

## NOTICE FOR PUBLIC HEARING

A public hearing as required by the General Code of Ordinances for Marathon County Chapter 17 Zoning Code will be held by the **Marathon County Board of Adjustment at 9:00 a.m., Thursday, July 27, 2023**, at 500 Forest Street, Wausau WI 54403.

Persons wishing to attend the meeting by phone may call into the telephone conference beginning fifteen (15) minutes prior to the start time indicated above using the following number: Phone

Number: 1-408-418-9388

Access Code/Meeting Number: 2482 290 3069

**PLEASE NOTE: If you are prompted to provide an “Attendee Identification Number” enter the # sign. No other number is required to participate in the telephone conference.**

When you enter the telephone conference, **PLEASE PUT YOUR PHONE ON MUTE!**

1. Approval of the May 25, 2023 minutes.
2. \*The application of Morgan Sand and Gravel LLC. for a conditional use permit per 17.204.54 “Nonmetallic Mining” of the General Code of Ordinances for Marathon County Chapter 17 Zoning Code, for the purpose of mine boundary expansion and continued operation of an existing permitted nonmetallic mining operation (Reclamation Permit#: r06007) on properties currently owned by Rib River Land Co LLC. The properties are located in the G-A General Agricultural district, on parcels described as W ½, SE ¼ Section 27, T29N, 5E Town of Rib Falls, further described as PIN# 066.2905.274.0997, 006.2905.274.0998.

\*For agenda item #2, an opportunity will also be provided to give testimony on reclamation related matters as required by Chapter 21, Nonmetallic Mining Reclamation Code. Plans and specifications may be viewed at the Conservation Planning and Zoning Department, 210 River Drive, Wausau during regular business hours (8:00 AM to 4:30 PM –Monday – Friday). Please call 715-261-6000 with questions about the project or to make an appointment to view or discuss the reclamation plans.

3. WDNR Shoreland Variance Participation - Action Required
4. Board Reappointments
5. Board Education as needed.
6. Announcements and Requests
7. Adjourn

All interested persons will be provided the opportunity to provide testimony at the public hearing. Those planning to attend this meeting who need some type of special accommodation in order to participate should call the County Clerk’s Office at 715-261-1500. Please call at least one business day in advance of the meeting.

In the event you are unable to attend the public hearing and wish to provide written testimony, please contact the Conservation, Planning and Zoning Department at 715-261-6000 for assistance.

Pat Schreiner, Chairman  
Board of Adjustment



Laurie Miskimins, Director  
Conservation Planning and Zoning Department

**Publish: July 10<sup>th</sup> and July 17, 2023**

E-mailed to Wausau Daily Herald on July 6, 2023, at 11:00 a.m./nd

**APPLICATION FOR CONDITIONAL USE PERMIT**  
**MARATHON COUNTY BOARD OF ADJUSTMENT**

The applicant hereby requests the Board of Adjustment to hear and decide upon this application as prescribed by Section 17.803 of the Marathon County Zoning Ordinance. **Use a separate sheet if necessary.**

Name of Applicant: Morgan Sand and Gravel, LLC  
Mailing Address: 228975 Granite Falls Trail, Marathon, WI 54448  
Telephone: 715-443-2796 Fax: 715-443-3455  
Cellphone: \_\_\_\_\_ Email: gstleber@morganreadymix.com  
Owner Name: (if different) Rib River Land Co., LLC  
Mailing Address: 228975 Granite Falls Trail, Marathon, WI 54448  
Telephone: 715-443-2796 Fax: 715-443-3455

066

**PARCEL INFORMATION**

Parcel ID # (PIN): 066-2905-274-0997 & ~~066~~-2905-274-0998  
(If more than one parcel is included in this application, list all parcel numbers & legal descriptions on a separate sheet.)

Legal Description: Government Lot \_\_\_\_\_ or W1/2 \_\_\_\_\_ SE 1/4  
Section 27, T 29 N, R 5 E, Town of Rib Falls  
Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision \_\_\_\_\_  
Property Address: Diamond Falls Trail  
Parcel size: Addition of 5.7 acres Acres or \_\_\_\_\_ Sq. Ft.  
Zoning District: General Ag, A-G

**Present use of property** (List all current uses, i.e. home, store, farm field, wooded, etc.):  
Current use of property is a permitted nonmetallic mine. Areas within the permitted area that are not actively mined are used for agricultural purposes.

**Existing improvements** (Structures, well, septic, etc.):  
No improvements have been made for existing mining operations.

**PROPOSAL**

Describe **specifically** the nature of this request (be sure to **list all proposed uses** of the parcel). What do you plan to do?  
The current mining permit for these two properties is for phase 1 and phase 2. The proposed revision would be to add phase 3 (5.7 acres) to the permit. The area will be reclaimed with vertical walls and a safety ledge if hard rock is encountered, if residuum is present the area will be reclaimed at minimum 3:1 sideslopes. The excavation will result in a pond to be used for recreational and wildlife purposes.

If this application is for a use that will be restricted to part of the parcel, specify the **exact dimensions** of the affected area.  
Please see attached project maps for layout of the nonmetallic mine site.

**Provide the following information if this box is checked**

Proposal has additional development standards in Section 17.204.54. Explain how your proposal meets or exceeds these requirements.

See attached Information

Use separate/additional sheet(s) if necessary

RECEIVED

MAY 08 2023

MARATHON CO. CONSERVATION,  
PLANNING & ZONING DEPT.

## INSTRUCTIONS TO APPLICANT

1. Be sure to complete **all items** on the application. This includes a **brief, but complete explanation** of the current use and proposed new use.
2. Prepare a **map at a scale which is reproducible** (11" x 17" or smaller). For maps larger than 11" x 17", be prepared to provide as many copies as needed for transmittal. In no instance may the scale of the map be less than 1 inch equals 200 feet. There are instances where a cross-section of the property or contours will be helpful, and in some cases one or both may be required. Narrative or photos may be included as supporting documentation.

