bradshaw, Its President

STATE OF Minnesota)
COUNTY OF Big Stone) ss.

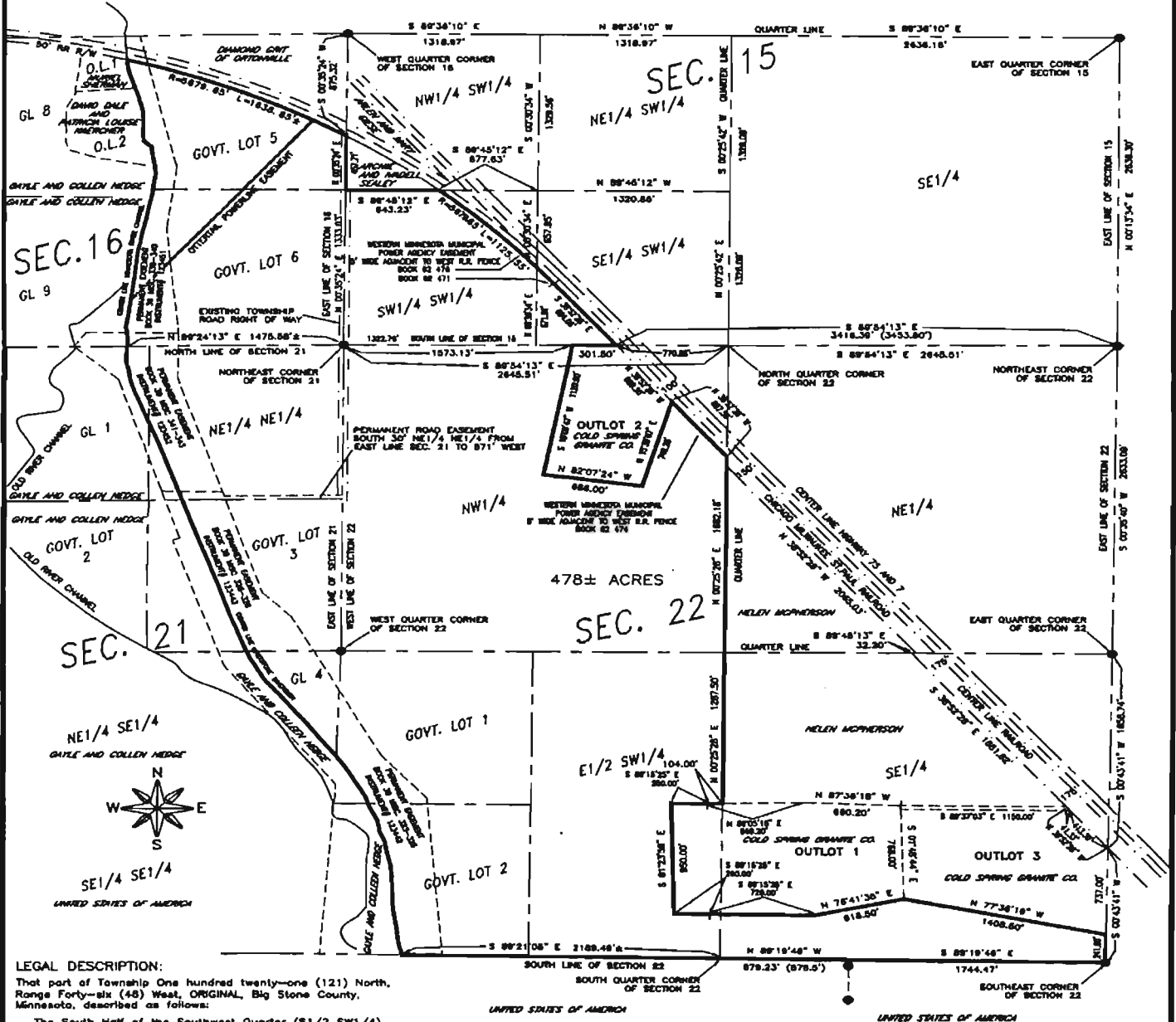
On this 26th day of April, 2006, before me, the undersigned, a Notary Public in and for the State of Minnesota, personally appeared JAMES R. BRADSHAW, known to me to be the person who did execute the above and foregoing instrument and acknowledged to me that he did execute the above and foregoing instrument as an officer of Glacier Resources, Ltd. and with full authority on behalf of the corporation recited herein.


NOTARY PUBLIC



CERTIFICATE OF SURVEY

Part of the South Half of the Southwest Quarter of Section 15, Part of Government Lot 5 and 6 of Section 16, Part of the West Half and part of the South Half of the Southeast Quarter of Section 22, and Part of the East Half of Section 21 Township 121 North, Range 46 West, Big Stone County, Minnesota



LEGAL DESCRIPTION:

That part of Township One hundred twenty-one (121) North, Range Forty-six (46) West, ORIGINAL, Big Stone County, Minnesota, described as follows:

The South Half of the Southwest Quarter (S1/2 SW1/4) lying southwesterly of the railroad right of way in Section Fifteen (15) of said Township.

Government Lot Five (5) lying southerly of the railroad and easterly of the center of the Whitestone Diversion Channel and Government Lot Six (6) easterly of the Whitestone Diversion Channel, all being located in Section Sixteen (16) of said Township.

That part of Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4), Government Lot One (1), Government Lot Three (3), and Government Lot Four (4), all being located easterly of the center of the Whitestone Diversion Channel, and all being located in Section Twenty-one (21) of said Township.

That part of the Northwest Quarter (NW1/4) lying southerly of the railroad right of way, EXCEPTING Outlot 2; Government Lots One (1) and Two (2) lying easterly of the center line of the Whitestone Diversion Channel; and the East Half of the Southwest Quarter (E1/2 SW1/4) and the South Half of the Southeast Quarter (S1/2 SE1/4), EXCEPT Outlots One (1) and Three (3), all being located in Section Twenty-two (22) of said Township.

Said tract contains 478 acres more or less and is subject to any encumbrances of record.

SCALE: 1" = 800'



LEGEND

- = FOUND CORNER MONUMENT
- = SET 5/8" REBAR WITH CAP STAMPED "RLS 19092"
- (50') RECORD DISTANCE

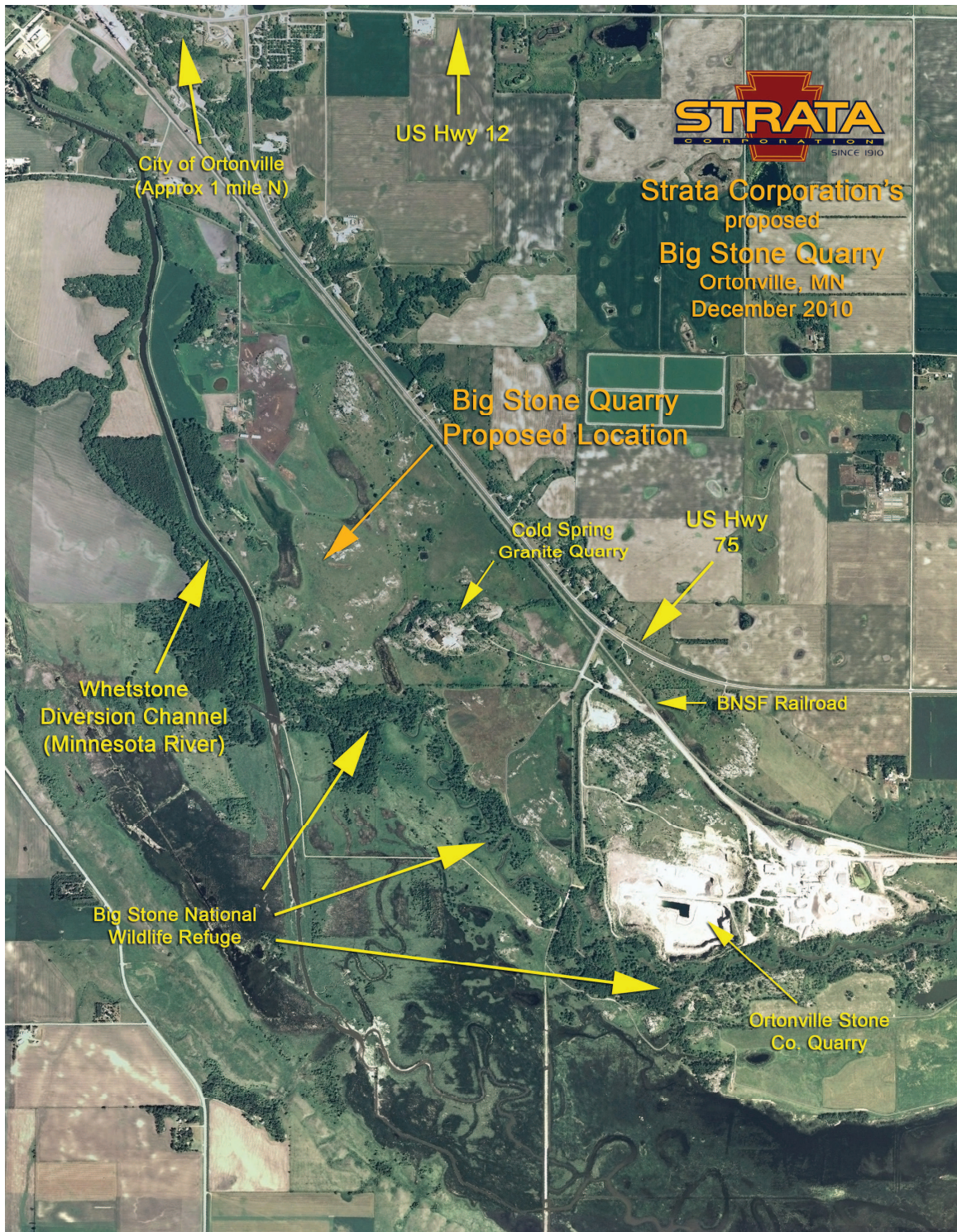
Surveyors Certificate

I, Roy Marthart, do hereby certify that this survey and drawing was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the Laws of the State of Minnesota.

Roy Marthart 5-16-06
Roy Marthart - MN Reg. No. 19092

Exhibit B

ENVIRONMENTAL ASSESSMENT WORKSHEET



Big Stone Quarry

BIG STONE COUNTY

December 20, 2010

Note to reviewers: Comments must be submitted to the RGU during the 30-day comment period following notice of the EAW in the *EQB Monitor*. Comments should address the accuracy and completeness of information, potential impacts that warrant further investigation and the need for an EIS.

3. **RGU** **Big Stone County**
 Contact person **Darren Wilke**
 Title **Environmental Services Director**
 Address **20 2nd ST SE**
 City, state, ZIP **Ortonville, MN 56278**
 Phone **(320)-839-6376**
 Fax **(320) 839-6253**
 E-mail **darren_w@co.big-stone.mn.us**

and subpart name:

Appendix A:	Strata Executive Summary
Appendix B:	Ecological Reports
Appendix C:	Wetland Reports
Appendix D:	State Correspondence
Appendix E:	Custom Soil Resource Report
Appendix F:	General Storm Water Permit
Appendix G:	Blast Noise Detailed Report
Appendix H:	SHPO Correspondence
Appendix I	Mine and Reclamation Plan

6. Description

a. Provide a project summary of 50 words or less to be published in the *EQB Monitor*.

Strata Corporation is proposing to construct a granite quarry mining operation south of Ortonville in Ortonville Township, Big Stone County, MN. The project involves the development of a new granite aggregate mining and processing operation on a 95.55 acre quarry site plus related ancillary operations and features. Construction activities are planned to begin in 2011 with the site becoming fully operational in 2012.

b. Give a complete description of the proposed project and related new construction. Attach additional sheets as necessary. Emphasize construction, operation methods and features that will cause physical manipulation of the environment or will produce wastes. Include modifications to existing equipment or industrial processes and significant demolition, removal or remodeling of existing structures. Indicate the timing and duration of construction activities.

The proposed granite quarry consists of a 95.55 acre quarry on a 478 acre rural site located southeast of Ortonville, MN within Big Stone County (Figure 1). The quarry development is located approximately 1,500 feet from the southern most edge of the Ortonville City limits. The quarry site is on private land perpetually leased by Strata Corporation from Gayle & Colleen Hedge, local residents and business owners. The property is currently utilized as a livestock feedlot and pasture land grazing operation. A detailed Executive Summary generated by Strata is included in Appendix A for review. Highlights of the proposed quarry construction and operation include:

- **A 95.55 acre quarry (which includes an aggregate processing area). The actual quarry will be completed in 3 phases beginning with the first phase, and then moving to the 2nd and 3rd phases as needed to satisfy demand for granite aggregate.**
- **Construction of an overland conveyor line and adjoining service road that will quietly transport granite aggregate to the BNSF rail line for loading into railcars and eventual transport to distant markets.**
- **Construction of a 1.15 mile long railroad siding and railcar sound enclosure loadout building and adjoining service road along the south side of the BNSF Railway to load aggregate onto unit trains.**
- **A 1.09 mile long graveled access road connecting to County Road 17.**
- **Eventual construction of metal shop and office building near the actual quarry.**

The proposed granite quarry has been in the design phase since 2006. During the past four plus years, the proposer has worked closely with all regulating agencies to lay out a feasible quarry plan that limits environmental impacts associated with the project. A detailed description of these efforts is outlined in Section 11.

c. Explain the project purpose; if the project will be carried out by a governmental unit, explain the need for the project and identify its beneficiaries.

The purpose of this project is to provide a quality source of high specification aggregates to the greater region and surrounding metropolitan centers. According to the Minnesota Aggregate Resources Task Force, there is a shortage of high quality aggregates to provide for the state's infrastructure construction needs. The proposed site will provide a substantial supply of high quality granite bedrock to fulfill those infrastructure needs for generations. The project is expected to initially employ 6 people, and eventually expanding to over 20 people in future years. A detailed tax impact analysis has not been completed to date, but the Big Stone County Aggregate Removal Tax is expected to generate over \$20,000 annually, growing to approximately \$50,000 in future years.

d. Are future stages of this development including development on any other property planned or likely to happen?

☐ Yes ☒ No

If yes, briefly describe future stages, relationship to present project, timeline and plans for environmental review.

e. Is this project a subsequent stage of an earlier project? ☐ Yes ☒ No

If yes, briefly describe the past development, timeline and any past environmental review.

7. Project magnitude data

Total project acreage:

One-hundred total acres including a 95.55 acre primary mine & processing area plus ancillary operations within a 478 acre private property parcel. Ancillary operations include a 1.09 mile long quarry access road, ±1,600 lineal feet of overland conveyor line with adjoining service road, and 9,170 ft of new railroad track with ±3,200 lineal feet of adjoining service road built off-site on BNSF property. Additionally, the project proposes to create a separate ±59 acre Rare Plant Protection Area in which several species of rare and/or endangered plants along with rare wetland features and pristine granite rock outcrops will be permanently protected by way of property gifting to the adjacent Big Stone National Wildlife Refuge.

Number of residential units: unattached **0** attached **0** maximum units per building
Commercial, industrial or institutional building area (gross floor space): total square feet **<=14,600 ft²** (The office building would likely be attached to the shop building and the exact configuration is yet to be determined)

Indicate areas of specific uses (in square feet):

Office **<=1,600 ft² Office/Parts Storage Building**

Retail

Warehouse

Light industrial **<=9,600 ft² Shop Building**

Other commercial (specify)

Building height **<= 24 ft (2 stories)** If over 2 stories, compare to heights of nearby buildings

Manufacturing

Other industrial **<=3,000 ft² Railcar Enclosure Building**

Institutional **<=400 ft² Electrical Swithgear Building**

Agricultural

8. **Permits and approvals required.** List all known local, state and federal permits, approvals and financial assistance for the project. Include modifications of any existing permits, governmental review of plans and all direct and indirect forms of public financial assistance including bond guarantees, Tax Increment Financing and infrastructure. *All of these final decisions are prohibited until all appropriate environmental review has been completed. See Minnesota Rules, Chapter 4410.3100.*

Table 1: Permits and Approvals Required

<u>Unit of government</u>	<u>Type of application</u>	<u>Status</u>
Big Stone County	Conditional Use	Following EAW
Big Stone County	SSTS Permit	Following EAW/Prior to construction
DNR	Water Appropriation Permit	Following EAW/Prior to construction
DNR	Listed Species Taking Permit	Preliminary /See below
Big Stone County LGU/Army Corps	Joint Wetland Mitigation Permit	Preliminary/ See below
MPCA	NPDES/Erosion Control	Following EAW/Prior to construction
MPCA	Air Quality Permit	Following EAW/Prior to construction

9. **Land use.** Describe current and recent past land use and development on the site and on adjacent lands. Discuss project compatibility with adjacent and nearby land uses. Indicate whether any potential conflicts involve environmental matters. Identify any potential environmental hazards due to past site uses, such as soil contamination or abandoned storage tanks, or proximity to nearby hazardous liquid or gas pipelines.

The current land use of the proposed quarry site is predominately pasture land and includes a cattle feedlot. Adjacent land use includes pasture to the north, pasture to the east, two granite quarries to the southeast, a wildlife refuge to the south, and pasture to the west. The project is compatible with the current quarries and pastures currently adjacent to the site. The final proposed quarry will not be visible from the wildlife refuge.

No potential environmental hazards associated with past site uses were identified.

10. **Cover types.** Estimate the acreage of the site with each of the following cover types before and after development:

	Before	After		Before	After
Types 1-8 wetlands	128	<125	Lawn/landscaping	0	0
Wooded/forest	0	0	Impervious surfaces	0	0
Brush/Grassland	257	201	Stormwater Pond	0	1
Cropland	37	37	Graveled Roads	0	4
Other					
(Ephemeral Wetlands)	<1	<1			
(Bedrock outcrops)	25	15			
(Feedlot)	30	0			

TOTALS Before 478 After 384

Note: acreages have been rounded to nearest whole number.

If Before and After totals are not equal, explain why:

Beginning with the original 478 acre site, subtract ±56 acres for grassland and ±10 acres of bedrock outcrops and 30 acres of the feedlot make up the ±96 acre quarry area. Additionally, there will be ±4 acres of remaining roads; ±1 acre of stormwater pond; and ±3 acres of wetlands. All of which total approximately 104 total acres altered from original site conditions.

11. Fish, wildlife and ecologically sensitive resources

- a. Identify fish and wildlife resources and habitats on or near the site and describe how they would be affected by the project. Describe any measures to be taken to minimize or avoid impacts.

The site property consists of approximately 478 acres of pasture land along a channelized portion of the Minnesota River (Whetstone Diversion Channel) in Big Stone County. Most of the acreage is comprised of heavily grazed and rocky pasture with some isolated granite outcrops scattered throughout the property. The property is largely void of trees with some deciduous trees localized around site wetlands and the Whetstone Diversion Channel. Prior to settlement, the site would have classified as wet prairie and natural communities would have included species such as prairie cord grass, big bluestem, giant goldenrod, and various sedges. Currently, the site is a pasture and years of grazing have degraded the quality of the prairie by suppressing the native warm season grasses and allowing introduced cool season grasses and noxious weeds to flourish. Similarly, extensive grazing has also degraded the quality of most of the wetlands with species such as prairie cord grass being replaced by reed canary grass. The exception to this degraded state would be the scattered rock outcrops located on the south side of the property. These outcrops have been exposed to less intensive grazing, allowing native plant communities to persist.

Some wildlife currently inhabiting this property may be displaced by the project. Fortunately, the project is located adjacent to the Big Stone National Wildlife Refuge which contains 11,521 areas of permanent wildlife habitat. With the availability of the adjacent permanent wildlife habitat and the added Rare Plant Protection Zone, it is not anticipated that wildlife populations will be negatively affected by this project.

Various species of fish inhabit the nearby river channel and its adjacent littoral wetlands. No fish inhabit the project site and this project is not anticipated to affect fish populations within the Minnesota River mainly due to the separation between the proposed project and the river and the avoidance of all littoral wetlands. (Figure 3).

b. Are any state-listed (endangered, threatened or special concern) species, rare plant communities or other sensitive ecological resources on or near the site? X Yes No

If yes, describe the resource and how it would be affected by the project. Describe any measures that will be taken to minimize or avoid adverse impacts. Provide the license agreement number (LA-____) and/or Division of Ecological Resources contact number (ERDB **20080298**) from which the data were obtained and attach the response letter from the DNR Division of Ecological Resources. Indicate if any additional survey work has been conducted within the site and describe the results.

Identified Resources

During the conceptual planning stages of this project, there was no knowledge that the property contained state-listed species and sensitive ecologic resources. After Strata met with and solicited comments from all regulatory agencies, including BSWR, DNR, ACOE, USFWS, and Big Stone County, they did learn that a state-listed species (ball cactus) and several mapped Rare Natural Communities with protected wetlands were located within the project footprint. Understanding the importance of these features, Strata temporarily discontinued all quarry design work for a period of two years and focused on gaining a better understanding of the site as recommended by all regulatory agencies. During this time, extensive botanical and wetland surveys to identify and map all state-listed species and Rare Natural Communities on the property were completed.

Botanical surveys of all rare floral resources were completed by Critical Connections as requested by the DNR. During these surveys, additional State-listed species were identified within rock pools (ephemeral) located on some granite outcrops that were included within the initial quarry footprint. Copies of all botanical survey reports are included in Appendix B.

All wetland delineation and Rare Natural Community survey work was completed by state-certified wetland delineators at WCEC. The locations of all wetlands, including ephemeral pools which contained many of state-listed species, were surveyed and mapped within the property. Rare Natural Communities previously mapped by the DNR within the project area were placed on site maps so they could be avoided during subsequent quarry design phases. Copies of all wetland surveys are included in Appendix C.

An active bald eagle nest is located within the Big Stone National Wildlife Refuge approximately 440 feet from southern boundary of this property. The bald eagle is a state listed Special Concern species and is not afforded any protections under Minnesota's Endangered Species Statute or the associated Rules. In August 9, 2007, the bald eagle was removed from the federal list of threatened and endangered species due to a rebound in its population. Even though bald eagles are de-listed, they are still protected by the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Based on information outlined by the USFWS, these Acts prohibit the "taking" of eagles.

Measures Taken to Avoid/Minimize Impacts

Following completion of the original 2007 quarry plan (Figure 2), and after multiple field studies, meetings, and discussions with ACOE, Big Stone County, BWSR, and the DNR, the quarry layout was extensively modified to avoid and/or minimize potential impacts to fish, wildlife and ecologically sensitive resources. Under the final proposed quarry plan (Figure 3), all impacts have been significantly reduced and existing rare natural features are afforded permanent protection not currently available under existing land use.

Listed below are all measures taken to avoid/minimize impacts to state-listed species, rare plant communities, or other sensitive ecological resources from the proposed project:

1) Quarry Relocation/Reconfiguration

The original quarry plan was simply designed to minimize impacts to delineated wetlands while targeting the most accessible granite located in various out-crops located on the property. Prior to moving forward with any permit applications, the Strata Team organized an on-site meeting with all regulatory agencies to discuss the

feasibility of the proposed quarry plan. During this meeting, Strata learned that the very outcrops that contained the most accessible granite, also were designated as Rare Natural Communities that contained state-listed species and hence protected from disruption. Strata then began the next phase of quarry planning beginning with the identification of all state-listed species (Appendix B) and Rare Natural Communities/wetlands (Appendix C) on the property and ending with a final proposed quarry plan that all regulatory agencies tentatively agreed included sufficient protections and mitigation that could be permitted within the current listed-species and wetland laws.

Following multiple meetings with the various regulatory agencies regarding quarry planning options, the proposed quarry plan was finalized in June 2010. This proposed plan avoids impacts to: all state-listed endangered species except for 3.7% of the identified ball cacti, all state-listed special concern species except for 3.9% of the Water Hyssop, all designated Rare Plant Communities, all ephemeral pools, and all but 3.26 acres of the most degraded wetlands on the property. Most notably, the final proposed quarry plan includes the complete relocation of the quarry further north to avoid the granite outcrops that were not heavily grazed and targets granite that is either buried under various depths of clayey sediments, or is within the intensively grazed granite outcrop which no longer contains rare features.

A summary of efforts to avoid rare ecological features during the quarry relocation/reconfiguration process between 2007 and 2010 are outlined in Table 2 below:

Table 2: Summary of Impacts for Initial Quarry Plan versus Proposed Quarry Plan

State-Listed Species	Initial Plan (2007)	Final Proposed Plan (2010)
Ball cactus (MN endangered)	3,508 specimens	130 specimens
Mudwort (MN special concern)	1,770 specimens	0 specimens
Wolf's Spikerush (MN endangered)	3,750 specimens	0 specimens
Hairy water clover (MN endangered)	3,000 specimens	0 specimens
Blackfoot quillwort (MN endangered)	2,000 specimens	0 specimens
Three-stamen waterwort (not listed-proposed threatened)	150 specimens	0 specimens
Larger water-starwort (MN special concern)	750 specimens	0 specimens
Water hyssop (MN special concern)	1,912 specimens	76 specimens
Small white lady's slipper orchid (MN special concern)	229 specimens	0 specimens
Total	17,069 specimens	206 specimens
Rare Natural Communities		
Ephemeral wetland pools on bedrock	1.1 Acres	0 Acres
Wetlands (Type 1 – 8)	4.18 Acres	3.26 Acres

2) Rare Plant Protection Area Designation

Even with all quarry revisions outlined above, not all impacts to protected species (ball cactus) could be avoided. Following preliminary coordination with the DNR Ecological Services Division, a preliminary taking threshold was determined and a feasible mitigation plan for the proposed taking was devised. Specifically, the mitigation plan includes the establishment of a 59 acre Rare Plant Protection Area (RPPA) consisting of the most ecological diverse portion including the southern granite outcrops on the property (Appendix B, Figure 3). The permanent protection of this RPPA, from current and any future land use, would be ensured by deeding the RPPA parcel to the Big Stone National Wildlife Refuge (BSNWR) as proposed by the land owner and Strata.

3) Watershed Evaluation/Protection

During the final planning stages associated with the relocation of the quarry further north, concerns were raised by the TEP Panel regarding impacts to existing micro-watersheds which supply hydrology to wetlands identified on the property. As a result, Strata completed a detailed site specific watershed evaluation which identified the size of the micro-watersheds on the property and evaluated the degree of impact from the proposed quarry. Following the completion of the watershed evaluation, the quarry plan was amended to avoid the waterway that supplies water from the east side of the quarry to the large wetland located west of the

quarry (wetland W10) and between the quarry and the Whetstone Diversion Channel. With that modification to the quarry plan, it was the consensus of the TEP Panel that the proposed quarry would not adversely reduce the size of any micro-watersheds to the extent necessary to negatively impact wetland hydrology. Details of the site specific watershed analysis are outlined in the *Amended Request for Replacement Plan Findings and Decision*, Appendix C - *Hydrology Assessment*.

Since the completion of the site watershed evaluation, it was confirmed via on-site observations that flooding from the Whetstone Diversion Channel was an additional source of hydrology to wetland W10. This observation would further alleviate the potential for the proposed quarry to negatively affect wetland hydrology to this wetland.

4) Wetland Hydrology Monitoring Plan

Once the quarry plan was finalized, concerns were raised by the TEP Panel that the proposed quarry could drain nearby wetlands via subsurface lateral effect. Strata does not anticipate the draining of site wetlands surrounding the proposed granite quarry as the site wetlands are; depressional wetlands which obtain hydrology from surface water runoff rather than groundwater, are underlain by low permeability clay soils separating the wetland from the underlying bedrock, and most importantly the observation of similar depressional wetlands adjacent to active quarries in the area.

As confirmation, Strata has proposed a Wetland Hydrology Monitoring Plan as part of the proposed project. The primary objective of the Wetland Hydrology Monitoring Plan (WHMP) is to observe and record water levels of site wetlands adjacent to the quarry, prior to, and during mining activities to determine if quarry mining operations affect wetland hydrology. Specifically, site wetlands W3, W10, and W11 will be monitored in accordance with the *Technical Standard for Water Table Monitoring of Potential Wetland Sites* (U.S. Army Corps of Engineers 2004), *Water Table Monitoring Project Design* (U.S. Army Corps of Engineers 2006), and *Installing Monitoring Wells/Piezometers in Wetlands* (U.S. Army Corps of Engineers 2000). In addition to monitoring water levels in the site wetlands, observations of hydrophytic vegetation, possible quarry seepage, and possible dewatering of the quarry itself will also be documented. Wetland hydrology monitoring will provide a baseline data set for detection and evaluation of any unexpected future impacts. Comparison of the data sets will allow the agencies to identify potential affects to site wetlands. Details of the site specific WHMP are outlined in the *Wetland Hydrology Monitoring Plan* in Appendix C of the *Amended Request for Replacement Plan Findings and Decision*, February 2010.

In the event that WHMP identifies that the quarry has negatively affected wetland hydrology, Strata will either have to mitigate the impact or restore the lost hydrology as required by the Wetland Conservation Act.

5) Fisheries Habitat Impact

During the generation of the Wetland Replacement Plan Finding of Fact summarized below and included in Appendix C, concern was expressed that the quarry may negatively impact spawning habitat provided by littoral wetlands located along the Whetstone Diversion Channel specifically identified as wetland W10 (Appendix C). Even though the quarry was designed to avoid all impacts to W10, the concern that the quarry could potentially indirectly drain W10 and thereby negatively affect its use for spawning remained. Strata contends that there are several wetlands currently adjacent to existing quarries in the area that appear unaffected, and these observations suggest that indirect impacts to wetlands adjacent to the proposed quarry are highly unlikely. In addition, in April 2010 it was confirmed that a major source of hydrology to W10 was overland flooding from the Whetstone Diversion Channel. This additional major source of hydrology in conjunction with the proposed WHMP, should help alleviate concern that these adjacent wetlands would be drained by the proposed quarry.

6) Bald Eagle Protection

To avoid an incidental taking of bald eagles, Strata utilized guidance from the United States Fish and Wildlife Service (USFWS) for minimizing and avoiding the disturbance of bald eagles from mining. The USFWS guidance for avoiding impacts include: 1) maintaining a buffer of at least 330 feet between the nest and the mining activities, 2) restricting any construction within 660 feet during the nesting season (February-July), and 3) maintaining a landscape buffer that screens the mining activity from view of the nest.

The originally planned 2007 quarry would have been located within sight of the active eagle nest located approximately 440 feet away. During the quarry redesign process, the proposed quarry was moved north to avoid the rock outcrop along the southern border of the property. This relocation increased the distance between the eagle nest and the quarry to over 1,150 feet and preserved the south granite outcrop which serves as a permanent buffer and visual barrier.

In addition to the relocation of the quarry, quarry development procedures will also help avoid an incidental taking of a bald eagle. After all approvals are received, Strata will begin mining in the northern most end of Quarry Area #1 located over ½ mile from, and beyond sight of, the active eagle nest (Figure 3). The mine will be opened up with the detonation of underground explosive charges which would not constitute a loud, intermittent noise. As the mine becomes large enough, all mining activity will be moved below surface grade which has an added benefit of less noise and visual disturbance. Unlike existing quarries in the area, this quarry is designed to transport all mined granite from the quarry and to the adjacent rail link via a rubber conveyor. This method of product transport significantly reduces the noise and disruption typically associated with granite quarries using trucks to haul the mined granite.

Notwithstanding all the above measures taken to avoid the non-purposeful take of a bald eagle, the eagles themselves have demonstrated a tolerance to similar activities at the nearby existing granite quarries in the area. The distances between the active eagle nest and the closest edge of the existing nearby quarries are:

Eagle Nest – Proposed Strata Quarry = 0.22 miles
Eagle Nest – Existing Cold Spring Granite Quarry = 0.35 Miles
Eagle Nest – Existing Ortonville Stone Quarry = 0.95 Miles

This established tolerance to the existing quarries combined with the design and operation of the Strata quarry should ensure that the proposed quarry will not disrupt the bald eagles nesting in the adjacent Wildlife Refuge.

Summary of Measures Taken to Avoid/Minimize Impacts

Strata worked closely with all regulatory agencies during the quarry planning stages in an effort to create a project that was both fiscally feasible and provided the required protections of rare features that would allow the project to be permitted. Since final approvals (ie. permits) cannot be obtained prior to completion of the EAW process, Strata worked closely with all regulatory agencies during the design stages to generate a quarry plan that provided protections and/or mitigation to rare features that the project could be permitted within the State Endangered Species Law, the State Wetland Conservation Act, and the Federal Clean Water Act following the completion of the EAW process. Supporting documentation acknowledging the measures taken to avoid/minimize impacts associated with this project are included in Appendix D and include:

- *Minnesota Wetland Conservation Act Sequencing Findings of Fact* documenting the proper wetland avoidance sequencing has been adequately addressed.
- *Minnesota Wetland Conservation Act Technical Evaluation Panel Finding of Fact* recommending approval of the proposed wetland replacement plan for all delineated wetlands on the project where impacts were unavoidable.
- *Minnesota Department of Natural Resources – Ecological Services Correspondence* outlining the negotiation process involving the complete redesign of the quarry to avoid impacts to all protected species except for approximately 3.7% of the ball cacti and the establishment of a 59 acre Rare Plant Protection Zone as a mutually acceptable mitigation measure.
- *United States Fish and Wildlife Service – Certification Non-Purposeful Take Avoidance* certifies that Strata has followed the USFWS's recommendations for avoiding non-purposeful take of bald eagles due to mining activities.

12. **Physical impacts on water resources.** Will the project involve the physical or hydrologic alteration, dredging, filling, stream diversion, outfall structure, diking, and impoundment of any surface waters such as a lake, pond, wetland, stream or drainage ditch? X Yes ___ No If yes, identify water resource affected and give the DNR Public Waters Inventory number(s) if the water resources affected are on the PWI: Describe alternatives considered and proposed mitigation measures to minimize impacts.

Wetland Impact Summary:

The project was designed to avoid and/or minimize impacts to all wetlands identified with the project footprint. Due to the large scale of this project, some wetland impact was unavoidable. The project was designed to avoid all impacts to high quality wetlands while minimizing impacts to the degraded wetlands located at the site. No lakes, ponds, streams, drainage ditches or wetlands listed on the DNR Public Waters Inventory will be impacted. Complete copies of wetland reports are included in Appendix C.

A total of 3.26 acres of wetland will be impacted by the proposed project (railroad siding track = 0.75 acres, site access road = 1.32 acres, conveyor line/road = 0.88 acres, and the quarry area = 0.31 acres). The wetland impacts will affect the following wetland plant communities; 0.22 acres of Type 1 (Seasonally flooded) wetlands, 0.81 acres of Type 2 (Fresh meadow) wetlands, and 2.23 acres of Type 3 (Shallow Marsh) wetlands. A detailed summary of all proposed wetland impacts are summarized in the table below.

Table 3: Wetland Impact Summary

Wetland Impact #	Associated Infrastructure	Wetland plant community type	Predominant vegetation in impacted wetland area	Size of area impacted
1	Railroad siding	Shallow Marsh	Reed canarygrass, cattails	0.02 acres
2	Railroad siding	Shallow Marsh	Reed canarygrass, cattails	0.22 acres
3	Railroad siding	Fresh meadow	Reed canarygrass, stinging nettle	0.40 acres
4	Railroad siding	Fresh meadow	Reed canarygrass, stinging nettle	0.11 acres
5	Site Access Road	Shallow Marsh	Reed canarygrass, cattails, goldenrods	0.61 acres
6	Site Access Road	Shallow Marsh	Cattails, reed canarygrass	0.29 acres
7	Site Access Road	Fresh meadow	Prairie cordgrass	0.02 acres
8	Site Access Road	Shallow Marsh	Reed canarygrass, Prairie cordgrass	0.40 acres
9	Conveyor Line/Road	Fresh meadow	Reed canarygrass, Prairie cordgrass	0.19 acres
10	Conveyor Line/Road	Shallow Marsh	Reed canarygrass, cattails	0.50 acres
11	Conveyor Line/Road	Shallow Marsh	Prairie cordgrass	0.19 acres
12	Quarry Area #3	Fresh meadow	Reed canarygrass, Prairie cordgrass	0.09 acres
13	Quarry Area #2	Seasonally flooded	Grass sp.	0.07 acres
14	Quarry Area #2	Seasonally flooded	Grass sp.	0.06 acres
15	Quarry Area #2	Seasonally flooded	Grass sp.	0.09 acres
Total Acres				3.26 acres

Alternatives Considered:

The initial quarry concept plan has been redesigned and revised on numerous occasions over the past four years in an effort to avoid and minimize impacts to rare plant populations, rare habitats and geologic features, and wetlands (Figure 2). The quarry footprint was redesigned to avoid all impacts to wetlands with the exception of a 0.09 acre fresh meadow wetland impact from an essential road crossing and a 0.22 acre impact of seasonally flooded wetlands within the current feedlot area. The quarry access road and the overland conveyor were designed to minimize wetland impacts by placement on upland where possible and crossing wetlands at the narrowest locations. The railroad siding is proposed to be constructed within the railroad right-of-way. Due to the nature of railroad construction, the 0.75 acres of wetland impact could not be avoided. The wetland impact avoidance and minimization is outlined in the sequencing argument *Amended Request for Sequencing Findings of Fact* in Appendix C. A comparison of wetland impacts proposed between the initial quarry plan and the current quarry plan is summarized in the table below.

Table 4: Wetland Minimization Summary

October 7, 2007 – Initial Quarry Plan	
Total Wetland Impacts	4.18 acres
Ephemeral Wetlands Within Total Wetland Impacts	0.69 acres
January 26, 2010 – Final Proposed Quarry Plan	
Total Wetland Impacts	3.26 acres
Ephemeral Wetlands Within Total Wetland Impacts	0.0 acres

Proposed Mitigation:

The 3.26 acres of unavoidable impacts will be mitigated through wetland replacement and the purchase of wetland bank credits. The replacement plan achieves wetland mitigation through the enhancement and preservation of the exceptional natural resource value of the wetlands and associated upland buffer within the 59 acre Rare Plant Protection Area. Remaining wetland mitigation will be achieved through the purchase of wetland bank credits from the Big Stone County Highway Department. The *Application for Withdrawal of Wetland bank Credits* will be submitted with the *Minnesota Local/State/Federal Application Forms for Water/Wetland Projects* to be completed after the submission of the *Environmental Assessment Worksheet*. The wetland replacement plan is summarized in the table below and included in the *Amended Request for Replacement Plan – Findings and Decision* (Appendix C).

Table 5: Wetland Replacement Summary

Wetland Impact Types	Replacement acres needed @ 2:1	RPPA Credit Available (acres)	Impact remaining	Credits Needed via Wetland Bank ³	Impact Following Mitigation
ACOE/WCA Jurisdictional	3.84	0.92	2.92	2.92	0
WCA Only Jurisdictional	2.73	0.92	1.81	1.81	0
Totals	6.57	1.84	4.73	4.73	0

13. **Water use.** Will the project involve installation or abandonment of any water wells, connection to or changes in any public water supply or appropriation of any ground or surface water (including dewatering)? ☒ Yes ☐ No

If yes, as applicable, give location and purpose of any new wells; public supply affected, changes to be made, and water quantities to be used; the source, duration, quantity and purpose of any appropriations; and unique well numbers and DNR appropriation permit numbers, if known. Identify any existing and new wells on the site map. If there are no wells known on site, explain methodology used to determine.

Before processed granite aggregates can be shipped as a usable product, they must be washed. A total of three or four holding (settling) ponds will be utilized to supply recycled water for the washing of these aggregates. The total volume of fresh water needed for these operations is directly tied to market demands and is difficult to accurately quantify, however based upon reasonable future demand forecasts, the annual fresh water needs are estimated to be:

Initial filling of holding ponds	7.7 acre feet
Production (washing) fresh water needs	43.9 acre feet
Replace stockpile moisture loss	9.8 acre feet
Evaporation loss in holding ponds	1.9 acre feet
Misc water use (dust control, roads, etc)	<u>1.1 acre feet</u>
Total fresh water needs	64.3 acre feet

The preferred source of this water would be the Whetstone Diversion Channel, but a well could be installed. In either case, Strata will need to work with the MDNR Waters Division to obtain a Water Appropriations Permit.

14. **Water-related land use management district.** Does any part of the project involve a shoreland zoning district, a delineated 100-year flood plain, or a state or federally designated wild or scenic river land use district? ☐ Yes ☒ No

100-Year Flood Plain

The west side of the quarry follows wetland W10 which is the eastern boundary of the 100-year flood plain. Therefore, the project is located just outside the mapped flood plain.

Shoreland District

The nearest part of the proposed quarry to the Whetstone Diversion Channel is the perimeter road located 607.8 feet away. The Big Stone County Shoreland District includes all land within 300 feet of a river, therefore this project is not located within a shoreland zoning district.

If yes, identify the district and discuss project compatibility with district land use restrictions.

Not Applicable

15. **Water surface use.** Will the project change the number or type of watercraft on any water body? ☐ Yes ☒ No

If yes, indicate the current and projected watercraft usage and discuss any potential overcrowding or conflicts with other uses.

16. **Erosion and sedimentation.** Give the acreage to be graded or excavated and the cubic yards of soil to be moved:

Quarry Access Road: 5,746 Ln Ft x 56 ft ROW (7.39 acres) x 2.50 ft avg depth =	23,845 CY
Quarry Area #1 Soils: 36.82 acre soil disturbance x 7.10 ft avg depth =	421,761 CY
Quarry Area #2 Soils: 18.21 acre soil disturbance x 7.43 ft avg depth =	218,284 CY
Quarry Area #3 Soils: 35.48 acre soil disturbance x 5.50 ft avg depth =	314,826 CY
Crossings between Quarry 1 & Quarry 3: 0.015 acre x 12 ft avg depth =	290 CY

Estimated Totals : 97.9 acres to be graded and 979,006 CY of soils handled

Describe any steep slopes or highly erodible soils and identify them on the site map.

Based on the Custom Soil Resource Report for this site (Appendix E), one soil type located within the property contains steep slopes between 1-25% (923C Copaston-Rock Outcrop). This soil type comprises 42.1% of the project area and includes the granite outcrops that will be contained within the quarry itself. No soil types within the project boundary were identified as highly erodible.

Describe any erosion and sedimentation control measures to be used during and after project construction.

Strata must implement best management practices during and after project construction. The erosion and sedimentation control measures to be proposed must be outlined in the Storm Water Pollution Prevention Plan (SWPPP) submitted to the MPCA for approval prior to the beginning of construction. Strata is following MPCA guidance titled *Stormwater Program for Construction Activity: Steps to Construction* and is waiting until the completion of this environmental review prior to completing and submitting the SWPPP and the NPDES Permit Application to the MPCA. A copy of the General Stormwater Permit is included within this EAW for reference (Appendix F).

17. **Water quality: surface water runoff**

a. Compare the quantity and quality of site runoff before and after the project. Describe permanent controls to manage or treat runoff. Describe any stormwater pollution prevention plans.

This site consists of 478 acres of intensively grazed pasture and feedlot where animals are currently allowed to wade directly within the site wetlands and streams. Conversely, the proposed project is a quarry and will by design act to contain site runoff on site. Therefore the quantity of the runoff is not expected to increase after the project is constructed. Since the proposed project will be regulated under the MPCA's Stormwater Program, any runoff water will be adequately retained and treated prior to discharge. Therefore, the quality of the site runoff could actually improve after the project is constructed. As referenced above, a final SWPPP will be prepared and submitted to the MPCA for approval once the environmental review process is complete.

b. Identify routes and receiving water bodies for runoff from the site; include major downstream water bodies as well as the immediate receiving waters. Estimate impact runoff on the quality of receiving waters.