**At a minimum the map must include:**

- The location, dimensions, and parcel identification number of the lot or lots including a legal description.
- Location of any and all nearby public and private streets.
- Dimensions of the lot and the location of all existing and proposed buildings or structures, and location of existing or proposed private onsite wastewater treatment (septic) system.
- Required front, rear, and side yard areas, open space, and parking.
- On residential parcels, the number of dwelling units contained within each building and proposed number of bedrooms.
- Location and dimensions of all buildings or structures to be erected, structurally altered, or moved.
- Wetlands and floodplains
- Screening/Buffers
- Lighting
- Parking

3. **Include the \$600 fee** when you submit the application. Please make checks payable to Marathon County.

**We cannot consider an application complete until the following are submitted to this office:**

<i>Check if submitted</i>	<i>Initial of staff</i>	
<input checked="" type="checkbox"/>	SH	Completed application including signatures.
<input checked="" type="checkbox"/>	SH	Map with all required information.
<input checked="" type="checkbox"/>	SH	Additional documents, as needed (lot combination forms, hunting/fishing shelter application, etc.)
<input checked="" type="checkbox"/>	SH	Zoning Permit application
<input checked="" type="checkbox"/>	SH	Fee

Please contact the Marathon County Conservation, Planning and Zoning Department with any questions: 715-261-6000.

**IMPORTANT:** The applicant or authorized representative **must be present at the hearing** or Board **may deny** the application without prejudice.

<p style="font-size: 1.5em; font-family: cursive;">Gordon Stieber</p> <hr/> <p>Owner Signature (required)</p>	<p style="font-size: 1.5em; font-family: cursive;">4/7/2023</p> <hr/> <p>Date</p>
<p style="font-size: 1.5em; font-family: cursive;">Gordon Stieber</p> <hr/> <p>Agent / Person responsible for work Signature (required)</p>	<p style="font-size: 1.5em; font-family: cursive;">4/7/2023</p> <hr/> <p>Date</p>

Conditional Use Permits expire six (6) months from the latest date of signature on the approval letter signed by Chairman and the Secretary of the Board of Adjustment if the proposed construction or preparation of land for use has not commenced. The Zoning Administrator may grant an extension for up to six (6) months upon show of valid cause.

<p><u>Return to:</u> Board of Adjustment Marathon County CPZ Department 210 River Drive Wausau, WI 54403-5449</p>	<p>Telephone: 715-261-6000 Toll free within Marathon County: 1-800-236-0153 Facsimile: 715-261-6016</p>
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<p><b>For office use</b></p> <p>Amount Received: \$ <u>600.00</u></p>	<p><b>For office use</b></p> <p>Date Stamp: <b>RECEIVED</b> <b>MAY 08 2023</b></p>	<p><b>For office use</b></p> <p><b>MARATHON CO. CONSERVATION, PLANNING &amp; ZONING DEPT.</b></p>
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Parcel ID #(s):  
 \_\_\_\_\_  
 \_\_\_\_\_  
 006-2905-274-0997 & 006-2905-274-0998

Permit #: \_\_\_\_\_

**NONMETALLIC MINING RECLAMATION  
 PERMIT MODIFICATION**

1. Morgan Sand and Gravel, Inc. - Gordon Stieber  
 (Name of Applicant)  
228975 Granite Falls Trail  
 (Street Address)  
Marathon, WI 54448  
 (City, State, Zip)  
(715) 443-2796  
 (Telephone Number)

2. Rib River Lane Co., LLC  
 (Name of Owner)  
228975 Granite Falls Trail  
 (Street Address)  
Marathon, WI 54448  
 (City, State, Zip)  
(715) 443-2796  
 (Telephone Number)

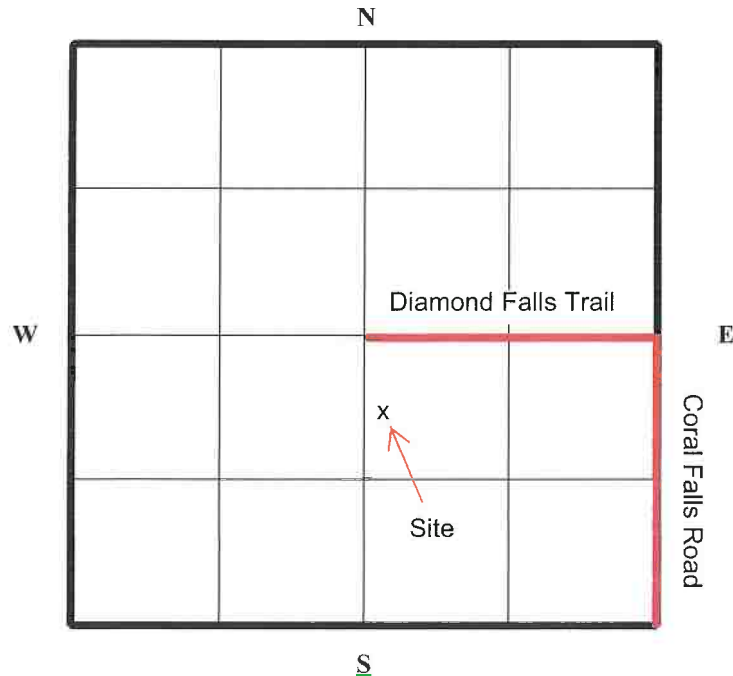
3.

**Legal description** of the site: W1/2, SE1/4, Sec.27, T.29N-R.5E.  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. **Total area to be affected** by this project. Include areas for stockpiling, processing, conservation practices, and any roads to be reclaimed:

**Addition of 5.7** sq. ft. / acres (circle one)  
 30.7 acres total with all 3 phases

5. **General Location Map** - (Draw the location of the site on the Section Map below. Include roads and any other pertinent information).