Runoff from this site eventually reaches the Whetstone Diversion Channel which is part of the Minnesota River. The Minnesota River in this area is identified by the MPCA as impaired water due to the presence of mercury. In areas further downstream, the river is impaired due to concentrations of fecal coliform. The proposed project will not contribute to mercury already present in the river and levels of fecal coliform are expected to be reduced with the implementation of the proposed project.

18. **Water quality: wastewaters**

a. Describe sources, composition and quantities of all sanitary, municipal and industrial wastewater produced or treated at the site.

Industrial or municipal wastewater will be produced or discharged at this site. At sometime in the future, a 30'x 40' office building with a bathroom would be constructed. This office building would generate an estimated maximum of 450 gallons per day of sanitary waste.

b. Describe waste treatment methods or pollution prevention efforts and give estimates of composition after treatment. Identify receiving waters, including major downstream water bodies (identifying any impaired waters), and estimate the discharge impact on the quality of receiving waters. If the project involves on-site sewage systems, discuss the suitability of site conditions for such systems.

All sanitary waste would be treated via a permitted Subsurface Sewage Treatment System (SSTS). The system would be permitted through the county and would need to comply with the Big Stone County Ordinance and MN Rules 7080.

c. If wastes will be discharged into a publicly owned treatment facility, identify the facility, describe any pretreatment provisions and discuss the facility's ability to handle the volume and composition of wastes, identifying any improvements necessary.

Not Applicable

19. **Geologic hazards and soil conditions**

a. Approximate depth (in feet) to ground water: **<1 foot** minimum, **>117.5 feet** average; to bedrock: **0 feet** minimum, **7 feet** average.

Extensive soil boring data (proprietary company information) has been reviewed by the TEP members and demonstrated that the shallow soil types covering the granite bedrock in this area were all low-permeability clays and that no underground aquifers between the surface and the underlying bedrock were found. Soil moisture levels directly underneath the on-site wetlands were found to be saturated (as expected), but when moving a few feet away from the delineated edges of such wetlands, soil moisture levels returned to normal.

Describe any of the following geologic site hazards to ground water and also identify them on the site map: sinkholes, shallow limestone formations or karst conditions. Describe measures to avoid or minimize environmental problems due to any of these hazards.

Sinkholes, shallow limestone formations or karst conditions do not exist in this geologic setting.

b. Describe the soils on the site, giving NRCS (SCS) classifications, if known. Discuss soil texture and potential for groundwater contamination from wastes or chemicals spread or spilled onto the soils. Discuss any mitigation measures to prevent such contamination.

The majority of overlying soils are silt and clay loams. The NRCS soil classifications are summarized in the table below. The predominance of low permeability soils significantly reduces the potential for contamination from groundwater migration. There will be no chemicals utilized on the property, but some sanitary waste may be generated from a future SSTS system for an office. The Svea and Esmond-Heimdal loams are rated as slightly limiting for mound systems and would serve as suitable sites for this type of SSTS system. See a complete Custom Soil Resource Report for more detail information (Appendix E).

Table 6: Summary of Soil Types within the Project Footprint

Map Unit Symbol	Map Unit Name	Depth to Water (cm)	Acres in Property	Percent in Property
70	Svea loam	60	32.7	31.5%
450	Rauville silty clay loam	0	7.6	7.3%
694B	Zell silt loam, 2-8% slopes	>200	10.7	10.3%
827B	Esmond-Heimdal loams, 2-6% slopes	>200	9.1	8.8%
923C	Copaston-Rock outcrop complex, 1-25% slopes	>200	43.7	42.1%

20. Solid wastes, hazardous wastes, storage tanks

a. Describe types, amounts and compositions of solid or hazardous wastes, including solid animal manure, sludge and ash, produced during construction and operation. Identify method and location of disposal. For projects generating municipal solid waste, indicate if there is a source separation plan; describe how the project will be modified for recycling. If hazardous waste is generated, indicate if there is a hazardous waste minimization plan and routine hazardous waste reduction assessments.

Typical types and amounts of municipal solid waste associated with an office building and a maintenance shop will be generated at the proposed quarry. The solid waste and recyclables will be handled by the local sanitary disposal contractor believed to be Waste Management. Used oil will be generated in the shop during maintenance of site equipment. All used oil will be collected and picked up by a used oil recycler and reused.

b. Identify any toxic or hazardous materials to be used or present at the site and identify measures to be used to prevent them from contaminating groundwater. If the use of toxic or hazardous materials will lead to a regulated waste, discharge or emission, discuss any alternatives considered to minimize or eliminate the waste, discharge or emission.

Any household cleaners associated with office and shop use will be handled according to Household Hazardous Waste Rules in Big Stone County. Actual construction plans for the shop have not yet been developed and current conceptual layouts feature a “dry shop” without a floor drain. If prior to the building permitting process Strata decides to install a floor drain in the shop, they will need to comply with all Big Stone County Ordinances and with Minnesota Rules 7045 which outlined the storage, handling, and proper disposal of waste.

c. Indicate the number, location, size and use of any above or below ground tanks to store petroleum products or other materials, except water. Describe any emergency response containment plans.

There will be one or two aboveground diesel fuel storage tank(s) on site to fuel on-site equipment. Tanks will have the appropriate secondary containment measures as stipulated by the MPCA.

21. Traffic.

Parking spaces added: **10-30**

Existing spaces (if project involves expansion): **0**

Estimated total average daily traffic generated: **10 cars for employees and 5 trucks if hauling aggregate locally.**

Estimated maximum peak hour traffic generated and time of occurrence: **A maximum of 20 cars for employees from 7am to 6 pm. A maximum of 12 trucks/hour (if hauling locally) during daytime business hours.**

Indicate source of trip generation rates used in the estimates. **Estimates are based on actual traffic at similar Strata operated sites.**

This quarry is designed to ship the majority of aggregate products to their distant destinations via the railroad. Although not anticipated, it is possible that some aggregates may be used in local construction projects and transported via truck using the site access road connecting to County Road 17 and US Hwy 75. Quarry employees will drive to the site daily.

If the peak hour traffic generated exceeds 250 vehicles or the total daily trips exceeds 2,500, a traffic impact study must be prepared as part of the EAW. Using the format and procedures described in the Minnesota Department of Transportation's Traffic Impact Study Guidance (available at: <http://www.oim.dot.state.mn.us/access/pdfs/Chapter%205.pdf>) or a similar local guidance, provide an estimate of the impact on traffic congestion on affected roads and describe any traffic improvements necessary. The analysis must discuss the project's impact on the regional transportation system.

22. Vehicle-related air emissions. Estimate the effect of the project's traffic generation on air quality, including carbon monoxide levels. Discuss the effect of traffic improvements or other mitigation measures on air quality impacts.

Not applicable for this project in rural Minnesota.

23. Stationary source air emissions. Describe the type, sources, quantities and compositions of any emissions from stationary sources of air emissions such as boilers, exhaust stacks or fugitive dust sources. Include any hazardous air pollutants (consult *EAW Guidelines* for a listing) and any greenhouse gases (such as carbon dioxide, methane, nitrous oxide) and ozone-depleting chemicals (chloro-fluorocarbons, hydrofluorocarbons, perfluorocarbons or sulfur hexafluoride). Also describe any proposed pollution prevention techniques and proposed air pollution control devices. Describe the impacts on air quality.

There will be no permanent Stationary Air Emission Sources planned for this project other than the routine fugitive dust sources discussed below. Although not planned, it is possible that a third-party owned temporary asphalt plant may wish to locate a portable asphalt plant at the site associated with a nearby temporary construction. That plant would work under completely different air quality permits and approvals.

24. **Odors, noise and dust.** Will the project generate odors, noise or dust during construction or during operation?

X Yes ___No

If yes, describe sources, characteristics, duration, quantities or intensity and any proposed measures to mitigate adverse impacts. Also identify locations of nearby sensitive receptors and estimate impacts on them. Discuss potential impacts on human health or quality of life. (Note: fugitive dust generated by operations may be discussed at item 23 instead of here.)

ODORS: No odors will be generated from this project.

NOISE: Four sources of noise will be generated from this project;

1) Bedrock Blasting Noise: An extremely short duration, low frequency explosive noise generated from a series of controlled explosive blasts used to dislodge and break up the granite bedrock. Blasting operations consist of certified blast engineers placing a series of explosive charges inside 2½-4" holes pre-drilled 20-35 ft deep into the bedrock, and then electronically detonating the charges. A single blast event would involve multiple separate explosive charges being detonated milliseconds apart from one another over total time duration of less than one second. Typically, this process is repeated a second or third time on the same blast day. Depending upon business demands, blasting operations are planned to occur approximately once every week during the construction season (late March through early November).

- Blast engineers have visited this site and determined the distance of all nearby homes. The estimated seismic and noise decibel levels of a controlled blast event traveling on a direct line of sight to the homes along Hwy 75, would create predicted noise and vibration levels that are very low and well within the US Bureau of Mines and OSHA regulations. Noise created by the blasting will be audible, but well below harmful levels. A blast event produces a very short series of "low frequency thumping" sounds, which from the distances involved, would be comparable to the decibels associated with highway truck traffic at a 40-50 foot distance or a lawn mower 10-15 feet away, however, the blast noise duration is less than 1 second in length and will occur an average of 2-3 times per week during the construction season.
- Notwithstanding the above, it is possible that during initial construction of the access road to the quarry, or during other out of ordinary tasks that multiple "small" blasts may be needed during a given day. These smaller blasts would create much less noise or vibration impacts that would the primary blasts associated with the quarry production routine.
- Strata will schedule all blasting activities only during normal (daytime) business hours, trying to avoid the lunch hour whenever possible.
- A detailed blast noise analysis completed by explosive experts is included (Appendix G)

2) Crushing Plant & Heavy Equipment (Construction) Noise: Noise will be generated from the crushing & wash plants as rocks are being crushed, screened and conveyed as well as from heavy equipment (haul trucks, loaders, excavators, etc) moving about the site. Due to the substantial distances involved between the work site and residences along Hwy 75, it is likely that these noises would not be audible from inside the homes. Low noise levels would be audible from outside those homes, at levels far below OSHA's allowable exposure levels. Unlike many mining operations, no large and noisy diesel powered 3 phase electrical generators are planned for this site and will instead utilize 3 phase electrical power provided by a local utility. Small portable diesel powered generators (ie: light plants or portable welders) will be utilized at this site.

3) Equipment Backup & Hazard Alarm Noise: Backup alarms on heavy equipment are required by federal regulations to warn people on the ground of equipment hazards. Unfortunately these backup alarms can also be annoying to nearby residences even at low decibel levels.

- To address this problem, Strata will utilize a new and improved type of equipment backup alarm that produces a lower frequency, more subtle quacking noise instead of the high pitched beeping noise

commonly found on heavy equipment. Using this type of backup alarm during daylight hours will substantially minimize or eliminate equipment backup alarm disturbances.

- For any nighttime operations, Strata will utilize an approved flashing strobe light type of backup alarm to eliminate alarm noise altogether (strobes cannot be used for daylight operation).
- Hazard alarms are required to warn people around the work site of plant startup and imminent blast operations hazards. They are a multi-frequency alarm that emits noise over a short time duration (ie: 5-15 seconds). Although their use is not frequent, these alarms will be utilized on this project and will likely be audible at low levels to Hwy 75 residents when outside their homes.

4) Railcar Loading Noise: Railcars will be loaded with aggregates on the south side of the BNSF main line tracks (south side of US Hwy 75). To minimize or eliminate the noise of the aggregates being loaded into the railcars, Strata plans to construct a metal building with sound insulation over the top of the railcars being loaded. This will virtually eliminate noise disturbances of the aggregates falling into the railcars, and should be inaudible from inside the nearby homes. The railcars will be moved during this railcar loading and shipping process via a railroad locomotive. Locomotive engine and railcar movement noise will be low but audible.

Noise Levels

The noise decibel levels encountered are influenced by many factors beyond just the original decibel levels emitted from the source. Sound waves are *reduced* by increasing the distances involved and are reflected away by obstructing surfaces such as rock outcrops, hills, sight and sound soil berms, buildings, trees, etc. Conversely, sound waves are *increased* by reducing the distances involved and can be reflected downwards by atmospheric conditions (ie: temperature inversions, air density or heavy cloud cover) which can in turn redirect sound waves downwards towards unintended recipients.

- Distance to Hwy 75 residences varies from over 2,900 to >4,000 feet (ie: about 9-16 city blocks) from the initial location of the quarry. If over several decades, the quarry grew to its *maximum potential* size, the distances from the outer edges of the quarry would still be about 1,380 to >3,000 feet away (ie: about 4-10 city blocks).
- Given the distances involved to these residences, no noise decibel levels emitted from any source on this project are expected to be at levels near or exceeding OSHA's allowable exposure levels.

DUST: This project will have a MPCA Air Quality Permit which will require compliance with state and federal air quality standards. The fugitive dust generated at this site will come from two sources.

1) Heavy equipment and truck movement (non-stationary): Access roads and common equipment movement routes in and around the site will be graveled to help reduce fugitive dust generation.

2) Production of aggregates (stationary crushing, screening & conveying equipment): Excessive dust created during this process will be mitigated by dust abatement techniques (ie spray and mist bars).

25. Nearby resources. Are any of the following resources on or in proximity to the site?

Archaeological, historical or architectural resources? ☐ Yes ☒ No

The State Historic Preservation Office (SHPO) did not respond to the March 26, 2008 resources request submitted by WCEC (Appendix H). When archaeological, historical or architectural resources have not been identified on a parcel in question, the SHPO office customarily doesn't respond to these requests.

Prime or unique farmlands or land within an agricultural preserve? ☐ Yes ☒ No

Designated parks, recreation areas or trails? ☒ Yes ☐ No

Scenic views and vistas? ☒ Yes ☐ No

Other unique resources? ☒ Yes ☐ No See Question 11 regarding the identification, avoidance, and mitigation of ecological resources.

If yes, describe the resource and identify any project-related impacts on the resource. Describe any measures to minimize or avoid adverse impacts.

The Big Stone National Wildlife Refuge is located immediately south of this property. The entire quarry was moved northwards to protect the large scenic granite outcrop located on the south side of the property adjacent to the refuge. This scenic granite outcrop will remain in place and provide visual barrier between the proposed project and the refuge.

There is a bike path located on the same property as the proposed quarry. The property owner granted an easement to the county to install the bike path following discussions between the County, Strata and the property owner, in which all parties agreed that the presence of the bike path would not disrupt future permitting of the proposed Strata quarry.

26. **Visual impacts.** Will the project create adverse visual impacts during construction or operation? Such as glare from intense lights, lights visible in wilderness areas and large visible plumes from cooling towers or exhaust stacks? ☐ Yes ☒ No

If yes, explain.

27. **Compatibility with plans and land use regulations.** Is the project subject to an adopted local comprehensive plan, land use plan or regulation, or other applicable land use, water, or resource management plan of a local, regional, state or federal agency? ☒ Yes ☐ No.

If yes, describe the plan, discuss its compatibility with the project and explain how any conflicts will be resolved. If no, explain.

The land use for this project is regulated by Big Stone County by way of a Conditional Use Permit. Strata anticipates that all the provisions outlined in this EAW to avoid and/or minimize impacts and conflicts will be properly addressed in the Conditional Use Permit Application for this project.

The Conditional Use Permit Application will address:

- Site and sound berms
- Soil handling and reclamation measures
- Hours of operation
- Blasting limitations
- Dust control
- Ecological protection measures
- Multiple operational noise controls
- Truck traffic minimization via rail load-out facility

28. **Impact on infrastructure and public services.** Will new or expanded utilities, roads, other infrastructure or public services be required to serve the project? ☒ Yes ☐ No.

If yes, describe the new or additional infrastructure or services needed. (Note: any infrastructure that is a connected action with respect to the project must be assessed in the EAW; see *EAW Guidelines* for details.)

The quarry is designed to utilize the railroad as the primary method to transport the finished aggregates to their final destinations. An overland conveyor line will be constructed to transport the finished aggregates from the quarry area to the railroad northeast of the quarry. A new series of railroad tracks will be constructed adjacent to the existing BNSF mainline (on BNSF ROW) to accommodate the loading of 90 car unit trains which will be used to transport the aggregates.

An access road will be constructed between the quarry and County Road 17 located to the southeast. County Road 17 is currently utilized by the two nearby existing granite quarries and the wildlife refuge and no additional public infrastructure or services would be needed for this project.

29. Cumulative potential effects. Minnesota Rule part 4410.1700, subpart 7, item B requires that the RGU consider the "cumulative potential effects of related or anticipated future projects" when determining the need for an environmental impact statement.

Identify any past, present or reasonably foreseeable future projects that may interact with the project described in this EAW in such a way as to cause cumulative potential effects. (Such future projects would be those that are actually planned or for which a basis of expectation has been laid.)

Describe the nature of the cumulative potential effects and summarize any other available information relevant to determining whether there is potential for significant environmental effects due to these cumulative effects (*or discuss each cumulative potential effect under appropriate item(s) elsewhere on this form*).

All planned activities associated with this project have been outlined by the applicant. Therefore, no other potential cumulative effects require consideration.

30. Other potential environmental impacts. If the project may cause any adverse environmental impacts not addressed by items 1 to 28, identify and discuss them here, along with any proposed mitigation.

Proper mine reclamation is a critical to avoiding environmental impacts once a mine is decommissioned. Even though the actual reclamation of this mine would occur generations in to the future, Strata prepared a *Mine and Reclamation Plan* that is included within this EAW for review (Appendix I).

31. Summary of issues. *Do not complete this section if the EAW is being done for EIS scoping; instead, address relevant issues in the draft Scoping Decision document, which must accompany the EAW.*

List any impacts and issues identified above that may require further investigation before the project is begun. Discuss any alternatives or mitigative measures that have been or may be considered for these impacts and issues, including those that have been or may be ordered as permit condition.

RGU CERTIFICATION. *(The Environmental Quality Board will only accept **SIGNED** Environmental Assessment Worksheets for public notice in the EQB Monitor.)*

I hereby certify that:

- The information contained in this document is accurate and complete to the best of my knowledge.
- The EAW describes the complete project; there are no other projects, stages or components other than those described in this document, which are related to the project as connected actions or phased actions, as defined at Minnesota Rules, parts 4410.0200, subparts 9b and 60, respectively.
- Copies of this EAW are being sent to the entire EQB distribution list.

Signature

James W. Miller

Date

12/20/10

Title

Big Stone County Environmental Officer

Environmental Assessment Worksheet was prepared by the staff of the Environmental Quality Board at the Minnesota Department of Administration, Office of Geographic and Demographic Analysis. For additional information, worksheets or for *EAW Guidelines*, contact: Environmental Quality Board, 658 Cedar St., St. Paul, MN 55155, 651-201-2492, or <http://www.eqb.state.mn.us>

List of Figures

Figure 1: Site Location Map (USGS Topo)

Figure 2: Original Quarry Plan (2007)

Figure 3: Final Proposed Quarry Plan

Figure 1

Site Location Map (USGS Topo)

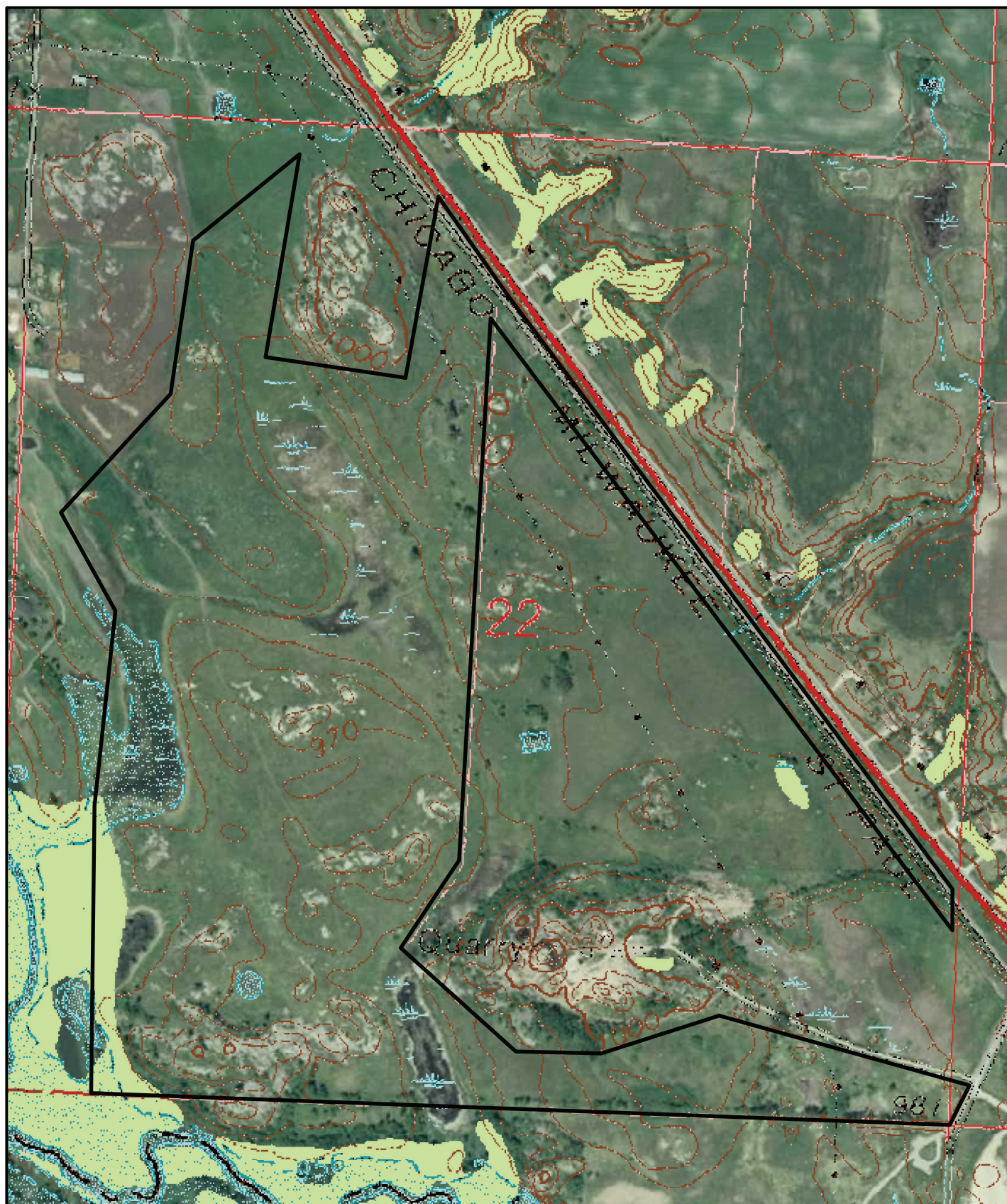


Figure 1: Site Location Map (USGS Topo. Map overlaying 2006 Aerial Photography)
WCEC Project No.: 08-6428-30 Ortonville EAW, Big Stone County, MN

Legend

 Area of Interest



0 225 450 900 1,350 1,800 Feet

WCEC, Inc.

Environmental Consultants
 1-800-422-8356

Figure 2

Original Quarry Plan (2007)

Figure 2

Original Quarry Plan (2007)

Strata Corporation's **ORTONVILLE QUARRY** INITIAL DESIGN - OCTOBER 2007

PRIVILEGED & CONFIDENTIAL
INFORMATION

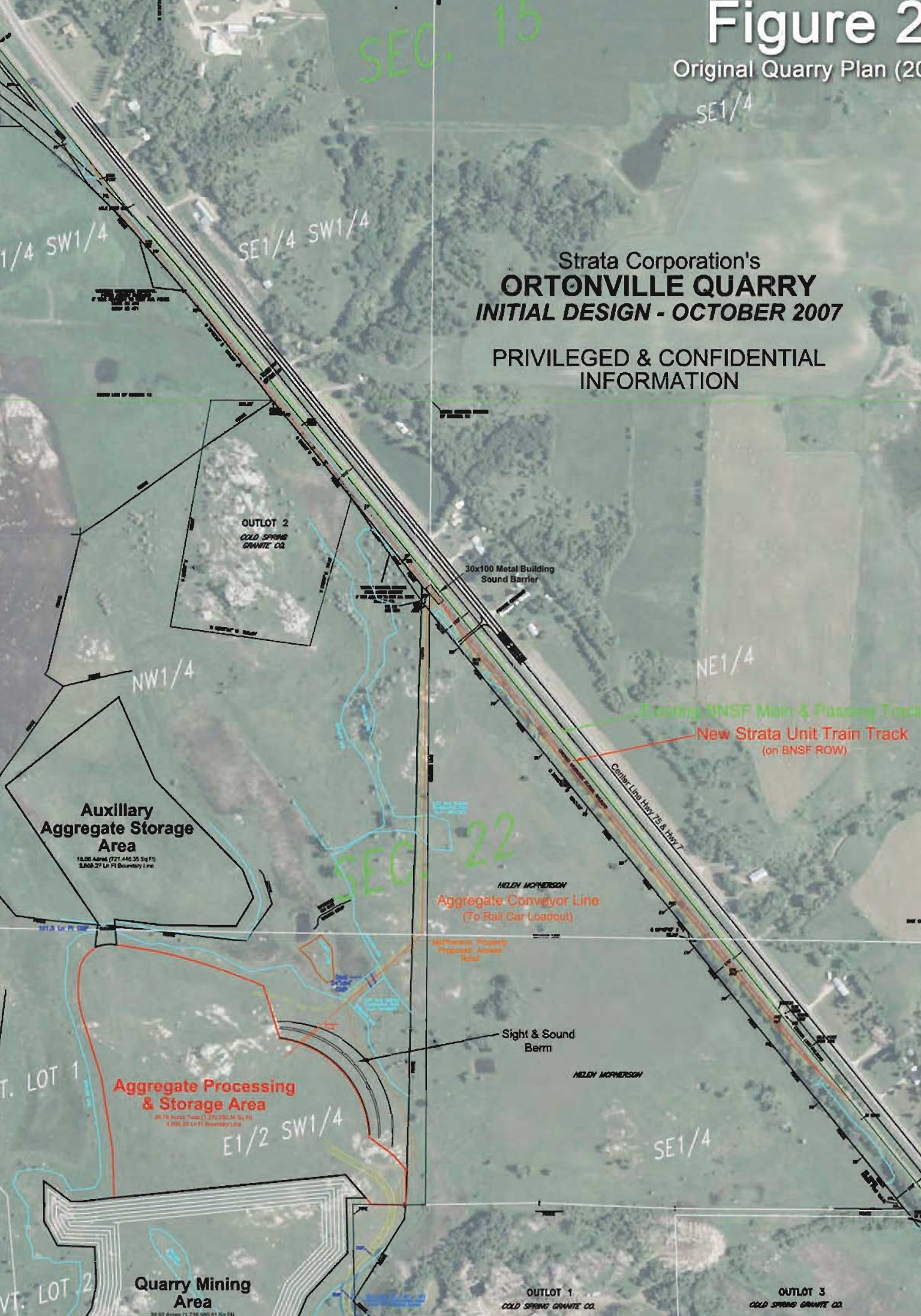


Figure 3

Final Proposed Quarry Plan

Figure 3

Final Proposed Quarry Design

Strata Corporation's
BIG STONE QUARRY
 Ortonville, MN
**FINAL PROPOSED
 QUARRY DESIGN**
 JUNE 2010

**PRIVILEGED & CONFIDENTIAL
 INFORMATION**

Caution: this drawing contains Privileged & Confidential Information and is not to be shared, viewed or copied without the expressed permission of Strata Corporation.

Exclusive Property of:

Strata Corporation

PO Box 13500 - Grand Forks, ND 58208 - (701) 746-5000

Direct all inquiries to: Bill LaFond (406) 365-5800

Drawing Revised on 17-June-2010 by Bill LaFond

AutoCAD File Name: "Ortonville Master 06-17-10 RPPA Expansion"

300 Feet

NOTE: The 2008 Aerial Photograph Image used as a background for this CAD Drawing is not "precisely" registered with GPS Surveyed points or landmarks on the ground (due to photographic distortions). It is provided only as a viewing aid.

Quarry Area # 2
 36.97 Acre Perimeter
 (35.48 Acre
 Soil Disturbance)

Quarry Area # 3
 Intermediate Aggregate Processing
 Area & Final Quarry Area
 19.09 Acre Perimeter
 (18.21 Acre Soil Disturbance)

Quarry Area # 1
 39.49 Acre Perimeter
 (36.82 Acre Soil Disturbance)
 (33.83 Acre Actual Mine Area)

Quarry Boundaries

See Section 22 of Quarry Plan

See Section 22 of Quarry Plan

See Section 22 of Quarry Plan

See Section 22 of Quarry Plan

See Section 22 of Quarry Plan

See Section 22 of Quarry Plan

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See Section 22 of Quarry Plan

See Section 22 of Quarry Plan

See Section 22 of Quarry Plan

See Section 22 of Quarry Plan

See Section 22 of Quarry Plan

See Section 22 of Quarry Plan

List of Appendices

Appendix A: Executive Summary
Appendix B: Ecological Reports
Appendix C: Wetland Reports
Appendix D: State Correspondence
Appendix E: Custom Soil Resource Report
Appendix F: General Stormwater Permit
Appendix G: Blast Noise Site Calculations
Appendix H: SHPO Site Review Request
Appendix I: Mine and Reclamation Plan

Appendix A

Executive Summary



Big Stone Quarry Executive Summary

Prepared November 2010

- **Project Owner:** Strata Corporation is a diverse heavy construction and ready mix concrete company with substantial aggregate and transportation operations. The company has 34 business locations throughout the region, extending from eastern Montana to central Minnesota. The company is headquartered in Grand Forks, ND and in 2010, celebrated its 100th year in business. Design and development of this project began in 2006.
- **Project Location:** This project consists of a 100 acre quarry development on a 478 acre rural site located approximately 2 miles southeast of Ortonville, MN within Big Stone County.
 - The project is located in the western ½ of Section 22, with a small portion of the access road extending into the SE¼ of Section 22, all within T-121N, R-46W of Big Stone County, MN.
 - The quarry development is on private pasture land which has been permanently leased by Strata Corporation from Gayle & Colleen Hedge, local residents and business owners.
 - The property is currently utilized as a livestock feedlot and pastureland grazing operation.
 - The footprint of the project development is 100 acres and includes:
 - A three phase Mining and Aggregate Processing area (Quarry Areas #1, 2 & 3) - 95.55 acres
 - 2 Drainage Crossings (soil berms w/culverts crossing over a drainage) – 0.015 acres
 - Overland Conveyor Line & adjoining Service Road (±1578 ft long) - 0.72 acres
 - 1.09 mile long graveled Access Road (connecting to County Rd 17) - 3.69 acre
 - Construction of metal Shop and Office Buildings (exact location to be determined)
 - The project will also result in the construction of nearly 9,200 feet of new Railroad Tracks, a Railcar Loadout Building and an adjoining service road, all along the south side of the existing BNSF Railway Main Line Tracks on railroad property.
 - Additionally, the project proposes to create a ±59 acre Rare Plant Protection Area in which several species of rare and/or endangered plants along with rare wetland features and pristine granite rock outcrops will be permanently protected by way of gifting this parcel to the adjacent Big Stone National Wildlife Refuge.
 - The project area is surrounded on the west side by the Minnesota River (Whetstone Diversion Channel), on the south side by the Big Stone National Wildlife Refuge, on the east side by the Cold Spring Granite quarry and pastureland, and on the north side by the BNSF Railroad and US Hwy 75.
- **Aggregate resource:** Aggregates (processed stone, sand & gravel) are the primary ingredient in common building materials such as concrete, asphalt pavement, base & surfacing materials for roads, etc. There exists a severe shortage of high quality aggregates within the region (especially within the metropolitan centers) which are needed to maintain and fuel the growth of basic infrastructure needs (highways, streets, bridges, building foundations, basements, driveways, sidewalks, etc). Aggregate is vital to the state's infrastructure.
 - This site represents a unique and very substantial deposit of high quality granite bedrock which may become a key resource to serve the aggregate needs of the greater region, the State of Minnesota and its metropolitan centers.
 - Although few people realize it, every person living in Minnesota consumes the equivalent of about 21,000 pounds of aggregates per person per year just to supply the amount of aggregate materials needed annually to maintain and construct roads, develop infrastructure, support building and construction projects, and for use in industrial applications! A new home requires about 120 tons of aggregates to construct. One mile of 4 lane highway uses over 20,000 tons of aggregates.
 - Many DOT infrastructure projects (ie: Bridges) now require the use of crushed granite bedrock in their concrete mix designs for superior strength and durability.
 - Aggregate mining contributes significantly to the state economy and employs over 10,000 people in the state.
 - This site contains enough high quality bedrock to service the concrete and road aggregate needs of the greater region for generations to come.



Big Stone Quarry Executive Summary

Prepared November 2010

- **Impacts to the Community:** The mine plan maintains a safe distance from the residential homes located along the northern side of US Hwy 75.
 - Distance to Hwy 75 Residences varies from over ½ to 1 mile (ie: about 9-16 city blocks) from the initial location of the quarry. If over many decades, the quarry grew to its maximum potential size, the distances from the outer edges of the quarry would still be about ¼ mile away (ie: about 4 city blocks) to the nearest Hwy 75 Residence.
 - As this is a long term, permanent facility, the economic benefits to the community will be long lived.
 - Internal projections suggest an initial employment of six full time personnel, growing to more than twenty personnel over time.
 - No detailed tax impact analysis has been completed to date. The Big Stone County Aggregate Removal Tax imposed is expected to initially generate over \$20,000 annually, growing to about \$50,000 in future years.
- **Discovery of rare plant species:** Solely due to this development project, extensive botanical and wetland surveys have been conducted upon the subject property, and all findings have been published and provided to the Minnesota DNR without cost. Strata Corporation has worked closely with the DNR to develop an extensive and detailed plan to minimize impacts to these rare plant species and their habitats, while permanently protecting the great majority of them. The results of these surveys have resulted in a new wealth of scientific knowledge of rare plant species unlike any other in the state, including detailed and specific inventories of rare plant species, locations, quantities and habitat.
 - The result of these botanical surveys will greatly increase the understanding of the rare elements that occur within the property, and have contributed to major revisions in the proposed mine plan to permanently protect those elements.
 - This mine plan establishes permanent ±59 acre Rare Plant Protection Area encompassing the highest concentration of rare plant colonies and habitats as well as unique wetland features and some of Minnesota's most pristine and majestic Granite Rock Outcrops.
 - As a result of this project, the property owners (Gayle & Colleen Hedge) propose to gift this 59 acre Rare Plant Protection Area over to the adjacent Big Stone National Wildlife Refuge to insure the long term survival and promote the future growth of these rare plant species and their habitats.
 - This Rare Plant Protection Area can serve to educate and promote a greater scientific knowledge and understanding of Minnesota's rare plants and their unique habitats.
- **Impacts to wetlands:** This site contains a series of natural wetlands that drain seasonal runoff from areas north of the site.
 - All wetlands within the project area have been delineated (surveyed and GPS mapped) and the mining plan has been designed to minimize and/or avoid impact to them. In areas where some minor wetland impacts (3.26 acres) were unavoidable, a wetland replacement plan is being submitted for state and federal consideration.
 - The mine plan allows all naturally occurring drainage patterns on the site to remain intact and to continue to provide drainage for seasonal runoff events.
 - Wetland surveys on the property have identified ephemeral wetland pools (small shallow bowl-like depressions in the bedrock that collect seasonal rain water) associated with the granite outcrops. Many of these ephemeral pools consist of wetland/non-wetland mosaics providing a unique habitat that can support a diversity of tiny plant and insect species. The mine plan has been revised to avoid impact to all the ephemeral wetland pools, and to permanently protect virtually all of them via the Rare Plant Protection Area.



Big Stone Quarry Executive Summary

Prepared November 2010

- **Preserves majestic granite outcrops:** This mining plan preserves the largest and most pristine granite outcrops located on this site.
 - There are large granite rock outcrops on the southern end of this site towering 40 feet above the surface that represent some of the most unique and majestic geological features in the State of Minnesota and the multi-state region. These rare granite rock outcrops will be permanently protected with this mine plan.
 - These granite outcrops were discovered to contain an extensive community of rare plant species whose habitats are exclusive to this type of geological feature.
 - Outside of this privately owned site, similar granite rock outcrops can be found in the adjacent Big Stone National Wildlife Refuge and near the communities Granite Falls and Morton, MN.
- **Impact to current site uses:** Due to increased urban growth and grasslands being converted into farmland, this region is experiencing a slow but steady reduction in the amount of grasslands available for livestock grazing. One can reasonably assume that area livestock operations will continue to pressure available grasslands in the region, including those found on this site.
 - As demonstrated by the current livestock operations on this site, livestock traffic and grazing does have a devastating impact upon rare botanical species.
 - The existing livestock activities have literally destroyed all rare botanical species within the northern half of this site, and left unchecked, will eventually have a similar impact upon the rare botanical species remaining in the southern half of this site (as increased grazing activities pressure the utilization of the entire site).
 - This mine plan permits the existing cattle feedlot operations to remain where they are currently located for many years or decades to come.
 - This mine plan will have an immediate elimination of livestock grazing activities within the southern portion of the site (in and around the Rare Plant Protection Area), where the great majority of the rare species remain and will be offered permanent protection.
- **Hours of Operation:** At this time, we do not foresee the business demand to merit consideration of nighttime work schedules at the Big Stone Quarry operation. Our production and operational demands are normally fulfilled on typical daylight (7am – 6:30pm) work schedule (M-F plus reduced Saturday hours) during the construction season (mid March thru mid November). As our work is virtually all outdoors and involves the washing of rock products with water, inclement and frigid winter weather usually forces the shutdown of production operations. In contrast, the warm summer months generally produce an uptick in construction activities resulting in longer daytime production shifts.
 - Nighttime and/or Sunday production schedules will be considered only during periods of extremely heavy business demand. The severity of those business demands will determine what additional shift hours will be utilized.
- **“Drill & Shoot” Blasting:** As is the case with all rock quarries, the bedrock needs to be blasted with explosives to displace and reduce the rock sizes to permit modern crushing equipment to process it.
 - Modern drill & shoot techniques are a precise and highly engineered activity. Today’s customized techniques are able to predict the resulting debris, noise and vibration hazards in advance to mitigate any potential damages.
 - All blasting activities conducted at this site will be in strict accordance with US Bureau of Mines regulations designed to insure safe and non-hazardous operations.
 - The mine plan will utilize certified explosive experts to determine the location, depths and pattern of explosive charges in an effort to avoid damage to nearby wetlands, rare species or other important features.



Big Stone Quarry Executive Summary

Prepared November 2010

- Seismic monitoring will occur at this site for every blast event, measured from the nearest protected structure to monitor and record seismic vibration and air over-pressure.
- A typical “Blast Day” involves one or more (typically two) separate blast sequences in a given day, with each blast sequence having a total time duration typically less than one second. A normal Blast Day produces enough quantity of broken rock material to last about 1 week of normal aggregate production. Strata will schedule all blasting activities only during normal (daytime) business hours, trying to avoid the lunch hour whenever possible.
- Blast engineers have visited this site and determined the distance of all nearby homes. The estimated seismic and noise decibel levels of a controlled blast event traveling on a direct line of sight to the homes along Hwy 75, would create predicted noise and vibration levels that are very low and well within the US Bureau of Mines regulations.
- Due to the substantial distances from the mine area to nearby residences along US Hwy 75, our blast experts predict the seismic vibrations created will be negligible to the residential homes along US Hwy 75. For sake of comparison, a child slamming the front door in your home would likely cause much more vibration than would a normal blast event from this site.
- Noise created by the blasting will be audible, but well below harmful levels. A blast event produces a very short series of “thumping” sounds, which from the distances involved would be a similar noise decibel level to highway truck traffic at a 40-50 foot distance or a lawn mower 10-15 feet away.
- Although seismic vibration levels are most influenced by the distance between the blast point and the measurement point, noise levels are influenced by many factors beyond just the distances involved. Sound waves are *reduced* by increasing distance and are reflected away by obstructing surfaces such as rock outcrops, hills, sight & sound soil berms, buildings, trees, etc. Conversely, sound waves are *increased* by reducing distance and reflected by temperature inversions or heavy cloud cover (which can redirect sound waves back downwards).
- **Aggregate Production:** Once the granite bedrock has been reduced in size from the blasting process, it is then processed into finished aggregates through a series of crushing, screening and washing operations.
 - This project will require a DNR Water Appropriation Permit to enable it to pump water from the nearby Minnesota River for use in the Aggregate washing operations and dust removal processes.
 - Water utilized in these washing and dust removal processes will be recycled and reused over and over again via a series of on-site settling ponds designed to clean the organic solids (sand & soils) from the water. The volume of water needed to fill these settling ponds, replace water lost to evaporation, and to replace water lost to moisture in the finished aggregate products will be sourced from the river.
 - The primary aggregate product to be produced from this quarry is (1x¾”) Concrete Rock which after it is crushed and screened, is then washed with the cleaned waters to remove dust and sand sized particles.
 - Dust generated from the crushing and screening operations will be controlled by a water misting and spray process at key dust generation points.
 - The quarry access road and other areas of routine travel will be graveled to reduce dust.
 - This project will have a MPCA Air Quality permit which will require strict compliance with state and federal air quality standards.
 - Backup alarms on heavy equipment are required by federal regulations to warn people on the ground of equipment hazards. Unfortunately these backup alarms can also be annoying to nearby residences.
 - To address this problem, Strata will utilize a newly approved type of backup equipment alarm that produces a lower frequency, more subtle quacking noise instead of the high pitched beeping noise commonly found on heavy equipment. Using this type of backup alarm during daylight hours will substantially minimize or eliminate alarm disturbances.



Big Stone Quarry Executive Summary

Prepared November 2010

- For any nighttime operations, Strata will utilize an approved Flashing Strobe Light type of backup alarm to eliminate alarm noise altogether (strobes cannot be used for daylight operation).
 - Although the life of this quarry is expected to last into the next century, extensive reclamation efforts will be an ongoing and annual process. A detailed Reclamation Plan has been developed for this site and has been submitted to Big Stone County. This Reclamation Plan will be reviewed annually and modified as conditions change to insure a safe and environmentally sound site. Soil disturbances will be shaped, smoothed and reseeded to blend into the surrounding landscapes. There will not be blighted buildings, structures, spoil piles or other eye sores left behind once this project is completed. We believe the public will find this quarry, like all of our other sites, to be an exceptionally clean and well kept quarry operation, both during and after its time in operation.
- **Groundwater:** It is not known whether or not the mining activities at this site will encounter any groundwater within the granite bedrock. It is highly doubtful any significant aquifers exist in the bedrock, but it is possible one may encounter “seepage” of groundwater thru existing small cracks and fissures in the bedrock. The existing rock quarries just east of this site have not demonstrated any serious problems of this nature.
 - It is common for rock quarries to encounter groundwater, due to seepage through naturally occurring cracks and faults in the bedrock. If such groundwater is encountered at this site, the mine plan proposes to pump these waters into on-site settling ponds to dispose of any organic solids and to then reuse the clean water for our aggregate washing operations. If groundwater seepage into the quarry is experienced in quantities exceeding our ability to reuse them in the aggregate washing operations, those excessive quantities of clean water would be pumped back into an on-site pond or the nearby river. If that were to happen, it would require securing a separate Water Discharge Permit in advance of any off-site discharge.
- **BNSF Train Shipping of Aggregates:** This mine plan provides for a rail car load out facility utilizing newly constructed and existing rail infrastructure as the primary method to transport aggregates to end use locations hundreds of miles away.
 - This mine plan uses railroads as the primary method to ship the processed aggregates, which greatly reduces the heavy truck traffic normally associated with rock quarries. Although unforeseen, conventional truck transportation will surely happen at some point in time and would represent a small fraction of our transportation activities.
 - To minimize the local train traffic, this rail car load out facility has been designed to accommodate large “90 Car Unit Trains”, thereby substantially decreasing the frequency of train movements through the area.
 - This rail car loading facility includes a Railcar Loadout Building with sound insulation to totally encompass the rail cars being loaded, to shield nearby homes from annoying noise or dust.
 - One 90 Car Unit Train hauls the equivalent of 367 Truckloads of Aggregates! Rail versus truck transportation will substantially reduce the wear and tear on local streets and highways, the amount of fuels consumed (nearly four times as fuel efficient as trucks), as well as exhaust and dust pollution created by typical heavy truck traffic (1/3 less Co2 emissions than by truck).
 - In addition to being environmentally friendly, rail transportation helps to lower the cost of the finished aggregates.
 - We are frequently asked to identify the number and/or frequency of Aggregate Unit Trains that will be shipped and it is virtually impossible to predict the business demands that will drive that number. In the early years, it will likely start off being 1 Unit Train shipped every 1½-2 weeks, and possibly grow to become 1 Unit Train every 4-5 days during latter years of operation.
 - Although typically done during daylight hours, BNSF Railway may drop-off and/or pick-up (loaded or empty) Aggregate Unit Trains at any time. Strata Corporation has no control over the hours of operations of the BNSF Railway.