6. **A Description of how the modifications differ from the original reclamation plan.**  
 The extent of the modifications include expansion of the permitted area to the south, phase 3. No proposed changes to the reclamation strategy or uses are proposed.  


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7. **Detailed description of the proposed reclamation plan modification.**  
 The previous reclamation plan will now incorporate an additional area approximately 5.7 acres in size south of the original quarry. No proposed changes to the reclamation strategy or uses are proposed.  


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8. **Describe proposed earthwork necessary for site reclamation including final slope angles, high wall reduction, benching, terracing, berms, and other slope stabilization measures.**  
 If soft rock is present sideslopes will be reclaimed to 3:1 or flatter to a minimum of 6 feet below water elevation. Sideslopes will be topsoiled, seeded and mulched as needed. If hard rock is present vertical walls and safety ledges will be used. A fence with "Caution" signs will be constructed along areas with vertical walls and safety ledges.  


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9. **Describe how the long-term safety of the reclaimed mining site will be addressed. Include any site-specific measures that will be necessary to address public safety regarding adjacent land uses.**  
 The access road will not be removed after reclamation is complete. The road is to be a minimum of 10:1 or flatter to the pit bottom. The 3:1 sideslopes will extend to a minimum of 6 feet below the water elevation. If vertical walls are used, adjacent berms will be left in place and a safety ledge constructed as shown in the reclamation plan. A 4' - 4 wire barb wire fence with "Caution" signs will also be constructed along reclaimed areas that utilize vertical walls.  


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10. **Description of anticipated topography, water impoundments, artificial lakes, created wetlands and other site features.**  
 The resulting pond will be up to approximately 22 acres with 3:1 sideslopes if possible to near vertical walls with a safety ledge. Earth berms will be used to topsoil sideslopes. If vertical walls and safety ledge is used, the adjacent earth berms will remain and an adjacent fence constructed.  


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11. **Description of the proposed post mine land use.**  
 The resulting pond will be used for wildlife and recreational purposes.  


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12. **Description of plans for disposition of manmade features that are not part of the post mine land use after completion of mining.**  
 After mining is complete all machinery associated with mining will be removed. No manmade features are proposed.  


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13. Describe or attach a **copy of a seeding plan** which shall include methods of seed bed preparation, seed mix seeding rates, mulching, netting, and/or other techniques needed to accomplish soil and slope stabilization.  
Seeding mix consists of DOT mix 20; Kentucky Bluegrass, Hard Fescue, Tal Fescue, and Perennial Ryegrass. See attached "Seeding Mixture" for specific rates and site preparation.

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14. Description of the **quantifiable standard** that will be used to determine successful establishment of vegetation on reclaimed areas.

A minimum of 5-1.0 square meter quadrats will be evaluated throughout the site to determine if a minimum 70% vegetative cover is present. If a minimum of 70% vegetative cover is present, and verified by Marathon County Zoning, this standard will be met.

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15. The following drawings or documents must be attached to this application. All maps must be drawn at a scale of no less than one (1) inch equals two hundred (200) feet:

- A. An estimate of the cost of site reclamation and the methodology used to calculate the estimate.
- B. One paper copy of a map(s) of the site as it presently exists. The map(s) shall include:
  - 1) Property boundaries and the location of all man-made features on or within 300 feet of the site and, to the best of the applicant's knowledge, the purpose for which each man-made feature and the adjoining land is used.
  - 2) Contours of the affected land at intervals no larger than ten (10) feet.
  - 3) The location and names of all streams, other water features and the existing drainage patterns on or within three hundred (300) feet of the site.
  - 4) Boundaries of previous excavations on the site, and the location and description of boundary stakes for the proposed site. The stakes shall be referenced to a permanent reference point. The area staked shall include all stockpiling and storage areas.
  - 5) The areal extent of the mineral deposits which will be mined on the site.
- C. One paper copy of a reclaimed site plan which shall include the following:
  - 1) A plan view showing final slope angles, high wall reduction, benching, terracing, other stabilization measures, fencing, safety measures and water impoundments at contour intervals of no larger than ten (10) feet.
  - 2) Cross-sectional drawings of any water impoundments, high wall reductions, benching or terracing, or other conservation practices.
  - 3) The erosion control measures to be employed during reclamation.
- D. One digital copy of all application materials.

Fee enclosed \$ 250

See the current Non-Metallic Mining fee schedule or contact the Conservation, Planning, and Zoning Department

To the best of my knowledge, I certify that the information provided on this application and accompanying documents are **true and accurate**.

I certify that the areas identified within the permit that are impacted by mining activities will be **reclaimed as specified in the approved permit** for the site.

I understand that submitting this application **authorizes the department administrator or his/her designee to enter onto the property** for the purposes outlined in the Nonmetallic Mining Reclamation Ordinance.

*Gordon Stieber*

Applicant's signature

*4/7/2023*

Date

Landowner Certification if landowner is **different** than applicant:

I certify that I concur with the reclamation plan authorized by this permit and will allow it to be implemented.

*Gordon Stieber*

Landowner's Signature

*4/7/2023*

Date

Pursuant to §21.301.03(b) of the Nonmetallic Mining Reclamation Ordinance, the Department may require the submittal of such other information as may be necessary to determine the feasibility of the nonmetallic mining reclamation.

Permit decisions shall be made by the Department no sooner than thirty (30) days nor later than sixty (60) days of receipt of a complete application, unless a public hearing is required under 21.301.06(B) of the Nonmetallic Mining Reclamation Ordinance, in which case a permit decision shall be made no later than 30 days following the hearing. An accelerated procedure for application review is available by appointment and shall be accompanied with a double fee. Bonds will be set at the time of permit issuance.

Failure of the applicant to notify the Department within five (5) workdays of the receipt of a permit granted by the Department will constitute an acceptance of the permit and all conditions and amendments to the application and plans.