Exhibit C

PUBLIC NOTICE
CLOSE PROXIMITY OWNERS AND LOCAL OFFICIALS
BIG STONE COUNTY PLANNING COMMISSION

Notice is hereby given that the Big Stone County Planning Commission will hold a public hearing on Thursday, January 5, 2012 in the Memorial Building at 7:30 PM in Clinton, MN.

Conditional Use Permit: Strata Corporation - Bill LaFond, Project Manager

Property Owners: Gayle Hedge and Colleen M. Hedge

Legal Description: That part of Township One hundred twenty-one (121) North, Range Forty-six (46) West, ORIGINAL, Big Stone County, Minnesota, described as follows: The South Half of the Southwest Quarter (S1/2 SW1/4) lying southwesterly of the railroad right of way in Section Fifteen (15) of said Township. That part of Government Lot Five (5) lying southerly of the railroad and easterly of the center of the Whetstone Diversion Channel and Government Lot Six (6) easterly of the Whetstone Diversion Channel, all being located in Section Sixteen (16) of said Township. That part of Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4), Government Lot One (1), Government Lot Three (3), and Government Lot Four (4), all being located easterly of the center of the Whetstone Diversion Channel, and all being located in Section Twenty-one (21) of said Township. That part of the Northwest Quarter (NW1/4) lying southerly of the railroad right of way, EXCEPTING Outlot 2; Government Lots One (1) and Two (2) lying easterly of the center line of the Whetstone Diversion Channel; and the East Half of the Southwest Quarter (E1/2 SW1/4) and the South Half of the Southeast Quarter (S1/2 SE1/4), EXCEPT Outlots One (1) and Three (3), all located in Section Twenty-two (22) of said Township. Said tract contains 478 acres more or less and is subject to any easements of record.

The applicant is requesting a conditional use permit to establish a 100+ acre granite quarry on the above described property which is zoned as Agricultural and Open Space District. The request complies with Sections 8.2.3.3. and 8.4.3.2. of the Big Stone County Land and Related Resources Management Ordinance, 2011.

All persons interested may appear and be heard at said time and place, or submit views in writing or by representative. If you know of any interested property owner who, for any reason, has not received a copy of this notice, please inform him/her of the time and place of the hearing.

Dated: December 21, 2011

By the order of the Big Stone County Planning Commission

Ronda Maas, Deputy Environmental Officer

20 SE 2nd Street

Ortonville, MN 56278

Exhibit D

**ORTONVILLE TOWNSHIP
BIG STONE COUNTY, MINNESOTA**

**A RESOLUTION TO STUDY DEVELOPMENT OF ORDINANCES FOR A
COMPREHENSIVE PLAN, ZONING AND REGULATION OF HIGH-IMPACT
FACILITIES IN ORTONVILLE TOWNSHIP**

WHEREAS, the Board of Supervisors ("Town Board") of Ortonville Township, Big Stone County, Minnesota ("Town") has not previously exercised its authority to enact a planning and zoning ordinance pursuant to its authority under Minnesota Statutes, sections 462.351 to 462.364, or to regulate high-impact industrial, agricultural, and commercial facilities;

WHEREAS, the Town has not enacted a planning and zoning ordinance or ordinances that regulates high-impact industrial, agricultural, and commercial facilities;

WHEREAS, Big Stone County ("County") regulates industrial, agricultural, and commercial facilities through its planning and zoning ordinance;

WHEREAS, the Town needs to evaluate the County planning and zoning ordinance to determine if it provides adequate protection to the residents of the Town from the impacts of new development of all types so that the Town can decide whether it is advisable to enact a zoning and planning ordinance that complies with Minnesota Statutes, section 394.33, subdivision 1 requiring the Town's zoning regulations to be consistent with and at least as strict as the County's zoning regulations;

WHEREAS, the Town needs to evaluate the County planning and zoning ordinance to determine if it provides adequate protection to the residents of the Town from the impacts of high-impact industrial, agricultural, and commercial activities, including but not limited to adverse impacts to quality of life, aesthetic values, quiet enjoyment of property, property values, recreational activities, air quality, and ground and surface water, so that the Town can decide whether it is advisable to enact one or more ordinances regulating high-impact industrial, agricultural, and commercial facilities that comply with Minnesota Statutes, section 394.33, subdivision 1 requiring the Town's zoning regulations to be consistent with and at least as strict as the County's zoning regulations;

WHEREAS, the Town seeks to support appropriate economic development consistent with current County zoning, existing land uses, and the quality of life values in the County's General Plan;

WHEREAS, the Town boundaries encompass the City of Ortonville, MN ("City"), such that the Town's geographic jurisdiction abuts the City's geographic jurisdiction, the Town intends to study the City's planning and zoning ordinance to ensure that the Town's development integrates harmoniously with the City's zoning and planning regulations;

WHEREAS, the Town's economy, pastoral environment, and quality of life are based on farm land, including pasture land;

WHEREAS, the Town is located in the scenic valley of the Minnesota River, is a gateway to Big Stone Lake, and is adjacent to the Big Stone National Wildlife Refuge, such that tourism is an important industry in the region;

WHEREAS, the Town recognizes that its proximity to Ortonville and the region's recreational and natural amenities and tranquil environment have resulted in past residential development within the town, it seeks to ensure that future residential development is not unduly discouraged by conflicting land uses;

WHEREAS, the Town seeks to ensure that its development is appropriately planned to protect existing community quality of life and property values while encouraging appropriate growth and economic development and that the State has authorized the Town to study the need for a zoning and planning ordinance and/or other regulation of new development; and

WHEREAS, the Town Board finds and determines that a study of the need for and costs and benefits of a Town planning and zoning ordinance and/or regulation of new or expanded high impact industrial, agricultural, and commercial facilities is warranted to protect the health, safety, and welfare of the public, and is in the public's best interests;

NOW, THEREFORE, that based on the findings and determinations contained herein, the Board of Supervisors of the Town of Ortonville Township resolves:

1. That the Board of Supervisors shall diligently undertake and pursue completion of a study with the following elements:
 - a. the need for and the costs and benefits of a Township planning and zoning ordinance;
 - b. the need for and costs and benefits of a Township ordinances regulating the following types of new and expanded high-impact facilities:
 1. the establishment and construction of any new animal feedlot over 1000 total animal units or an expansion of an existing animal feedlot which will have a cumulative total of over 1250 animal units as defined by Minnesota Pollution Control Agency Rules 7020.0300, also referred to as the Minnesota Pollution Control Agency-Water Quality Division-Animal Feedlots;
 2. the construction of any new manure storage area with a capacity to accumulate manure from more than 1000 animal units, said animal units defined in number 1 above;
 3. the establishment of any junkyard or salvage yard containing more than 6 unlicensed motor vehicles for resale purposes;
 4. the establishment of any new industrial facility for storage of hazardous waste or demolition of waste;
 5. the establishment of any commercial or industrial tire recycling facility;
 6. the opening of any new gravel pit or rock quarry for commercial purposes.

- c. an evaluation of the terms of the County and City planning and zoning ordinances to ensure consistency with the County ordinance and harmonious integration of a Township planning and zoning ordinance and/or high-impact facilities ordinance with both the County and City planning and zoning ordinances;
 - d. the possible provisions in a Town planning and zoning ordinance and/or ordinances to regulate high-impact new and expanded facilities; and
 - e. such other elements as are necessary to fully consider development of a planning and zoning ordinance and/or high-impact facility ordinance.
2. That the Town is authorized to retain the assistance of planning and zoning professionals, technical experts, and legal counsel to assist in the preparation of the foregoing study.
 3. That the Board of Supervisors of Ortonville Township shall ensure that a draft of the foregoing study is completed within six months from the date of this resolution and that a final study is prepared within 9 months from the date of this resolution.
 4. That the Board of Supervisors of Ortonville Township shall establish a committee to oversee development of a planning and zoning ordinance.
 5. That the Board of Supervisors of Ortonville Township shall establish one or more committees to oversee development of ordinances regulating high-impact facilities.
 6. That the Board of Supervisors of Ortonville Township will determine a budget for completion of the study and evaluate the need for a special assessment or other appropriate source of revenue needed to ensure completion of the study.

PASSED AND APPROVED BY THE ORTONVILLE TOWNSHIP BOARD OF SUPERVISORS THIS 8th day of February, 2012.

	Yes	No	Other
Supervisor <u>Al Wolke</u>	<u>X</u>	___	___
Supervisor <u>Bruce Hansen</u>	<u>X</u>	___	___
Supervisor <u>John Roe</u>	<u>X</u>	___	___

BY THE BOARD

Bruce Hansen
Town Chair

ATTEST:

Harold R Dimberg, III
Township Clerk

The foregoing instrument was acknowledged before me this 7th day of February 2012, by
Bruce Hoerneman Chair of the Ortonville Township Board.

Subscribed and sworn to before
me this 8th day of February 2012.

Ronald R Fraienstuh
Notary Public



The foregoing instrument was acknowledged before me this 8th day of Feb, 2012, by
Harold R Dimberg, III Clerk of the Ortonville Township Board.

Subscribed and sworn to before
me this 8th day of February 2012.

Ronald R Fraienstuh
Notary Public



ORTONVILLE TOWNSHIP
BIG STONE COUNTY, MINNESOTA
Ordinance No. 2012-1

**AN INTERIM ORDINANCE PLACING A MORATORIUM
ON NEW OR EXPANDED HIGH IMPACT INDUSTRIAL, AGRICULTURAL AND
COMMERCIAL FACILITIES**

WHEREAS, the Board of Supervisors ("Town Board") of Ortonville Township, Big Stone County, Minnesota ("Town") has not previously exercised its authority to enact a planning and zoning ordinance pursuant to its authority under Minnesota Statutes, sections 462.351 to 462.364, or to regulate high impact industrial, agricultural, and commercial facilities;

WHEREAS, Big Stone County ("County") regulates industrial, agricultural, and commercial facilities through its planning and zoning ordinance;

WHEREAS, the Town needs to study the County's planning and zoning ordinance to determine if it provides adequate protection to the residents of the Town from the impacts of high-impact industrial, agricultural, and commercial activities, including but not limited to potential noise, dust, aesthetic, property value, air quality, and groundwater impacts, so that the Town can decide whether it is advisable to enact a zoning and planning ordinance and/or an ordinance regulating high-impact industrial, agricultural, and commercial facilities, that comply with Minnesota Statutes, section 394.33, subdivision 1 requiring the Town's zoning regulations to be consistent with and at least as strict as the County's zoning regulations;

WHEREAS, the Town seeks to support appropriate economic development consistent with current County zoning, existing land uses, and the quality of life values in the County's General Plan;

WHEREAS, the Town boundaries encompass the City of Ortonville, MN ("City"), such that the Town's geographic jurisdiction abuts the City's geographic jurisdiction, the Town seeks to ensure that its development integrates harmoniously with City zoning and planning;

WHEREAS, the Town's economy, pastoral environment, and quality of life are based on farm land, including pasture land;

WHEREAS, the Town is located in the scenic valley of the Minnesota River, is a gateway to Big Stone Lake, and is adjacent to the Big Stone National Wildlife Refuge, such that tourism is an important industry in the region;

WHEREAS, the Town recognizes that its proximity to Ortonville and the region's recreational and natural amenities and tranquil environment have resulted in past residential development within the town, it seeks to ensure that future residential development is not unduly discouraged by conflicting land uses;

WHEREAS, the Town seeks to ensure that its development is appropriately planned to protect existing community quality of life and property values while encouraging appropriate growth and economic development;

WHEREAS, the Town has the authority under Minnesota Statutes, section 462.355, subd. 4 to protect its planning process by adopting an interim ordinance to regulate, restrict, or prohibit any use within the Town for a period of up to one year;

WHEREAS, the Town Board, recognizing a need a need to study development of a planning and zoning ordinance and ordinances related to high-impact facilities, acted at its meeting on February 8th, 2012 to authorized such study; and

WHEREAS, the Town Board finds and determines that placing a moratorium on new or expanded high-impact industrial, agricultural, and commercial facilities is needed to protect the planning process as well as the health, safety, and welfare of the public, and is in the public's best interests, and the moratorium will allow the Town sufficient time to study the effectiveness of the County's development regulations and to determine whether it is necessary or advisable for the Town to enact its own zoning and planning ordinance and ordinance or ordinances to regulates specific land uses;

NOW, THEREFORE, that based on the findings and determinations contained herein, the Board of Supervisors of the Town of Ortonville Township ordains:

Section 1. Moratorium on Certain New or Expanded Facilities. In order to protect the planning process under the authority of Minnesota Statutes Section 462.355, Subdivision 4 and to protect the roads, health, safety and welfare of our citizens, the Ortonville Township Town Board hereby adopts an Interim Ordinance which prohibits the following land use developments within the township's jurisdiction:

1. the establishment and construction of any new animal feedlot over 1000 total animal units or an expansion of an existing animal feedlot which will have a cumulative total of over 1250 animal units as defined by Minnesota Pollution Control Agency Rules 7020.0300, also referred to as the Minnesota Pollution Control Agency-Water Quality Division-Animal Feedlots;
2. the construction of any new manure storage area with a capacity to accumulate manure from more than 1000 animal units, said animal units defined in number 1 above;
3. the establishment of any junkyard or salvage yard containing more than 6 unlicensed motor vehicles for resale purposes;
4. the establishment of any new industrial facility for storage of hazardous waste or demolition of waste;
5. the establishment of any commercial or industrial tire recycling facility;
6. the opening of any new gravel pit or rock or aggregate quarry for commercial purposes.

In order to protect the planning process and the health, safety and welfare of the Town's citizens, the Town Board hereby exercises its authority under Minnesota Statutes, section 462.355, subdivision 4 to adopt this interim ordinance. During the period of the interim ordinance, the establishment of new facilities enumerated above, or the expansion of such existing facilities, is prohibited and the Town shall not issue a conditional use permit, an amended conditional use

permit, or any other related permits to any such facilities. The purpose of this ordinance is to temporarily prohibit the establishment or expansion of such facilities in the Town while allowing existing facilities to continue to operate within the scope of their existing permits, provided the operation remains in compliance with the permit conditions and all applicable federal, state and local laws, rules, regulations and ordinances.

Section 2. Applicability. This interim ordinance shall apply to all land within the jurisdictional boundaries of the Town and shall be in effect for a period of one year from the date of its adoption, or until enactment of one or more ordinances regulating planning and zoning in the Town or development of new facilities of the types enumerated above, or upon its express repeal by resolution adopted by the Town Board, whichever occurs first.

Section 3. Violations. Any person, firm or corporation who shall violate any of the provisions hereof or who shall fail to comply with any of the provisions hereof or who shall make any false statement in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor. Each day that a violation continues shall constitute a separate offense.

Section 4. Enforcement.

- a. Stop Work Orders. Whenever any work is being done contrary to the provisions of this Interim Ordinance, the Township Board may order the work stopped by written notice personally served upon the contractor performing work or the owner or operator of the property and/or project. All activities shall cease and desist until subsequent written authorization to proceed is received from the Township Board.
- b. Injunctive Relief and other Remedies. In the event of a violation of this Interim Ordinance, the Township Board may institute appropriate actions or proceedings, including requesting injunctive relief, to prevent, restrain, correct or abate such violations.
- c. Costs of Enforcement Proceedings. All costs incurred for corrective action may be recovered by the Township Board in a civil action in District Court, or at the discretion of the Township Board, the costs may be certified to the Township Auditor as a special tax against the real property. These and other remedies, as determined appropriate by the Township Board, may be imposed upon the responsible person either in addition to, or separate from, other enforcement actions.

Section 5. Severability and Validity

It is hereby declared to be the intention that several provisions of this Interim Ordinance are severable in accordance with the following:

- a. If any court of competent jurisdiction shall adjudge invalid the application of any provision of this Ordinance to be invalid, such judgment shall not affect any other provisions not specifically included in said judgment.

- b. If any court of competent jurisdiction shall adjudge invalid the application of any provision of this Ordinance to a particular property, building or structure, such judgment shall not affect other property, buildings or structures.

Section 6. Effective Date. This interim ordinance shall take effect immediately upon adoption.

Adopted this 8th day of February 2012.

PASSED AND APPROVED BY THE ORTONVILLE TOWNSHIP BOARD OF SUPERVISORS THIS 8th day of February, 2012.

	Yes	No	Other
Supervisor <u>Bruce Hansen</u>	<u>X</u>	___	___
Supervisor <u>Alan White</u>	<u>X</u>	___	___
Supervisor <u>Don Roe</u>	<u>X</u>	___	___

BY THE BOARD

Bruce Hansen
Town Chair

ATTEST:

Harold R. Dinkley, Jr.
Town Clerk

The foregoing instrument was acknowledged before me this 8th day of Feb, 2012, by Bruce Hansen Chair of the Ortonville Township Board.



Subscribed and sworn to before me this 8th day of February 2012.

Ronald R. Fraushuh, Jr.
Notary Public

The foregoing instrument was acknowledged before me this 8th day of Feb, 2012, by Harold R. Dinkley, Jr., Clerk of the Ortonville Township Board.



Subscribed and sworn to before me this 8th day of February 2012.

Ronald R. Fraushuh, Jr.
Notary Public

Exhibit E



170227

ELAINE MARTIG
COUNTY RECORDER
BIG STONE COUNTY

RECORDED ON
05/17/2012 04:15PM

REC FEE: \$46.00
PAGES: 10

By: Laura Berger Deputy

BIG STONE COUNTY BOARD OF COMMISSIONERS
BIG STONE COUNTY, MINNESOTA

CONDITIONAL USE PERMIT

IN RE: CUP 11-4970

Application of Strata Corporation, dated December 22, 2012, lessee of Gayle E. Hedge and Colleen M. Hedge, property owners in the County of Big Stone, State of Minnesota for a conditional use permit to establish a granite quarry on the following described property.

Applicant: Strata Corporation – Bill Lafond, Business Development Manager
Property Owner: Gayle E. Hedge and Colleen M. Hedge
Legal Description: That part of Township One hundred twenty-one (121) North, Range Forty-six (46) West, ORIGINAL, Big Stone County, Minnesota, described as follows: The South Half of the Southwest Quarter (S1/2 SW1/4) lying southwesterly of the railroad right of way in Section Fifteen (15) of said Township. That part of Government Lot Five (5) lying southerly of the railroad and easterly of the center of the Whetstone Diversion Channel and Government Lot Six (6) easterly of the Whetstone Diversion Channel, all being located in Section Sixteen (16) of said Township. That part of Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4), Government Lot One (1), Government Lot Three (3), and Government Lot Four (4), all being located easterly of the center of the Whetstone Diversion Channel, and all being located in Section Twenty-one (21) of said Township. That part of the Northwest Quarter (NW1/4) lying southerly of the railroad right of way, EXCEPTING Outlot 2; Government Lots One (1) and Two (2) lying easterly of the center line of the Whetstone Diversion Channel; and the East Half of the Southwest Quarter (E1/2 SW1/4) and the South Half of the Southeast Quarter (S1/2 SE1/4), EXCEPT Outlots One (1) and Three (3), all located in Section Twenty-two (22) of said Township. Said tract contains 478 acres more or less and is subject to any easements of record.