Permit decisions or administration decisions may be appealed pursuant to 21.301.07(E) of the Nonmetallic Mine Reclamation Code.

**UPDATED NONMETALLIC MINE PERMIT  
ON THE  
MORGAN SAND AND GRAVEL, LLC THURS QUARRY**

**TOWN OF RIB FALLS  
MARATHON COUNTY,  
WISCONSIN**

**Prepared for:**

**Mr. Gordon Stieber  
228975 Granite Falls Trail  
Marathon, WI 54448**

**April 6, 2023**

**Prepared By:**

**BRIAN CAMLEK  
WATER RESOURCE SPECIALIST  
WDNR PROFESSIONALLY ASSURED WETLAND DELINEATOR  
STAR ENVIRONMENTAL, INC.  
(715) 443-6115  
bcamlek.starenvironmental@hotmail.com**



**UPDATED NONMETALLIC MINE PERMIT  
ON THE  
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**TOWN OF RIB FALLS  
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WDNR PROFESSIONALLY ASSURED WETLAND DELINEATOR  
STAR ENVIRONMENTAL, INC.  
(715) 443-6115  
bcamlek.starenvironmental@hotmail.com**

**UPDATED NONMETALLIC MINE PERMIT  
ON THE  
MORGAN SAND AND GRAVEL, LLC THURS QUARRY**

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# UPDATED NONMETALLIC MINE PERMIT ON THE MORGAN SAND AND GRAVEL, LLC THURS QUARRY

## Introduction

This Quarry was originally permitted in 2007 by Marathon County Zoning, mining has been taking place since and is anticipated to continue through 2037. Marathon County has requested this report to reflect current and proposed extent of mining. Phase 3, an addition of 5.7 acres to the permitted area, being proposed, for a total permitted area of 30.7 acres.

## Modifications/Safety Features

The quarry will be reclaimed with vertical walls around its perimeter. The "Pit Access Road" will remain after mining is complete with a minimum of 10:1 or flatter to the quarry bottom of easy entrance/exit of the excavation.

After mining is complete, stockpiled subsoil and topsoil material will be used to reshape the pit walls to a minimum of 3:1 or flatter sideslopes to the pit bottom if residuum is present. If solid rock is present, vertical walls with a safety ledge will be utilized. The adjacent berm would remain and a 4' – 4 wire barb wire fence installed with "Caution" signs every 100 feet.

## Final Reclamation

Reclamation will include installing safety features as outlined in Attachment 1, Figure 4 and vertical walls constructed in accordance with NR 135.10. Sloped areas will be 3:1 or flatter to a minimum of 6' below water elevation then topsoiled and seeded. A minimum of 70% vegetative cover will be established. After Marathon County Zoning has verified these requirements are met, the site will be considered reclaimed.

## **ATTACHMENT 1**

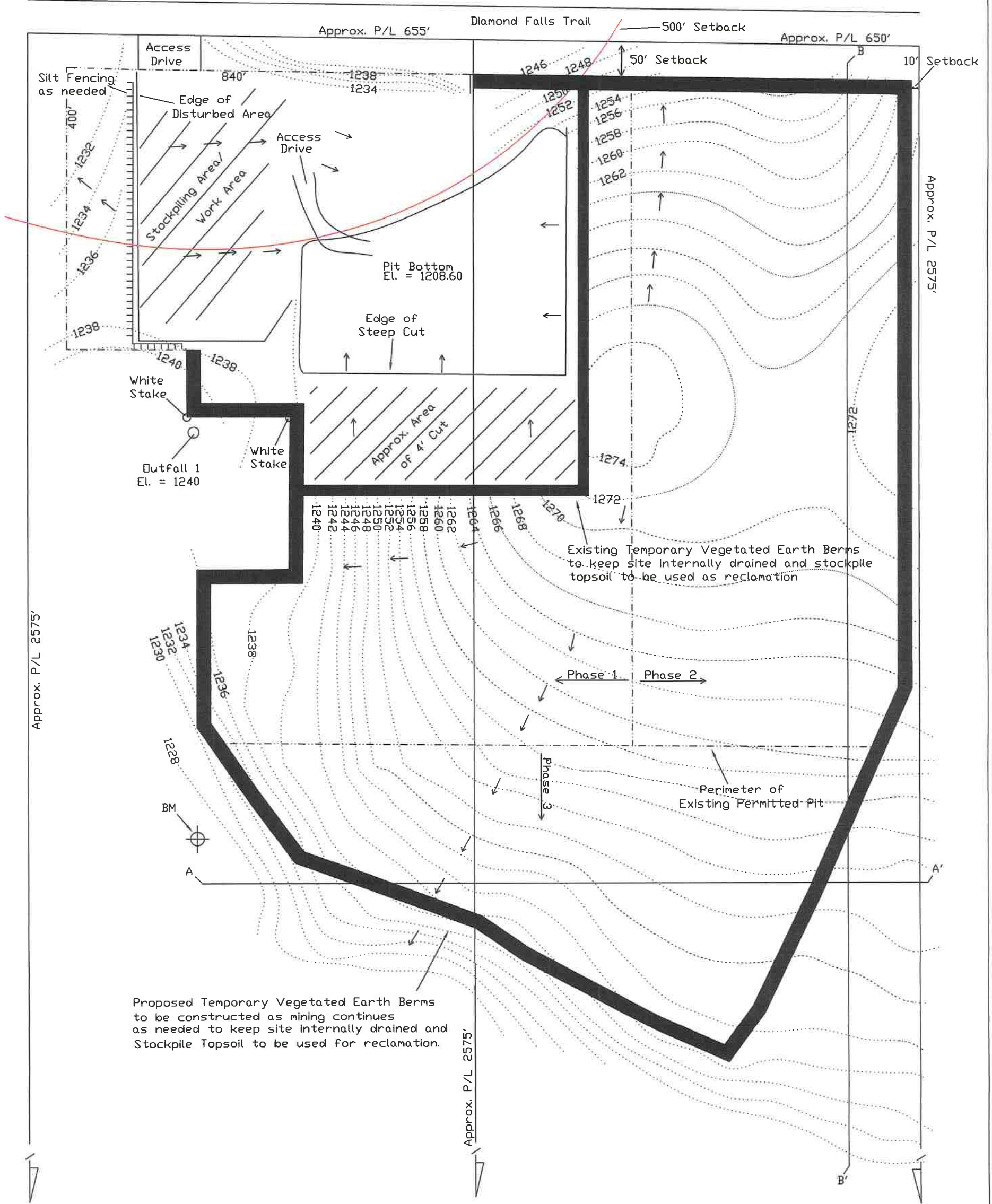
### **PROJECT SITE MAPS**

Figure 1: Existing Site Map

Figure 2: Proposed Site Map

Figure 3: NMM Cross Sections

Figure 4: Typical Surrounding Safety Features



Proposed Temporary Vegetated Earth Berms to be constructed as mining continues as needed to keep site internally drained and Stockpile Topsoil to be used for reclamation.

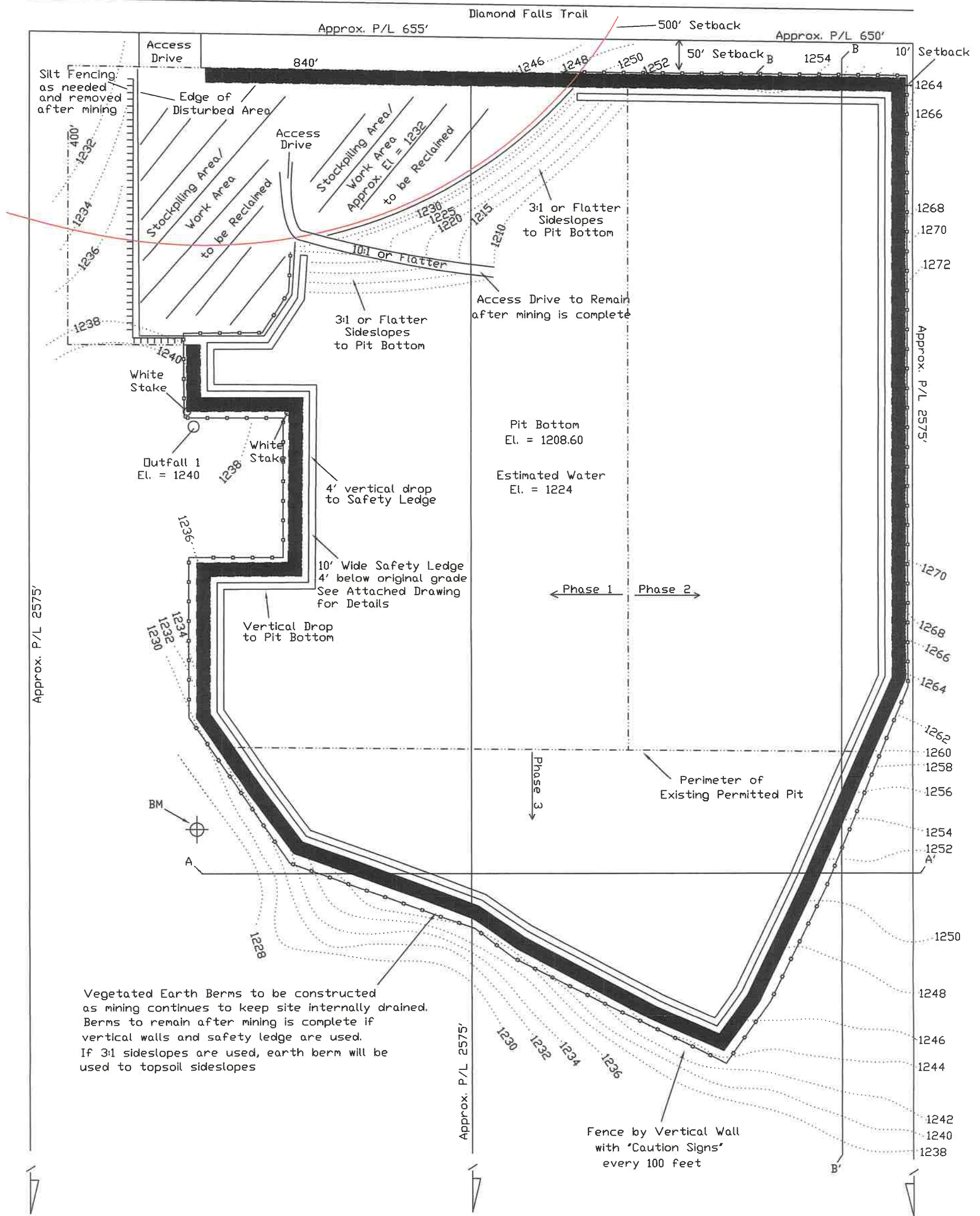
Existing Temporary Vegetated Earth Berms to keep site internally drained and stockpile topsoil to be used as reclamation

Scale 1" = 150'  
 Unless Noted  
 This is not a certified survey map

- Legend:
- Perimeter of Existing Permitted Pit
  - BM Top of Spike in Maple Tree El. = 1218.25
  - Existing Surface Water Flow



Note: The Plot Plan shows the maximum extent of vertical walls and safety ledges. If soft rock is present 3:1 sideslopes will be utilized