FINDINGS OF FACT

1. Bill Lafond on behalf Strata Corporation requests a conditional use permit to establish and operate a granite mining quarry on the above described property which is zoned as A-2 Agricultural Preservation District.
2. On January 5, 2012 the Big Stone County Planning Commission conducted a public hearing at the Memorial Building, Clinton, Minnesota, to consider the application. Testimony concerning this request was given by Bill Lafond, Business Development Manager for Strata Corporation, Jason Kirwin, Environmental Consultant for Strata Corporation, Tony Russell of Austin Powder Company, and Darren Wilke, Environmental Officer for Big Stone County. Those who spoke in opposition of the request included Rebecca Turk, Eugene Homan, Art Lee, Nancy Aune, Arlen Giese, Gordon Lindquist, Mike Hartman, Don Robertson, Shawn May, Norman Haukos, Marlowe Klepel, Dale Livingston, Kathy Longhenry, Brian Wojtalwicz, Don Sherman, Clark Mastel and a letter from David Amberg was read by Chair Vicki Oakes. The following eighteen concerns came from the public hearing:
 - 1) Rare Plant Protection Area-shape and management
 - 2) Underground hydrology/Mitigation of dewatering wells & stock ponds
 - 3) Affects on Tourism
 - 4) Private Access over the railroad
 - 5) Property Values
 - 6) Lack of future residential development due to quarry
 - 7) Dust and silica dust health hazards
 - 8) Plans for vibration/sound monitoring & mitigation
 - 9) Job loss at neighboring quarries
 - 10) Estimates of gravel tax and property taxes
 - 11) Safety violations
 - 12) Hours of operation
 - 13) Time lines to establish sight & sound berms
 - 14) Alternative water supply if Diversion Channel is too low or diverted
 - 15) Bike trail issues with proximity to primary crusher
 - 16) Entry signage
 - 17) Lighting issues
 - 18) Processing of reject dimensional stone as alternative to new quarry
3. On February 2, 2012, the Big Stone County Planning Commission continued the public meeting and Strata representatives were allowed to address each of the eighteen concerns, and submit additional evidence to support their statements. As each point was discussed, the Planning Commission reviewed the conditional use criteria and determined if the application met the criteria. If not, potential conditions were discussed to address each of the concerns. The Planning Commission requested that an alternative access road be designed and shared with the adjacent landowner, and be presented at the next meeting.
4. On February 16, 2012, the Big Stone County Planning Commission held the continued public meeting to review the drafted conditions. The proposed condition for an alternative

access road had to be revised due to the discovery of a wildlife easement on the Longhenry/Aune land prohibiting any vegetation or land alterations. The conditions were revised as follows:

- 1) **Well/Livestock Pond Interference:** The applicant is not released from any local, state or federal rules or statutes regarding well interference and water use conflict or the need to obtain valid DNR permits authorizing the appropriation of water. The DNR and County Technical Evaluation Panel (TEP) will consult during the modification of the existing wetland mitigation and monitoring plan approval to locate two additional monitoring wells. These wells will go beyond what has already been planned for wetland monitoring and will assist in monitoring the livestock watering pond on parcel #11-0104-000, as well as the 16' well owned presently by Arlen Giese. Strata Corporation (Strata) has been informed that a condition of their authorization to pump water is the requirement to rectify adverse effects the quarry is shown to have on other ground or surface water features adversely affected by the quarry's de-watering, including wells and livestock watering ponds within 1 & 1/2 miles. The applicant shall be responsible for all costs associated with the monitoring wells and on-going data collection. Data shall be submitted to the DNR Monitoring Hydrologist on a quarterly basis.
- 2) **Private Railroad Crossing/Adjacent Pasture Access:** The private railroad crossing serving parcel #11-0104-000, from its Northeast corner, shall be extended by Strata to the satisfaction of the County Board, for purposes of pasture access. The owners of this parcel, along with its renter, shall be in possession of a phone number that will put them in contact with the loadout manager. Trains will be split within thirty minutes of reasonable notification. Trains serving Strata shall not block this crossing at any time, unless loading activity is currently underway.
- 3) **Dust Generation/Testing Protocols:** Strata agrees to pay for independent testing of air quality at property line locations determined by Big Stone County. A baseline for air quality is required prior to commencement of quarry operations. During quarry operation, testing will occur for respirable dust and crystalline silica according to MSHA Permissible Exposure Limits (PEL) and Threshold Limit Values (TLV) as established by the American Conference of Governmental Industrial Hygienists. Testing will occur at times, dates and locations established by the County and may be altered if complaints indicate a need to determine levels at additional locations.
- 4) **Vibration/Sound Monitoring:** Strata agrees to pay for independent monitoring of seismic levels at property lines in line with the nearest residence. Every blasting event will be monitored and documented, with results supplied to Big Stone County. Big Stone County will have final discretion on when, or if, testing could end for each new quarry area opened. NFPA Section 495, Chapter 10 shall be referenced to determine compliance. Damages resulting from exceeding limits under this Section will be immediately corrected and paid in full by Strata.
- 5) **Hours of Operation:** Rock drilling, mining, crushing, processing, washing, stockpiling and railcar loading may normally only be conducted 7:00am-6:00pm, Monday – Friday, and from 7:00am-1:00pm on Saturdays, with none of these activities occurring during 8:00pm-7:00am, or on Sundays. Explosive detonations

may occur only from 7:00am-12:00pm; and 1:00pm-5:00pm, Monday- Friday, with no blasting occurring outside of these time periods. Staging, stripping, reclamation, construction, maintenance, repairs and administrative activity will normally occur 7:00am-6:00pm, Monday – Friday, 7:00am – 1:00pm on Saturdays, with no restrictions on these activities if necessary. Movement and relocation of equipment shall not be restricted. Any alteration of hours of operation may be considered by the Big Stone County Board of Commissioners during times of extreme demands on production and/or for emergency operations.

- 6) **Sight/ & Sound Berms/Stockpiles:** Sight and & Sound Berms shall be constructed to help shield views of quarry operations from homeowners along US Hwy 75 as shown on maps as part of this permit application and EAW, and the initial berms shall be constructed prior to start up of mining and processing activities. All parties agree that the quarry operations cannot be made invisible, and that the purpose of the Sight & Sound Berms is to help shield the most conspicuous of views. Final berm locations and heights will be determined through consultation with Big Stone County for quarry area #1, as well as future placement of berms near quarry areas #2 and #3. Crusher Fines Stockpile(s) shall be built to be proportional to surrounding Sight & Sound Berms and/or surrounding topography. All berms will be sloped and covered with adequate soils and planted with native grasses, as recommended by the Soil and Water Conservation District (SWCD). On-going management to control invasive weeds shall be conducted on all berms.
- 7) **Wash water source:** Strata proposes to appropriate waters from the Minnesota River Floodway Diversion Channel along the western side of the property for their source of wash water. The Floodway Diversion Channel is currently operating in a manner that is inconsistent with the original Army Corps of Engineers design criteria. Strata has been informed that as a condition of their authorization to appropriate water, that Strata shall, at their expense, bear the sole responsibility to seek an alternative water source if future restoration projects are implemented.
- 8) **Primary Crusher Noise Impacts:** The primary crusher shall be located in the depths of the quarry for the entire life of the operation as soon as it is feasible (typically 6-10 weeks) for each subsequent quarry area opened. The primary crusher shall not operate above ground for more than four months after each initial quarry area opening and shall be placed in the quarry bottoms as soon as feasible.
- 9) **Setback to 730th Avenue for Quarry Area #2:** Setbacks from the centerline of 730th Ave. to excavation areas shall be one hundred and fifty feet (150').
- 10) **Flood Elevations:** A minimum of two (2') feet in elevation shall be maintained between quarry area perimeters and base flood elevations of all adjacent floodplains, as shown on the official (2006) Big Stone County Flood Insurance Rate Maps. This shall also apply to any berms, stockpiles and fill of any kind. Soil dikes may be created to meet this requirement.
- 11) **All Submitted Information:** All supporting information, documentation and plans shown in the EAW, and submitted during the Conditional Use Permit Application process, shall be considered binding as conditions to granting the Conditional Use Permit, unless otherwise noted in the above conditions.

Metal Shop: A metal shop, originally shown to the Northwest of the processing area, shall be located in an alternate location to be approved by the Big Stone County Commissioners.

5. On February 8, 2012, the Ortonville Township Board passed a moratorium ordinance prohibiting new or expanded high impact industrial, agricultural and commercial facilities. The ordinance includes a moratorium on the opening of any new gravel pit or rock or aggregate quarry for commercial purposes in Ortonville Township.
6. On February 16, 2012, the Planning Commission found that the request complies with Section 8.2.3.3. of the Big Stone County Land and Resources Management Ordinance, 2011 and the conditional use criteria in Section 11.5 of the same Ordinance, as follows:
 - 6a. The requested use is one of the acceptable conditional uses specifically listed for the district in which it is to be located and is similar in nature to other industrial uses already present in the near vicinity.
 - 6b. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity provided that the County imposes the above conditions in addition to applicable regulations of the Minnesota Pollution Control Agency, the Occupational Safety and Health Administration, and the Mining Safety and Health Administration.
 - 6c. No evidence was provided to support the claim that the conditional use will substantially diminish or impair property values within the immediate vicinity or impede the normal or orderly development and improvement of surrounding vacant property for uses predominant in the area.
 - 6d. Strata Corporation will provide adequate utilities, access roads, drainage and other necessary facilities for the conditional use permit requested.
 - 6e. Sufficient off-street parking and loading space is available on the property to serve the proposed use.
 - 6f. It has been demonstrated that adequate measures will be taken by Strata Corporation to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance, and to control lighting in such a manner that no disturbance to neighboring properties will result.
 - 6g. Strata Corporation shall obtain air quality permits from the Minnesota Pollution Control Agency, and DNR approval for a water appropriations permit and a takings permit for the rare plant species within the project area, as may be required.
 - 6h. Strata Corporation shall obtain approval from the Technical Evaluation Panel (TEP) for mitigation of wetland impacts prior to any such impacts.
7. On February 16, 2012, the Planning Commission voted 5-3 to recommend approval of the conditional use permit to the Board of Commissioners with the conditions discussed. Pat Dwyer abstained from the vote.
8. On March 6, 2012, the Big Stone County Board of Commissioners discussed the framework for holding another public hearing and set that date for April 10, 2012. Due to a conflict with a special state election, the date of the public hearing was later changed to April 17, 2012.
9. On April 17, 2012, the Big Stone County Board of Commissioners held a public hearing at the Ortonville Armory to accept new information regarding the proposal. Bill Lafond

presented an alternative rail spur design which would move the rail spur and load out off the Burlington Northern Santa Fe right-of-way and closer to the quarry processing area. Testimony was also received from several citizens, both local and outside of the County. The County Board extended the timeframe for additional written input to be submitted by 4:00 p.m. on April 25, 2012.

10. On May 1, 2012, the Big Stone County Board of Commissioners accepted as part of the record the documents and information as contained in a legend of documents and further considers its proceedings along with all proceedings before the Planning Commission as part of the record. At this May 1, 2012 meeting, the Big Stone County Board of Commissioners met to discuss the application of Strata Corporation. They reviewed the advantages of the new rail spur design and each of the criteria for a conditional use permit from Section 11.5 of the Big Stone County Land and Related Resource Management Ordinance, 2011. The Board then went through each of the conditions prepared by the Planning Commission and deleted #2 which dealt with the private railroad crossing and the conveyor load out area near Hwy 75. This #2 condition will be changed to reference the alternative rail spur #3-C, as presented at the April 17, 2012 County Board public hearing. The County Attorney stated that the Ordinance does not specifically state that the Comprehensive Plan needed to be an element for consideration of conditional use permits. However, it could be considered within the framework of the review criteria in making decisions and testimony was provided at public hearings regarding guidelines in that Plan. The County Board commented on how the proposed project and conditions satisfied the ordinance criteria:
 - 10a. The Board finds that the conditional use is specifically listed for the A-2 District, as required by section 11.5.1.;
 - 10b. The Board finds that section 11.5.2. was met and effects have been mitigated sufficiently regarding: distance; sight/sound berms; new railroad spur plans that kept the train traffic/loadout area away from neighboring residences; dust suppression technology and requirements; shipment of aggregate products primarily by rail rather than trucking and a condition requiring industrial testing of air quality;
 - 10c. Section 11.5.3 is satisfied as the quarry project will not impact surrounding agricultural activity, and is similar in nature to surrounding quarry activity that is more visible to locations that may be developed residentially;
 - 10d. Section 11.5.4. has been met as adequate access roads from County Hwy. 17 will be constructed to serve this project. Additionally, railroad spurs are being constructed to cover primary product transportations. NPDES permits and wetland mitigation plans will ensure polluted runoff does not reach wetlands or the Whetstone Diversion Channel/MN River.
 - 10e. Testimony states that adequate space and plans exist to provide for off-street parking and loading facilities, as required in section 11.5.5.; and
 - 10f. The Board felt that section 11.5.6. is also covered by conditions placed by the Planning Commission, as well as plans presented by Strata Corporation. They feel that any dust, noise and vibrations will be adequately controlled by conditions, as well as State and Federal regulations controlling air quality, blast noise, and vibrations.

DECISION

It is ordered that the conditional use permit be **GRANTED** with the conditions discussed at February 16, 2012 Planning Commission meeting with the exception of #2 which is no longer applicable due to the new rail spur and load out location. This condition will be changed to require use of the alternative rail spur #3-C. The conditions are attached by reference as shown in attachment A. Additionally, the following permits shall be obtained, as may be required:

- NPDES permit and air quality permit from Minnesota Pollution Control Agency
- Storm Water Pollution Prevention Plan from Minnesota Pollution Control Agency
- Water appropriations permit from Department of Natural Resources
- Rare plant species takings from Department of Natural Resources
- Wetland mitigation approval, as required.

DATED this 15th day of May, 2012.

BIG STONE COUNTY BOARD OF COMISSIONERS

By:



Darren Wilke

On this 15th day of May, 2012, before me personally appeared Darren Wilke as Environmental Officer for Big Stone County, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that the same as a free act and deed for the purposes herein expressed and for the County of Big Stone.



Notary Public, Big Stone County, Minnesota

Drafted by:
Darren Wilke
Environmental Officer
20 SE Second St.
Ortonville, MN 56278



Conditions for Strata Corp. Quarry Application, Permit #11-4970

- 1) **Well/Livestock Pond Interference:** The applicant is not released from any local, state or federal rules or statutes regarding well interference and water use conflict or the need to obtain valid DNR permits authorizing the appropriation of water. The DNR and County Technical Evaluation Panel (TEP) will consult during the modification of the existing wetland mitigation and monitoring plan approval to locate two additional monitoring wells. These wells will go beyond what has already been planned for wetland monitoring and will assist in monitoring the livestock watering pond on parcel #11-0104-000, as well as the 16' well owned presently by Arlen Giese. Strata Corporation (Strata) has been informed that a condition of their authorization to pump water is the requirement to rectify adverse effects the quarry is shown to have on other ground or surface water features adversely affected by the quarry's de-watering, including wells and livestock watering ponds within 1 & 1/2 miles. The applicant shall be responsible for all costs associated with the monitoring wells and on-going data collection. Data shall be submitted to the DNR Monitoring Hydrologist on a quarterly basis.
- 2) **Private Railroad Spur Lines:** The private railroad spur serving the quarry processing area shall be constructed according to conceptual plans shown on Alternative #3-C, presented to the County Board at their April 17, 2012 public hearing.
- 3) **Dust Generation/Testing Protocols:** Strata agrees to pay for independent testing of air quality at property line locations determined by Big Stone County. A baseline for air quality is required prior to commencement of quarry operations. During quarry operation, testing will occur for respirable dust and crystalline silica according to MSHA Permissible Exposure Limits (PEL) and Threshold Limit Values (TLV) as established by the American Conference of Governmental Industrial Hygienists. Testing will occur at times, dates and locations established by the County and may be altered if complaints indicate a need to determine levels at additional locations.
- 4) **Vibration/Sound Monitoring:** Strata agrees to pay for independent monitoring of seismic levels at property lines in line with the nearest residence. Every blasting event will be monitored and documented, with results supplied to Big Stone County. Big Stone County will have final discretion on when, or if, testing could end for each new quarry area opened. NFPA Section 495, Chapter 10 shall be referenced to determine compliance. Damages resulting from exceeding limits under this Section will be immediately corrected and paid in full by Strata.
- 5) **Hours of Operation:** Rock drilling, mining, crushing, processing, washing, stockpiling and railcar loading may normally only be conducted 7:00am-6:00pm, Monday – Friday, and

from 7:00am-1:00pm on Saturdays, with none of these activities occurring during 8:00pm-7:00am, or on Sundays. Explosive detonations may occur only from 7:00am-12:00pm; and 1:00pm-5:00pm, Monday- Friday, with no blasting occurring outside of these time periods. Staging, stripping, reclamation, construction, maintenance, repairs and administrative activity will normally occur 7:00am-6:00pm, Monday – Friday, 7:00am – 1:00pm on Saturdays, with no restrictions on these activities if necessary. Movement and relocation of equipment shall not be restricted. Any alteration of hours of operation may be considered by the Big Stone County Board of Commissioners during times of extreme demands on production and/or for emergency operations.

- 6) **Sight/ & Sound Berms/Stockpiles:** Sight and & Sound Berms shall be constructed to help shield views of quarry operations from homeowners along US Hwy 75 as shown on maps as part of this permit application and EAW, and the initial Berms shall be constructed prior to start up of mining and processing activities. All parties agree that the quarry operations cannot be made invisible, and that the purpose of the Sight & Sound Berms is to help shield the most conspicuous of views. Final berm locations and heights will be determined through consultation with Big Stone County for quarry area #1, as well as future placement of berms near quarry areas #2 and #3. Crusher Fines Stockpile(s) shall be built to be proportional to surrounding Sight & Sound Berms and/or surrounding topography. All berms will be sloped and covered with adequate soils and planted with native grasses, as recommended by the Soil and Water Conservation District (SWCD). On-going management to control invasive weeds shall be conducted on all berms.
- 7) **Wash water source:** Strata proposes to appropriate waters from the Minnesota River Floodway Diversion Channel along the western side of the property for their source of wash water. The Floodway Diversion Channel is currently operating in a manner that is inconsistent with the original Army Corps of Engineers design criteria. Strata has been informed that as a condition of their authorization to appropriate water, that Strata shall, at their expense, bear the sole responsibility to seek an alternative water source if future restoration projects are implemented.
- 8) **Primary Crusher Noise Impacts:** The primary crusher shall be located in the depths of the quarry for the entire life of the operation as soon as it is feasible (typically 6-10 weeks) for each subsequent quarry area opened. The primary crusher shall not operate above ground for more than four months after each initial quarry area opening and shall be placed in the quarry bottoms as soon as feasible.
- 9) **Setback to 730th Avenue for Quarry Area #2:** Setbacks from the centerline of 730th Ave. to excavation areas shall be one hundred and fifty feet (150').
- 10) **Flood Elevations:** A minimum of two (2') feet in elevation shall be maintained between quarry area perimeters and base flood elevations of all adjacent floodplains, as shown on the official (2006) Big Stone County Flood Insurance Rate Maps. This shall also apply to any berms, stockpiles and fill of any kind. Soil dikes may be created to meet this requirement.
- 11) **All Submitted Information:** All supporting information, documentation and plans shown in the EAW, and submitted during the Conditional Use Permit Application process, shall be considered binding as conditions to granting the Conditional Use Permit, unless otherwise noted in the above conditions.

- 12) **Metal Shop:** A metal shop, originally shown to the Northwest of the processing area, shall be located in an alternate location to be approved by the Big Stone County Commissioners.

Exhibit F

Submitted to County Board 11-April-12 for review and consideration. This illustration is conceptual and has not been approved.



Exhibit G



* 1 7 0 7 2 2 3 *

170722

ELAINE MARTIG
BIG STONE COUNTY RECORDER
RECORDED ON
09/27/2012 02:45PM
WELL CERT: 0
REC FEE: 46.00 PAGES:3
CINDY NELSON
BIG STONE COUNTY TREASURER
TRANSFER ENTERED: 09/27/2012
STATE DEED TAX PAID: 1.65
DELINQUENT TAXES: NO
CRV: NONE SPLIT: YES

_____(RESERVED FOR RECORDING INFORMATION)_____

QUIT CLAIM DEED

STATE DEED TAX DUE HEREON: ~~\$170~~ 1.65

Date: September 27, 2012

FOR VALUABLE CONSIDERATION, **Gayle E. Hedge and Colleen M. Hedge**, husband and wife (collectively "**Grantor**"), hereby quitclaims and conveys to **Geraldine Ann Crookston** ("**Grantee**"), the real property in Big Stone County, Minnesota, described in **Exhibit A** hereto attached ("**Subject Property**") reserving and excepting for the benefit of Gayle E. Hedge and Colleen M. Hedge, as joint tenants, the right to receive any and all payments due to Grantor under that certain Aggregate Mining & Lease Agreement ("**Lease**") between Grantor, as Landowner, and Glacier Resources, Ltd. ("**Glacier**"), as Lessee, dated April 26, 2006 and that certain Option Agreement dated April 26, 2006 (as amended by Agreements to Extend the Term of Option Agreement dated March 21, 2011 and March 21, 2012) ("**Option**"), as evidenced by that certain Memorandum of Lease ("**Memorandum of Lease**") recorded as Document No. 160958 with the Big Stone County Recorder's office, which Lease and Option covers the Subject Property as well as other parcels of real property.

Grantor and Grantee acknowledge that the Subject Property is subject to (i) the superior rights and interests of Glacier (and its affiliate Strata Corporation) under the Lease and Option, (ii) the rights and interests of Clark Mastel under an existing agricultural lease between Grantor, as Landowner, and Clark Mastel, as Lessee, which expires on May 31, 2013, and (iii) a restriction herein being declared by Grantor that the Subject Property be used only for agricultural purposes except for the uses by the Lessee Glacier (and its affiliate Strata Corporation) under the Lease.

Together with all hereditaments and appurtenances belong thereto.

This deed represents a gift by the Grantor to the Grantee and the consideration exclusive of any lien or encumbrance remaining thereon for this transfer is \$500.00 or less.

Gayle E. Hedge
Gayle E. Hedge

Colleen M. Hedge
Colleen M. Hedge

STATE OF ^{South Dakota} MINNESOTA)
COUNTY OF Grant) ss.

The foregoing instrument was acknowledged before me this 27th day of September, 2012, by Gayle E. Hedge and Colleen M. Hedge, husband and wife.



Kathleen Korth
Notary Public
My commission expires 5-6-2014

Tax Statements for the real property described in this instrument should be sent to (Include name and address of Grantee):

This Instrument was Drafted By:
Gayle E. Hedge
320 Park Street
Ortonville, MN 56278

Geraldine Ann Crookston
8238 South High Court
Centennial, CO 80122

EXHIBIT A - CROOKSTON

Lot L of the Southwest Quarter of the Southwest Quarter (SW1/4 SW1/4) of Section Fifteen (15), of Government Lot Six (6) of Section Sixteen (16), of the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-one (21), and of the Northwest Quarter of the Northwest Quarter (NW1/4 NW1/4) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 3.98 acres.

11-0088-000 11-0079-000
11-0089-000 11-0097-000
part of all parcels



* 1 7 0 7 2 3 3 *

170723

ELAINE MARTIG
BIG STONE COUNTY RECORDER
RECORDED ON
09/27/2012 02:45PM
WELL CERT: 0
REC FEE: 46.00 PAGES:3
CINDY NELSON
BIG STONE COUNTY TREASURER
TRANSFER ENTERED: 09/27/2012
STATE DEED TAX PAID: 1.65
DELINQUENT TAXES: NO
CRV: NONE SPLIT: YES

(RESERVED FOR RECORDING INFORMATION)

QUIT CLAIM DEED

STATE DEED TAX DUE HEREON: ~~\$170~~/ 1.65

Date: September 27, 2012

FOR VALUABLE CONSIDERATION, **Gayle E. Hedge and Colleen M. Hedge**, husband and wife (collectively "**Grantor**"), hereby quitclaims and conveys to **Geraldine Ann Crookston** ("**Grantee**"), the real property in Big Stone County, Minnesota, described in **Exhibit A** hereto attached ("**Subject Property**") reserving and excepting for the benefit of Gayle E. Hedge and Colleen M. Hedge, as joint tenants, the right to receive any and all payments due to Grantor under that certain Aggregate Mining & Lease Agreement ("**Lease**") between Grantor, as Landowner, and Glacier Resources, Ltd. ("**Glacier**"), as Lessee, dated April 26, 2006 and that certain Option Agreement dated April 26, 2006 (as amended by Agreements to Extend the Term of Option Agreement dated March 21, 2011 and March 21, 2012) ("**Option**"), as evidenced by that certain Memorandum of Lease ("**Memorandum of Lease**") recorded as Document No. 160958 with the Big Stone County Recorder's office, which Lease and Option covers the Subject Property as well as other parcels of real property.

Grantor and Grantee acknowledge that the Subject Property is subject to (i) the superior rights and interests of Glacier (and its affiliate Strata Corporation) under the Lease and Option, (ii) the rights and interests of Clark Mastel under an existing agricultural lease between Grantor, as Landowner, and Clark Mastel, as Lessee, which expires on May 31, 2013, and (iii) a restriction herein being declared by Grantor that the Subject Property be used only for agricultural purposes except for the uses by the Lessee Glacier (and its affiliate Strata Corporation) under the Lease.

Together with all hereditaments and appurtenances belong thereto.

This deed represents a gift by the Grantor to the Grantee and the consideration exclusive of any lien or encumbrance remaining thereon for this transfer is \$500.00 or less.

Gayle E. Hedge
Gayle E. Hedge

Colleen M. Hedge
Colleen M. Hedge

South Dakota
STATE OF ~~MINNESOTA~~)
) ss.
COUNTY OF Grant)

The foregoing instrument was acknowledged before me this 27th day of September, 2012, by Gayle E. Hedge and Colleen M. Hedge, husband and wife.



Kathleen Korth
Notary Public
My commission expires 5-6-2014

Tax Statements for the real property described in this instrument should be sent to (Include name and address of Grantee):

This Instrument was Drafted By:
Gayle E. Hedge
320 Park Street
Ortonville, MN 56278

Geraldine Ann Crookston
8238 South High Court
Centennial, CO 80122

EXHIBIT A – CROOKSTON

Lot N of Government Lot Six (6) of Section Sixteen (16), of Government Lots One (1), Three (3) and Four (4) and the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-one (21), and of Government Lots One (1) and Two (2) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 48.61 acres.

Part of:
11-0088-000
11-0089-000
11-0097-000



* 1 7 0 7 2 1 3 *

170721

ELAINE MARTIG

BIG STONE COUNTY RECORDER

RECORDED ON

09/27/2012 02:45PM

WELL CERT: 0

REC FEE: 46.00 PAGES:3

CINDY NELSON

BIG STONE COUNTY TREASURER

TRANSFER ENTERED: 09/27/2012

STATE DEED TAX PAID: 1.65

DELINQUENT TAXES: NO

CRV: NONE SPLIT: YES

(RESERVED FOR RECORDING INFORMATION)

QUIT CLAIM DEED

STATE DEED TAX DUE HEREON: ~~\$170~~ 1.65

Date: September 27, 2012

FOR VALUABLE CONSIDERATION, **Gayle E. Hedge and Colleen M. Hedge**, husband and wife (collectively "**Grantor**"), hereby quitclaims and conveys to **Geraldine Ann Crookston** ("**Grantee**"), the real property in Big Stone County, Minnesota, described in **Exhibit A** hereto attached ("**Subject Property**") reserving and excepting for the benefit of Gayle E. Hedge and Colleen M. Hedge, as joint tenants, the right to receive any and all payments due to Grantor under that certain Aggregate Mining & Lease Agreement ("**Lease**") between Grantor, as Landowner, and Glacier Resources, Ltd. ("**Glacier**"), as Lessee, dated April 26, 2006 and that certain Option Agreement dated April 26, 2006 (as amended by Agreements to Extend the Term of Option Agreement dated March 21, 2011 and March 21, 2012) ("**Option**"), as evidenced by that certain Memorandum of Lease ("**Memorandum of Lease**") recorded as Document No. 160958 with the Big Stone County Recorder's office, which Lease and Option covers the Subject Property as well as other parcels of real property.

Grantor and Grantee acknowledge that the Subject Property is subject to (i) the superior rights and interests of Glacier (and its affiliate Strata Corporation) under the Lease and Option, (ii) the rights and interests of Clark Mastel under an existing agricultural lease between Grantor, as Landowner, and Clark Mastel, as Lessee, which expires on May 31, 2013, and (iii) a restriction herein being declared by Grantor that the Subject Property be used only for agricultural purposes except for the uses by the Lessee Glacier (and its affiliate Strata Corporation) under the Lease.

Together with all hereditaments and appurtenances belong thereto.

This deed represents a gift by the Grantor to the Grantee and the consideration exclusive of any lien or encumbrance remaining thereon for this transfer is \$500.00 or less.

Gayle E. Hedge
Gayle E. Hedge

Colleen M. Hedge
Colleen M. Hedge

South Dakota
STATE OF ~~MINNESOTA~~)
COUNTY OF Grant) ss.

The foregoing instrument was acknowledged before me this 27th day of September, 2012, by Gayle E. Hedge and Colleen M. Hedge, husband and wife.



Kathleen Korth
Notary Public
My commission expires 5-6-2014

Tax Statements for the real property described in this instrument should be sent to (Include name and address of Grantee):

This Instrument was Drafted By:
Gayle E. Hedge
320 Park Street
Ortonville, MN 56278

Geraldine Ann Crookston
8238 South High Court
Centennial, CO 80122

EXHIBIT A - CROOKSTON

Lot M of Government Lot Six (6) of Section Sixteen (16) and of the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-one (21), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 63.52 acres.

11-0088-000 part
11-0089-000 part



170725

ELAINE MARTIG
BIG STONE COUNTY RECORDER
RECORDED ON
09/27/2012 02:45PM
WELL CERT: 0
REC FEE: 46.00 PAGES:3
CINDY NELSON
BIG STONE COUNTY TREASURER
TRANSFER ENTERED: 09/27/2012
STATE DEED TAX PAID: 1.65
DELINQUENT TAXES: NO
CRV: NONE SPLIT: YES

(RESERVED FOR RECORDING INFORMATION)

QUIT CLAIM DEED

STATE DEED TAX DUE HEREON: ~~\$170~~ 1.65

Date: September 27, 2012

FOR VALUABLE CONSIDERATION, **Gayle E. Hedge and Colleen M. Hedge**, husband and wife (collectively "**Grantor**"), hereby quitclaims and conveys to **Alan Thomas Knippen and Kimberly Ann McClelland-Knippen**, husband and wife (collectively "**Grantee**"), the real property in Big Stone County, Minnesota, described in **Exhibit A** hereto attached ("**Subject Property**") reserving and excepting for the benefit of Gayle E. Hedge and Colleen M. Hedge, as joint tenants, the right to receive any and all payments due to Grantor under that certain Aggregate Mining & Lease Agreement ("**Lease**") between Grantor, as Landowner, and Glacier Resources, Ltd. ("**Glacier**"), as Lessee, dated April 26, 2006 and that certain Option Agreement dated April 26, 2006 (as amended by Agreements to Extend the Term of Option Agreement dated March 21, 2011 and March 21, 2012) ("**Option**"), as evidenced by that certain Memorandum of Lease ("**Memorandum of Lease**") recorded as Document No. 160958 with the Big Stone County Recorder's office, which Lease and Option covers the Subject Property as well as other parcels of real property.

Grantor and Grantee acknowledge that the Subject Property is subject to (i) the superior rights and interests of Glacier (and its affiliate Strata Corporation) under the Lease and Option, (ii) the rights and interests of Clark Mastel under an existing agricultural lease between Grantor, as Landowner, and Clark Mastel, as Lessee, which expires on May 31, 2013, and (iii) a restriction herein being declared by Grantor that the Subject Property be used only for agricultural purposes except for the uses by the Lessee Glacier (and its affiliate Strata Corporation) under the Lease.

Together with all hereditaments and appurtenances belong thereto.

This deed represents a gift by the Grantor to the Grantee and the consideration exclusive of any lien or encumbrance remaining thereon for this transfer is \$500.00 or less.

Gayle E. Hedge
Gayle E. Hedge

Colleen M. Hedge
Colleen M. Hedge

South Dakota
STATE OF ~~MINNESOTA~~)
COUNTY OF Grant) ss.

The foregoing instrument was acknowledged before me this 27th day of September, 2012, by Gayle E. Hedge and Colleen M. Hedge, husband and wife.



Kathleen Korth
Notary Public
My commission expires 5-6-2014

Tax Statements for the real property described in this instrument should be sent to (Include name and address of Grantee):

This Instrument was Drafted By:
Gayle E. Hedge
320 Park Street
Ortonville, MN 56278

Alan Thomas Knippen
Kimberly Ann McClelland-Knippen
951 Colgate Street
P. O. Box 93
Big Stone City, SD 57216

EXHIBIT A - KNIPPEN

Lot J of the South Half of the Southwest Quarter (S1/2 SW1/4) of Section Fifteen (15) and of the West Half (W1/2) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 111.28 acres.

Part of:

11-0079-000

11-0097-000



* 1 7 0 7 2 4 3 *

170724

ELAINE MARTIG
BIG STONE COUNTY RECORDER
RECORDED ON
09/27/2012 02:45PM
WELL CERT: 0
REC FEE: 46.00 PAGES:3
CINDY NELSON
BIG STONE COUNTY TREASURER
TRANSFER ENTERED: 09/27/2012
STATE DEED TAX PAID: 1.65
DELINQUENT TAXES: NO
CRV: NONE SPLIT: YES

_____(RESERVED FOR RECORDING INFORMATION)_____

QUIT CLAIM DEED

STATE DEED TAX DUE HEREON: ~~\$170~~ 1.65

Date: September 27, 2012

FOR VALUABLE CONSIDERATION, **Gayle E. Hedge and Colleen M. Hedge**, husband and wife (collectively "**Grantor**"), hereby quitclaims and conveys to **June Joanne Ziegler** ("**Grantee**"), the real property in **Big Stone County**, Minnesota, described in **Exhibit A** hereto attached ("**Subject Property**") reserving and excepting for the benefit of Gayle E. Hedge and Colleen M. Hedge, as joint tenants, the right to receive any and all payments due to Grantor under that certain Aggregate Mining & Lease Agreement ("**Lease**") between Grantor, as Landowner, and Glacier Resources, Ltd. ("**Glacier**"), as Lessee, dated April 26, 2006 and that certain Option Agreement dated April 26, 2006 (as amended by Agreements to Extend the Term of Option Agreement dated March 21, 2011 and March 21, 2012) ("**Option**"), as evidenced by that certain Memorandum of Lease ("**Memorandum of Lease**") recorded as Document No. 160958 with the Big Stone County Recorder's office, which Lease and Option covers the Subject Property as well as other parcels of real property.

Grantor and Grantee acknowledge that the Subject Property is subject to (i) the superior rights and interests of Glacier (and its affiliate Strata Corporation) under the Lease and Option, (ii) the rights and interests of Clark Mastel under an existing agricultural lease between Grantor, as Landowner, and Clark Mastel, as Lessee, which expires on May 31, 2013, and (iii) a restriction herein being declared by Grantor that the Subject Property be used only for agricultural purposes except for the uses by the Lessee Glacier (and its affiliate Strata Corporation) under the Lease.

Together with all hereditaments and appurtenances belong thereto.

This deed represents a gift by the Grantor to the Grantee and the consideration exclusive of any lien or encumbrance remaining thereon for this transfer is \$500.00 or less.

Gayle E. Hedge
Gayle E. Hedge

Colleen M. Hedge
Colleen M. Hedge

South Dakota
STATE OF ~~MINNESOTA~~)
COUNTY OF Grant) ss.

The foregoing instrument was acknowledged before me this 27th day of September, 2012, by Gayle E. Hedge and Colleen M. Hedge, husband and wife.



Kathleen Korth
Notary Public
My commission expires 5-6-2014

Tax Statements for the real property described in this instrument should be sent to (Include name and address of Grantee):

This Instrument was Drafted By:
Gayle E. Hedge
320 Park Street
Ortonville, MN 56278

June Joanne Ziegler
29 Cornell Drive
Longmont, CO 80503

EXHIBIT A - ZIEGLER

Lot K of the Southwest Quarter of the Southwest Quarter (SW1/4 SW1/4) of Section Fifteen (15), of Government Lots Three (3) and Four (4) of Section Twenty-one (21), of the West Half (W1/2) of Section Twenty-two (22), and of the South Half of the Southeast Quarter (S1/2 SE1/4) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 102.71 acres.

Part of:

11-0079-000
11-0097-000
11-0089-000

Ortonville Township
Objection to A-7829 to A-78324

Exhibit H



LEGEND

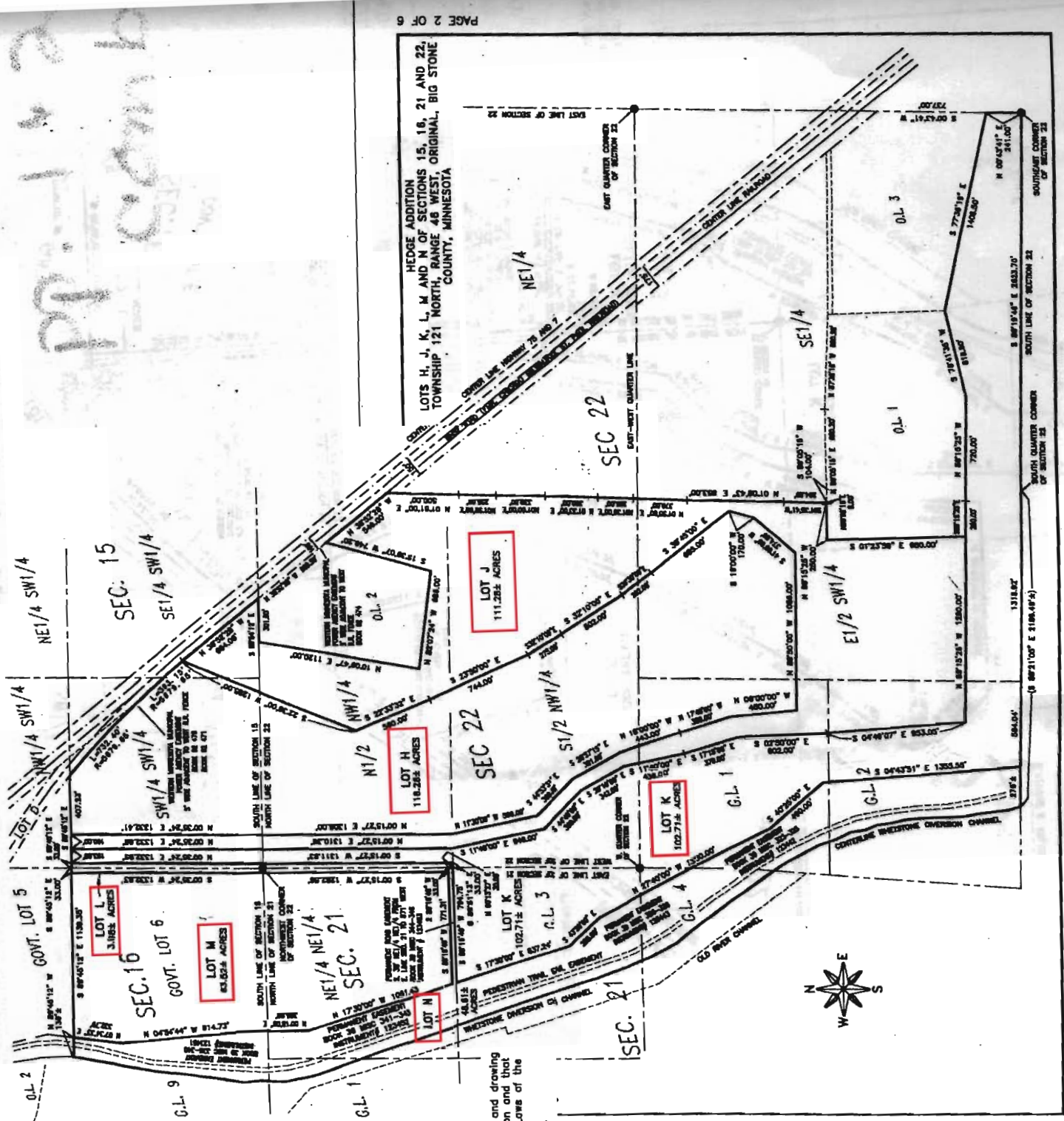
- = FOUND CORNER MONUMENT
- = SET 5/8" REBAR WITH CAP STAMPED "RLS 190922"
- () = RECORD DATA



DOC. NO. 170714
FILED September 26, 2012
AT 4:35 P.M. AND RECORDED
IN BOOK 5 OF Plats
ON PAGE 424

ELAINE MARTIG
COUNTY RECORDER
BIG STONE COUNTY, MINNESOTA
BY Young Berger DEPUTY

Surveyors Certificate
I, Roy Marthart, do hereby certify that this survey and drawing was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the Laws of the State of Minnesota.



Ortonville Township
Objection to A-7829 to A-78324

Exhibit I

Ortonville Heritage Preservation Commission

987 US Hwy 12, Ortonville, MN 56278
www.ortonville.net

Ph: (320) 839-3284

e-mail: eda@ortonville.net

Fax : (320) 839-2521

To:	Mayor David Dinnel and City Council	Date:	9/28/2012
From:	Vicki Oakes	MEMO	
Re:	Council Packet Addition Agenda Item: Hedge Annexation		

I have enclosed copies of the Annexation Petitions which were submitted to the City Office late yesterday afternoon by Gayle Hedge. The enclosures are submitted for your review in advance of Monday's City Council meeting for the agenda item "Hedge Annexation" (last item under New Business).

At Monday's meeting, they are asking the Council to consider whether to direct that a Public Hearing on Annexation Ordinances be held at a City Council Special Meeting on Monday, Nov. 5th, at 6:00 p.m. (further details can be found on the attachment "Timeline ANNEXATION BY ORDINANCE per MN Statute §414.033").

Due to the complexities of these issues, I asked Strata Corporation to provide a step-by-step guide to aid the City in their consideration of these matters. Strata Corporation with the aid of their legal team provided the attached timelines which include ordinance or statutory references where appropriate.

Again, Monday's agenda item, in this regard, is to request that Council call for a Public Hearing. The Public Hearing will provide the platform to review the merits of annexation and receive public input before final Council deliberations take place.

Please call me at 320-305-2434 if you have any questions.

Thank you for your consideration.

**PROPERTY OWNER PETITION TO MUNICIPALITY
FOR ANNEXATION BY ORDINANCE - 120 Acres or Less**

IN THE MATTER OF THE PETITION OF CERTAIN PERSONS FOR THE
ANNEXATION OF CERTAIN LAND TO THE CITY OF ORTONVILLE, MINNESOTA
PURSUANT TO MINNESOTA STATUTES § 414.033, SUBD. 2(3)

TO: Council of the City of Ortonville ("City"), Minnesota

PETITIONERS STATE: All of the property owners in number are required to commence a proceeding under Minnesota Statutes § 414.033, Subd. 2(3).

It is hereby requested by:

_____ the sole property owner; or
 X all of the property owners

of the area proposed for annexation to annex certain property described herein lying in the Township of Ortonville to the City of Ortonville, County of Big Stone, Minnesota.

The area proposed for annexation is legally described as set forth on the attached **Exhibit 1**.

1. There are two property owners in the area proposed for annexation.
2. The area proposed for annexation abuts the City, is 120 acres or less, and is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available.
3. The area proposed for annexation is unincorporated, abuts on the City's southern boundary, and is not included within any other municipality.
4. The area proposed for annexation, in acres, is set forth on the attached **Exhibit 1**.
5. The reasons for the requested annexation include, but are not limited to one or more of the following:
 - A) The area proposed for annexation is now, or is about to become, urban or suburban in character;
 - B) The property owners desire to have available to them and their property the many services that are most efficiently provided by the City, including, but not limited to, administrative, planning, environmental controls, water, sewer and electrical utility services, better fire rating and protection, police protection, and recreational facilities. These services are not currently available or offered to a sufficient degree by Ortonville Township. As an example, County Sheriff or Rural Fire services currently would have to travel through the City, using City streets, in order to gain access to the area proposed for annexation;
 - C) The area proposed for annexation is contiguous to City along its northern boundary and can only be accessed from the City. Without such access to the

City, the area proposed for annexation is severed from access to nearby highways or county roads. Inherent obstacles restricting other access include private property owned by others, the BNSF Railway to the northeast, the Big Stone National Wildlife Refuge to the south, and the Whetstone Diversion Channel (Minnesota River) to the west; and

- D) The area proposed for annexation is a natural and logical extension to those adjoining properties already within the City.

PETITIONERS REQUEST: That pursuant to Minnesota Statutes § 414.033, the property described herein on **Exhibit 1** attached hereto be annexed to and included within the City of Ortonville, Minnesota.

Dated: September 27, 2012

Signatures:

Gayle Hedge
Gayle Hedge

Colleen M. Hedge
Colleen Hedge

EXHIBIT 1 - HEDGE

Lot H of the South Half of the Southwest Quarter (S1/2 SW1/4) of Section Fifteen (15) and of the West Half (W1/2) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 118.26 acres.