Scale 1" = 150'  
 Unless Noted

This is not a certified survey map

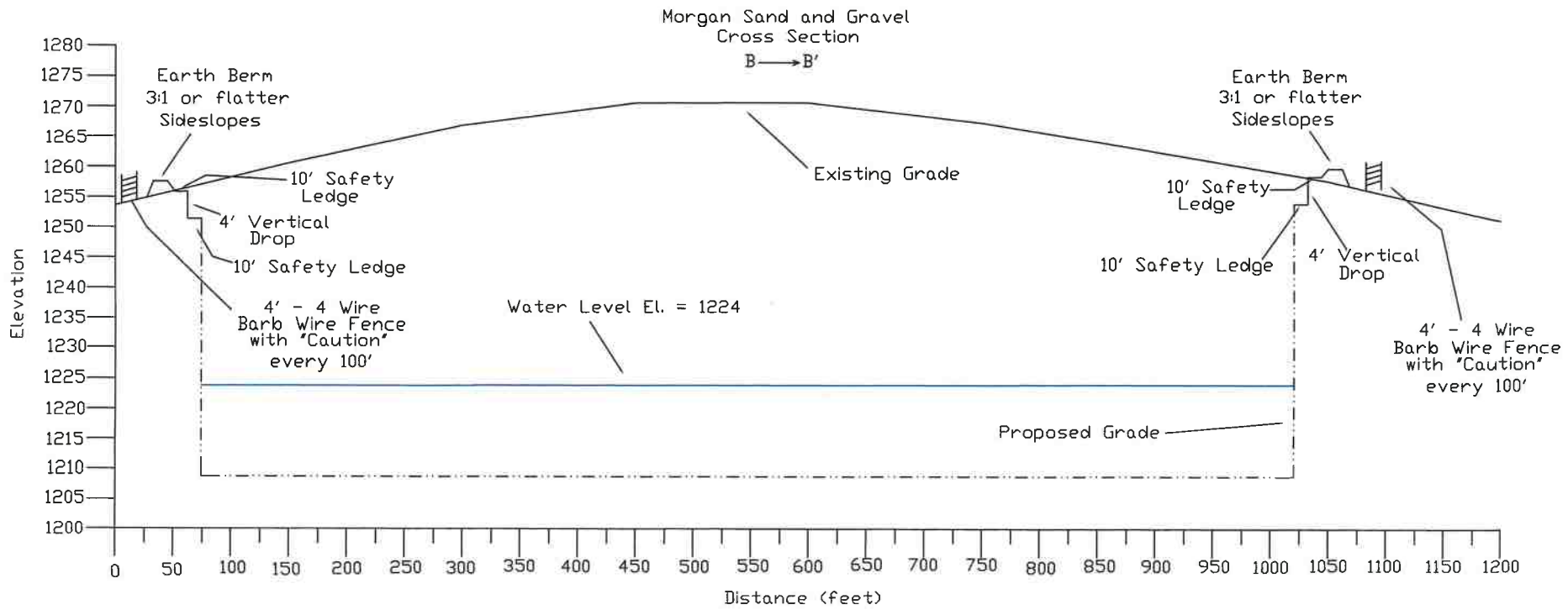
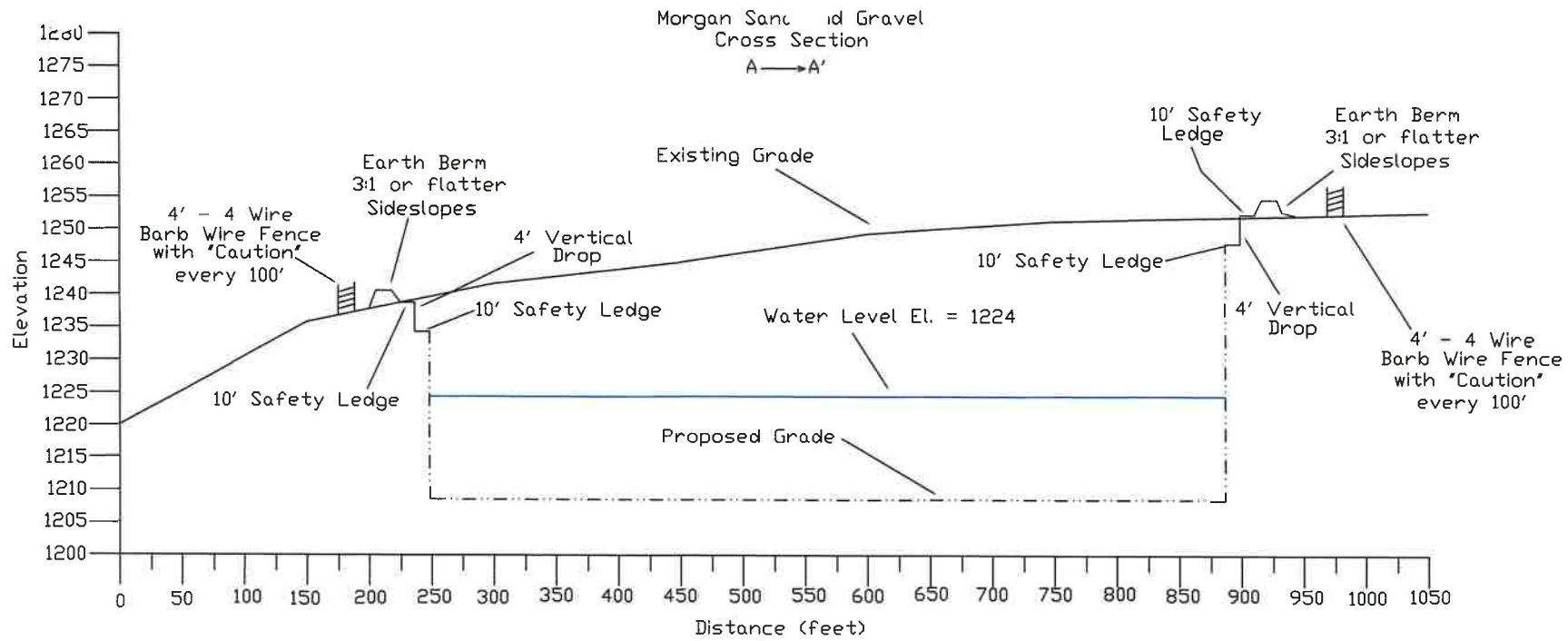
Legend:

--- Perimeter of Existing Permitted Pit



BM Top of Spike in Maple Tree  
 El. = 1218.25





# Example of Typical Vertical Wall and Safety Ledge Drawing

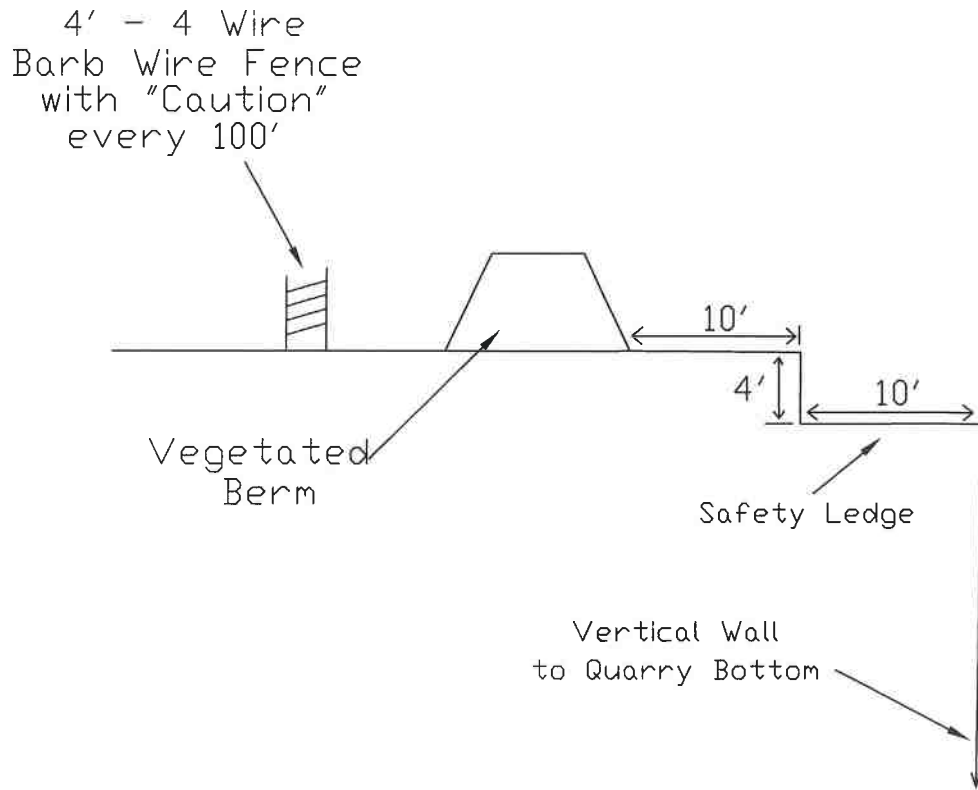


Figure 4



**ATTACHMENT 2**  
**FINANCIAL ASSURANCE**

**Phase 3**  
**Required Summary**  
**for**  
**Calculating a Proposed Financial Assurance**

<b>ITEM:</b> (see: Attachment C for description of items, Attachment D for DNR sample costs, Attachment E for description of assurance types.)	<b>UNITS<sup>1</sup></b>	<b>\$/UNIT</b>	<b>AMOUNT</b>
<input checked="" type="checkbox"/> Grading and regrading <input checked="" type="checkbox"/> Activities necessary to ensure soil and slope stabilization  Erosion control materials  Equipment and labor	5.7 acres	\$1,950/acre	\$11,115.00
<input type="checkbox"/> Scarification of subsoil or underlying materials prior to topsoil redistribution			
<input type="checkbox"/> Cost of obtaining or creating substitute topsoil material (if necessary) <input checked="" type="checkbox"/> Topsoil redistribution <input checked="" type="checkbox"/> Application of lime and /or fertilizer according to plan or test  Materials  Equipment and labor	5.7 acres	\$550/acre	\$3,135.00
<input checked="" type="checkbox"/> Revegetation: Seeding/Transplanting  Materials including cost of seed and Mulch  Equipment and labor	5.7 acres	\$260/acre	\$1,482.00
<input type="checkbox"/> Mulching, netting or other stabilizing techniques  Materials  Equipment and labor			
<input type="checkbox"/> Site maintenance costs up until time of final inspection and/or recovery of financial assurance.			
<b>TOTAL</b> .....			\$15,732.00 or

Note: Reclamation Estimates derived from previously approved Plan

\$2,760/acre for  
5.7 acres

*Attach additional sheets as necessary.*

<sup>1</sup> Examples: for materials, the quantity of a given material. For equipment or labor, number of machine-hours or person-hours.

**ATTACHMENT 3**  
**SEEDING MIXTURE**

**USDA-NRCS**  
**ESTABLISHING AND MAINTAINING VEGETATION**

1. **Make Plans for Seeding after Construction!** Seed within 24 hours after construction. If construction finishes after September 1 make a temporary seeding of Annual rye, or a dormant seeding. If a temporary seeding is done, plan to reseed in early spring. Where possible and practical, divert runoff until vegetation is established. Use soil retention blankets, jute matting, or sod in critical areas where water concentrates.
2. **Obtain Needed Materials!** Test soil. Secure lime, fertilizer, seed, seed inoculation and mulching materials before construction starts.
  - a. **Lime.** If needed, apply lime at the rate of  3  tons per acre.
  - b. **Fertilizer.** In lieu of a soil test, apply 400-600 pounds per acre of 20-10-10.
  - c. **Seed.** Always check the label and seed in pure live seed rates.
  - d. **Mulch Materials.** Mulch with 1/ 1/2 tons/acre of straw or hay reasonably free from grain and weed seed, or strawy manure at the rate of 6-8 T/A may be used.