**PROPERTY OWNER PETITION TO MUNICIPALITY
FOR ANNEXATION BY ORDINANCE - 120 Acres or Less**

IN THE MATTER OF THE PETITION OF CERTAIN PERSONS FOR THE
ANNEXATION OF CERTAIN LAND TO THE CITY OF ORTONVILLE, MINNESOTA
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TO: Council of the City of Ortonville ("City"), Minnesota

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 X all of the property owners

of the area proposed for annexation to annex certain property described herein lying in the Township of Ortonville to the City of Ortonville, County of Big Stone, Minnesota.

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- D) The area proposed for annexation is a natural and logical extension to those adjoining properties already within the City.

PETITIONERS REQUEST: That pursuant to Minnesota Statutes § 414.033, the property described herein on **Exhibit 1** attached hereto be annexed to and included within the City of Ortonville, Minnesota.

Dated: 9/27/12

Signatures:

Alan Thomas Knippen

Alan Thomas Knippen

Kimberly Ann McClelland-Knippen

Kimberly Ann McClelland-Knippen

EXHIBIT 1 - KNIPPEN

Lot J of the South Half of the Southwest Quarter (S1/2 SW1/4) of Section Fifteen (15) and of the West Half (W1/2) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 111.28 acres.

**PROPERTY OWNER PETITION TO MUNICIPALITY
FOR ANNEXATION BY ORDINANCE - 120 Acres or Less**

IN THE MATTER OF THE PETITION OF CERTAIN PERSONS FOR THE
ANNEXATION OF CERTAIN LAND TO THE CITY OF ORTONVILLE, MINNESOTA
PURSUANT TO MINNESOTA STATUTES § 414.033, SUBD. 2(3)

TO: Council of the City of Ortonville ("City"), Minnesota

PETITIONER STATES: All of the property owners in number are required to commence a proceeding under Minnesota Statutes § 414.033, Subd. 2(3).

It is hereby requested by:

 X the sole property owner; or
 all of the property owners

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 - B) The property owner desires to have available to her and her property the many services that are most efficiently provided by the City, including, but not limited to, administrative, planning, environmental controls, water, sewer and electrical utility services, better fire rating and protection, police protection, and recreational facilities. These services are not currently available or offered to a sufficient degree by Ortonville Township. As an example, County Sherriff or Rural Fire services currently would have to travel through the City, using City streets, in order to gain access to the area proposed for annexation;
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- D) The area proposed for annexation is a natural and logical extension to those adjoining properties already within the City.

PETITIONER REQUESTS: That pursuant to Minnesota Statutes § 414.033, the property described herein on **Exhibit 1** attached hereto be annexed to and included within the City of Ortonville, Minnesota.

Dated: 9/27/12

Signatures: Geraldine Ann Crookston
Geraldine Ann Crookston

EXHIBIT 1 - CROOKSTON

Lot L of the Southwest Quarter of the Southwest Quarter (SW1/4 SW1/4) of Section Fifteen (15), of Government Lot Six (6) of Section Sixteen (16), of the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-one (21), and of the Northwest Quarter of the Northwest Quarter (NW1/4 NW1/4) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 3.98 acres.

**PROPERTY OWNER PETITION TO MUNICIPALITY
FOR ANNEXATION BY ORDINANCE - 120 Acres or Less**

IN THE MATTER OF THE PETITION OF CERTAIN PERSONS FOR THE
ANNEXATION OF CERTAIN LAND TO THE CITY OF ORTONVILLE, MINNESOTA
PURSUANT TO MINNESOTA STATUTES § 414.033, SUBD. 2(3)

TO: Council of the City of Ortonville ("City"), Minnesota

PETITIONER STATES: All of the property owners in number are required to commence a proceeding under Minnesota Statutes § 414.033, Subd. 2(3).

It is hereby requested by:

 X the sole property owner; or
 all of the property owners

of the area proposed for annexation to annex certain property described herein lying in the Township of Ortonville to the City of Ortonville, County of Big Stone, Minnesota.

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- D) The area proposed for annexation is a natural and logical extension to those adjoining properties already within the City.

PETITIONER REQUESTS: That pursuant to Minnesota Statutes § 414.033, the property described herein on **Exhibit 1** attached hereto be annexed to and included within the City of Ortonville, Minnesota.

Dated: 9/27/12

Signatures:

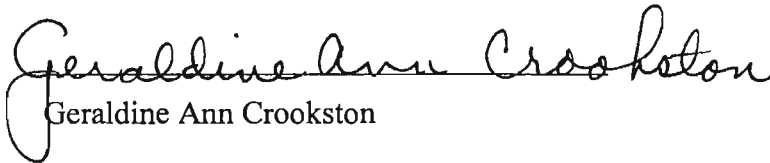

Geraldine Ann Crookston

EXHIBIT 1 - CROOKSTON

Lot M of Government Lot Six (6) of Section Sixteen (16) and of the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-one (21), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 63.52 acres.

**PROPERTY OWNER PETITION TO MUNICIPALITY
FOR ANNEXATION BY ORDINANCE - 120 Acres or Less**

IN THE MATTER OF THE PETITION OF CERTAIN PERSONS FOR THE
ANNEXATION OF CERTAIN LAND TO THE CITY OF ORTONVILLE, MINNESOTA
PURSUANT TO MINNESOTA STATUTES § 414.033, SUBD. 2(3)

TO: Council of the City of Ortonville ("City"), Minnesota

PETITIONER STATES: All of the property owners in number are required to commence a proceeding under Minnesota Statutes § 414.033, Subd. 2(3).

It is hereby requested by:

 X the sole property owner; or
 all of the property owners

of the area proposed for annexation to annex certain property described herein lying in the Township of Ortonville to the City of Ortonville, County of Big Stone, Minnesota.

The area proposed for annexation is legally described as set forth on the attached **Exhibit 1**.

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City, the area proposed for annexation is severed from access to nearby highways or county roads. Inherent obstacles restricting other access include private property owned by others, the BNSF Railway to the northeast, the Big Stone National Wildlife Refuge to the south, and the Whetstone Diversion Channel (Minnesota River) to the west; and

- D) The area proposed for annexation is a natural and logical extension to those adjoining properties already within the City.

PETITIONER REQUESTS: That pursuant to Minnesota Statutes § 414.033, the property described herein on **Exhibit 1** attached hereto be annexed to and included within the City of Ortonville, Minnesota.

Dated: 9/27/12

Signatures: Geraldine Ann Crookston
Geraldine Ann Crookston

EXHIBIT 1 - CROOKSTON

Lot N of Government Lot Six (6) of Section Sixteen (16), of Government Lots One (1), Three (3) and Four (4) and the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section Twenty-one (21), and of Government Lots One (1) and Two (2) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 48.61 acres.

**PROPERTY OWNER PETITION TO MUNICIPALITY
FOR ANNEXATION BY ORDINANCE - 120 Acres or Less**

IN THE MATTER OF THE PETITION OF CERTAIN PERSONS FOR THE
ANNEXATION OF CERTAIN LAND TO THE CITY OF ORTONVILLE, MINNESOTA
PURSUANT TO MINNESOTA STATUTES § 414.033, SUBD. 2(3)

TO: Council of the City of Ortonville ("City"), Minnesota

PETITIONER STATES: All of the property owners in number are required to commence a proceeding under Minnesota Statutes § 414.033, Subd. 2(3).

It is hereby requested by:

 X the sole property owner; or
 all of the property owners

of the area proposed for annexation to annex certain property described herein lying in the Township of Ortonville to the City of Ortonville, County of Big Stone, Minnesota.

The area proposed for annexation is legally described as set forth on the attached **Exhibit 1**.

1. There is one property owner in the area proposed for annexation.
2. The area proposed for annexation abuts the City, is 120 acres or less, and is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available.
3. The area proposed for annexation is unincorporated, abuts on the City's southern boundary, and is not included within any other municipality.
4. The area proposed for annexation, in acres, is set forth on the attached **Exhibit 1**.
5. The reasons for the requested annexation include, but are not limited to one or more of the following:
 - A) The area proposed for annexation is now, or is about to become, urban or suburban in character;
 - B) The property owner desires to have available to her and her property the many services that are most efficiently provided by the City, including, but not limited to, administrative, planning, environmental controls, water, sewer and electrical utility services, better fire rating and protection, police protection, and recreational facilities. These services are not currently available or offered to a sufficient degree by Ortonville Township. As an example, County Sheriff or Rural Fire services currently would have to travel through the City, using City streets, in order to gain access to the area proposed for annexation;
 - C) The area proposed for annexation is contiguous to City along its northern boundary and can only be accessed from the City. Without such access to the

City, the area proposed for annexation is severed from access to nearby highways or county roads. Inherent obstacles restricting other access include private property owned by others, the BNSF Railway to the northeast, the Big Stone National Wildlife Refuge to the south, and the Whetstone Diversion Channel (Minnesota River) to the west; and

- D) The area proposed for annexation is a natural and logical extension to those adjoining properties already within the City.

PETITIONER REQUESTS: That pursuant to Minnesota Statutes § 414.033, the property described herein on **Exhibit 1** attached hereto be annexed to and included within the City of Ortonville, Minnesota.

Dated: 9/27/12

Signatures:

June Joanne Ziegler
June Joanne Ziegler

EXHIBIT 1 - ZIEGLER

Lot K of the Southwest Quarter of the Southwest Quarter (SW1/4 SW1/4) of Section Fifteen (15), of Government Lots Three (3) and Four (4) of Section Twenty-one (21), of the West Half (W1/2) of Section Twenty-two (22), and of the South Half of the Southeast Quarter (S1/2 SE1/4) of Section Twenty-two (22), all in Township One Hundred Twenty-one (121) North, Range Forty-six (46) West of the 5th P.M., according to the Plat on file in the office of the County Recorder, Original, Big Stone County, Minnesota, in Book 5 of Plats, page 424, consisting of approximately 102.71 acres.

Timeline

MINING CONDITIONAL USE PERMIT

Per City Ordinances § 150.029 (D) Subd 2, 150.048 (A)(B) & 150.138 (A)

- Mon. Nov 05** Strata (Applicant), (joined by property owners if required by Ordinance) submits comprehensive Conditional Use Permit Application, and proposed Findings of Fact for Planning Commissions consideration to City Zoning Administrator (City Clerk) along with request that the CUP Application review process be handled in an expedient manner, including a request that Planning Commissions hold a Special Meeting on Tuesday Nov. 13th to consider the CUP Application and at that time to call for a Public Hearing to be scheduled for 3:00pm Wednesday, December 05, 2012. (W/informational copies of complete CUP Application to members of the Planning Commission, City Council, and EDA) Note: Planning Commission may determine their Regular Meeting of Nov 19th is not necessary should there be no other business issues to address? (City Ordinance § 150.138 (A) Subd 1-3) (State Statute § 15.99 Subd 2 (60 day time limit to act upon CUP Application))
- Tues. Nov 06** Confirm with Planning Commission that a Special Meeting has been set for 3:00pm Nov 13th and that CUP is on their agenda for the same
- Wed. Nov 08** Strata (Applicant) prepares list of all property owners and addresses within 350 feet of CUP property(s) according to the County Assessment Records. To be submitted to Zoning Administrator Nov 14th. (City Ordinance § 150.138 (A) Subd 2)
- Mon. Nov 12** Observance of Veterans Day (government offices closed)
- Tues. Nov 13** Planning Commission Special Meeting 3:00pm. Commission reviews CUP Application and proposed Findings of Fact for Planning Commission's consideration. Commission, per City Ordinance, calls for a Planning Commission Special Meeting 3:00pm (or later time) Wednesday, Dec 05, 2012 to conduct a Public Hearing on the CUP Application. Instructs staff to publish notice of Public Hearing in Nov 20th edition of Ortonville Independent (Nov 16th newspaper submission deadline). Also instructs staff to coordinate with Strata (Applicant) the required mailing of Public Hearing notice to all property owners within 350 feet of CUP property(s) according to the County Assessment Records a minimum of 10 days in advance of Public Hearing date. (City Ordinance §10.11 (B) and §150.138 (A) Subd 2 & 3) (State Statute § 462.357 Subd 3)
- Wed. Nov 14** Strata' (Applicant) submits to Zoning Administrator a list of all property owners and addresses within 350 feet of CUP property(s) according to the County Assessment Records. Strata (Applicant) reviews list with Zoning Administrator to insure it is complete and accurate. Strata (Applicant) coordinates with Zoning Administrator the detailed process used to conduct the actual mailing (who does what and when) (City Ordinance § 150.138 (A) Subd 2)
- Fri. Nov 16** 12:00pm Newspaper submission deadline. PC Staff submits notice of (Mining CUP) Public Hearing at PC's Special Meeting on Dec 5th to Ortonville Independent for publication in Nov. 20th edition.
- Tues. Nov 20** Notice of Dec 5th CUP Public Hearing published in Ortonville Independent (City Ordinance §10.11 (B) and §150.138 (A) Subd 2) (State Statute § 462.3595 Subd 2 referencing State Statute § 462.357 Subd 3 (10 day advance newspaper notice publication requirement))

Timeline

MINING CONDITIONAL USE PERMIT

Per City Ordinances § 150.029 (D) Subd 2, 150.048 (A)(B) & 150.138 (A)

- Wed. Nov 21** (Latest Date) Strata (Applicant) provides to Zoning Administrator for immediate mailing, Preadressed Mailing Envelopes containing notice of Dec. 5th CUP Public Hearing addressed to all property owners within 350 feet of CUP property(s). A copy of the notice and a list of the property owners and addresses shall be attested by the Zoning Administrator and made part of the official record. (City Ordinance § 150.138 (A) Subd 2) (State Statute § 462.357 Subd 3)
- Thur. Nov 22** Thanksgiving (government offices closed)
- Mon. Nov 26** Strata (Applicant) submits proposed Findings of Fact to Planning Commission Chair to insure mutual agreement that all relevant issues were addressed. Planning Commission Chair then reviews and distributes proposed Findings of Fact with other Commission Members prior to Dec 5th CUP Public Hearing (for Planning Commission's subsequent deliberation).
- Mon. Dec 03** City Council Regular Meeting 7:00pm. Council instructs City Clerk to place action of Planning Commission's forthcoming CUP recommendations on the Council's Dec. 17th Regular Meeting Agenda.
- Wed. Dec 05** Planning Commission Special Meeting 3:00pm (or later time). Planning Commission conducts Public Hearing on Strata's CUP Application; (1) Strata (Applicant) Presentation, (2) Q&A w/PC Members, (3) Allow Public Comment. (City Ordinance § 150.138 (A) Subd 3) (State Statute § 462.3595 Subd 2)
- Dec 06-12** Planning Commission Staff prepares Planning Commission's final Findings of Fact and CUP Recommendation Report for submission to City Clerk by Dec 12th for Council's Dec 17th Regular Meeting Agenda. (City Ordinance § 150.138 (A) Subd 6)
- Mon. Dec 10** Potential Planning Commission Special Meeting 3:00pm. (Should additional deliberations be found necessary from PC's Dec 05 Special Meeting – see above)
- Wed. Dec 12** Planning Commission Staff submits to City Clerk for inclusion in Council's Dec 17th Agenda and Information Packets; CUP Recommendation Report (including CUP App & Submittals), Planning Commission's final Findings of Fact, and new Findings of Fact for Council to consider.
- Mon. Dec 17** City Council Regular Meeting 7:00pm. Council deliberates Planning Commission's CUP Recommendation Report and Planning Commission's Findings of Fact. If approved, Council then adopts Findings of Fact (as their own if duplicate of PC's).
- Fri. Jan 04** Statutory 60 day deadline to act upon CUP Application
- Tues. Jan 07** City Council Regular Meeting 7:00pm. (No further action on CUP contemplated)

Timeline

ANNEXATION BY ORDINANCE per MN Statute §414.033

- Thur. Sept 27 Petitioner's file multiple Petitions for Annexation by Ordinance with City Clerk.
- Mon. Oct 01 **City Council Regular Meeting 7:00pm. Council considers whether to direct that a Public Hearing on Annexation Ordinances be held at a City Council Special Meeting 6:00pm Monday, Nov. 5th. If so, Council could place potential action (1st Reading) of Annexation Ordinance(s) on Council's Regular Meeting Agenda for 7:00pm Nov 5th. Council may also call for an additional City Council Special Meeting to be held (6:00pm or 7:00pm ?) Nov. 13th for potential action (2nd Reading) on multiple Annexation Ordinances.**
- If Council so moves, it would direct City Clerk to promptly complete the following as required by statute;
- A) Provide 30 day notice via Certified Mail (*per MN Statute § 414.033 Subd. 2(b)*) of Council's 6:00pm Nov 5th Special Meeting to conduct a Public Hearing on proposed Annexation Ordinance(s). Such Certified Mail Notice to be mailed to Ortonville Township Clerk (Attn: Twp Supervisors), all contiguous (adjoining) property owners and property owners within the area(s) to be annexed. (Note: Other Petitioners are also adjoining property owners, and as such must receive each Petitioner notice)
 - B) Provide written notice to all Petitioner's (*per MN Statute § 414.033 Subd. 13*) regarding potential changes in cost of electrical utility services
 - C) City Clerk to post proper notice of Council's 6:00pm Nov. 5th Special Meeting to conduct Public Hearing on Annexation Ordinance(s) per the requirements of *City Ordinance 32.02(B)* and also *MN Statute §13D.04 (formerly codified as SS §471.705)*
 - D) City Clerk to submit Notice of Council's 6:00pm Nov. 5th Special Meeting to conduct Public Hearing on Annexation Ordinance(s) be published in the Oct 23rd issue of the Ortonville Independent (Friday Oct 19th Newspaper submission deadline) (*State Statute § 462.357 Subd 3 (10 day advance newspaper notice publication requirement)*)
- Wed. Oct 03 Petitioners to submit draft Annexation Ordinance and Arguments Supporting Annexation to Council Members for their review and consideration.
- Mon. Oct 15 City Council Regular Meeting 7:00pm. (No Annexation related actions contemplated)
- Fri. Oct 19 **12:00pm Newspaper submission deadline** for City Clerk to submit Notice of (multiple Annexation Ordinances) Public Hearing to Ortonville Independent for publication in Oct 23rd edition
- Tues. Oct 23 **Notice** of Nov 5th Annexation Ordinance(s) Public Hearing published in Ortonville Independent. (*State Statute § 462.357 Subd 3*)
- Wed. Oct 31 City Clerk to confirm that Council's 6:00pm **Nov. 5th Special Meeting** to conduct a Public Hearing on multiple Annexation Ordinances, plus **potential action** (1st Reading) of multiple Annexation Ordinance(s) have been placed on Council's Nov. 5th Regular Meeting Agenda(s).

Timeline

ANNEXATION BY ORDINANCE per MN Statute §414.033

- Mon. Nov 05** City Council Special Meeting 6:00pm. (w/Mayor Pro Tem Mike Dorry presiding) Council conducts a Public Hearing on multiple Annexation Ordinance(s). Petitioner's in attendance.
- Mon. Nov 05** City Council Regular Meeting 7:00pm. (w/Mayor Pro Tem Mike Dorry presiding) Council deliberates on (draft) Annexation Ordinances. Council conducts 1st Reading of each individual Annexation Ordinance. If approved, Council President to direct City Clerk per City Charter to place potential action of 2nd Reading of multiple Annexation Ordinances on Council's Nov. 12th Special Meeting Agenda. (2nd Reading is required per *City Charter Section 2.12*) Petitioner's in attendance.
- Mon. Nov 12** Observance of Veterans Day (government offices closed)
- Tues. Nov 13** City Council Special Meeting (6:00pm or 7:00pm ?). (w/Mayor Pro Tem Mike Dorry presiding) Council conducts and deliberates on 2nd Reading of each individual Annexation Ordinance. If approved, Council orders each individual Annexation Ordinance to be published in Nov 20th edition of Ortonville Independent per *City Charter Sec. 2.16*. Petitioner's in attendance.
- Wed. Nov 14** (A.S.A.P) As required by statute, City prepares and submits "Annexation Information Report" (form AIR) to MN Dept of Revenue
- A) **Map & Description:** All Annexation Ordinances must be accompanied by a map showing the City's Boundary and the land being annexed (*MN Statute §414.012 Subd. 1*). Legal descriptions of the annexation area(s) being annexed and a copy of the Plat must also be included (*MN Statute §414.012 Subd. 2*).
 - B) **Filing:** All Annexation Ordinances must be filed with the Chief Administrative Law Judge (MBA), the township, the county auditor, and secretary of state (*MN Statute §414.033 Subd. 7*).
 - C) **Election Precinct Boundaries:** City Clerk required to notify County Auditor and Secretary of State regarding the affect annexations will have on election precinct boundaries (*MN Statute §204B.14 Subd. 4(a) & 5*).
- Fri. Nov 16** 12:00pm Newspaper submission deadline. If directed by City Council, City Clerk submits multiple Annexation Ordinances to Ortonville Independent for publication in Nov. 20th edition.
- Mon. Nov 19** City Council Regular Meeting 7:00pm. (No Annexation related actions contemplated)
- Tues. Nov 20** (If approved) All individual Annexation Ordinances published in Ortonville Independent. (per *City Charter 2.16*).
- Mon. Dec 3** City Council Regular Meeting 7:00pm. (No Annexation related actions contemplated)
- Fri. Dec 7** (If approved) Deadline for City Clerk to submit Annexation Ordinances to Municipal Boundary Adjustment (MBA) for review and approval

Timeline

ANNEXATION BY ORDINANCE per MN Statute §414.033

Tues. Dec 11 12:00pm Municipal Boundary Adjustment (MBA) Regular Meeting. MBA to review multiple Annexation Ordinances. After MBA approves and Annexation Ordinances are effective, City Clerk is required by statute to immediately deliver to Big Stone County Auditor a copy of all Annexation Ordinances (*MN Statute § 414.033 Subd. 7*)