<b>SEED RATES PER ACRE AND SEED NEEDED IN POUNDS</b>					
Mix # <u>Dot 20</u>	Location: Grading and Berms		Mix # _____	Location:	
	Acres: <u>---5.7---</u>			Acres:	
(From Critical Area Planting Mixtures-342)	<b>Rate per acre</b>	<b># Seed Needed</b>	(From Critical Area Planting Mixtures-342)	<b>Rate per acre</b>	<b># Seed Needed</b>
<b>SPECIES</b>			<b>SPECIES</b>		
Kentucky Bluegrass	7.8 lbs	45			
Hard Fescue	31.36lbs	179			
Tall Fescuu	52.27lbs	298			
Perennial Ryegrass	49.66 lbs	284			

3. **Prepare the Seedbed!** THE SUCCESS OF THIS SEEDING DEPENDS ON THE PROPER SEEDBED. With a disk or harrow, work the soil to a 3-inch depth. On small areas, handwork may be necessary.
4. **Mulch Properly!** Spread mulch uniformly. 1 1/2 T/A is 60 bales per acre or 6-7 stems thick. Anchor mulch be pressing into the soil with a dull, weighted disc set straight or other approved methods. Work waterways crosswise when possible.
5. **Seed!** Inoculate birdsfoot trefoil and crownvetch properly. Seed shallow at 1/4 to 1/2 inch deep immediately after seedbed preparation. A cultipacker seeder works well. A hydro-seeder or hand seeder can be used.
6. **Maintain Properly!** Control weeds and undesirable woody vegetation. Delay mowing until after July 15 to accommodate ground-nesting wildlife. If pastured, always regulate grazing. Where grasses alone are used, an occasional application of fertilizer, high in nitrogen helps to maintain the stand.

ADDITIONAL COMMENTS:

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Thurs Quarry
Owner
Marathon
County
<u>Designed: Brian Camlek</u> Water Resource Specialist

**ATTACHMENT 4**

**RESUME'**

Résumé' of Qualifications  
**Brian Camlek,**  
**WDNR Professionally Assured Wetland Delineator,**  
**Licensed Designer of Engineering Systems**  
**CST, POWTS Inspector**  
Water Resource Specialist, Star Environmental, Inc.  
705 Third Street, P.O. Box 434  
Marathon, WI 54448  
Telephone: 715-443-6115, Cell: 715-630-4401  
Email: bcamlek.starenvironmental@hotmail.com

**Experience: Star Environmental, Inc., Water Resource Specialist**

Professional Experiences in Wetland Delineations, Wetland Mitigation Banks, Non-Metallic Mine Reclamation Plans, Pond Development Plans, Stormwater Pollution Prevention Plans, Soil and Site Evaluations for Septic Systems and Stormwater, Septic System Designs, Septic System and Well Inspections.

**Dade Moeller, Inc., Environmental Scientist**

Sampled Soil, Water, Vegetation and Aquatic Organism while conducting extensive QA/QC of data collected during offshore operations in the Gulf of Mexico in response to the BP Deepwater Horizon Oil Spill of 2010.

**Water and Environmental Analysis Laboratory, UWSP, Environmental Lab Technician**

Analyzed and interpreted water samples for Nitrates, Nitrites, Chloride, Fluoride, Bacteria, Total Hardness, Alkalinity, pH, Turbidity, Biological Oxygen Demand, Chemical Oxygen Demand.

**Education: B.S.-Water Resources and Soil Science, May 2010 University of Wisconsin-Stevens Point**

WDNR Basic and Advanced Wetland Delineation Training Workshops

WDNR Critical Methods in Wetland Delineation Workshop

Completion of UW-La Crosse Grasses, Sedge & Rushes Workshop

Certified Environmental Inspector - Commonground University ASTM E1527-13 Phase 1 ESA

Completion of UW-Madison-WinSLAMM v.10.2 Meeting Urban Stormwater Management

Completion of Trenching & Excavating Competent Person Awareness Training

**Qualifications: WDNR Professionally Assured Wetland Delineator**

Licensed Designer of Engineering Systems

Certified Environmental Inspector, Environmental Assessment Association

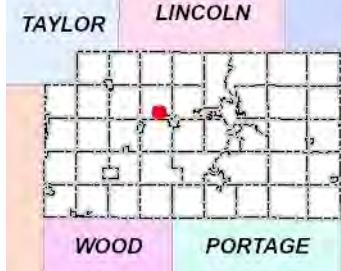
Certified Soil Tester, State of Wisconsin

Certified POWTS Inspector, State of Wisconsin

Licensed Pump Installer, State of Wisconsin



# Land Information Mapping System



- Legend**
- Road Names
  - Parcels
  - Parcel Lot Lines
  - Land Hooks
  - Section Lines/Numbers
  - Right Of Ways
  - Named Places
  - Municipalities
  - 2020 Orthos Countywide
    - Red: Band\_1
    - Green: Band\_2
    - Blue: Band\_3

342.65 0 342.65 Feet



NAD\_1983\_HARN\_WISCRS\_Marathon\_County\_Feet

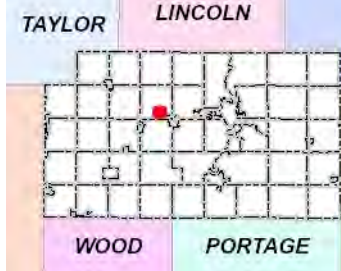
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**THIS MAP IS NOT TO BE USED FOR NAVIGATION**

**Notes**



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342.58 0 342.58 Feet



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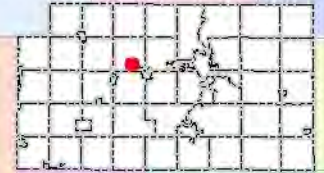




# Land Information Mapping System

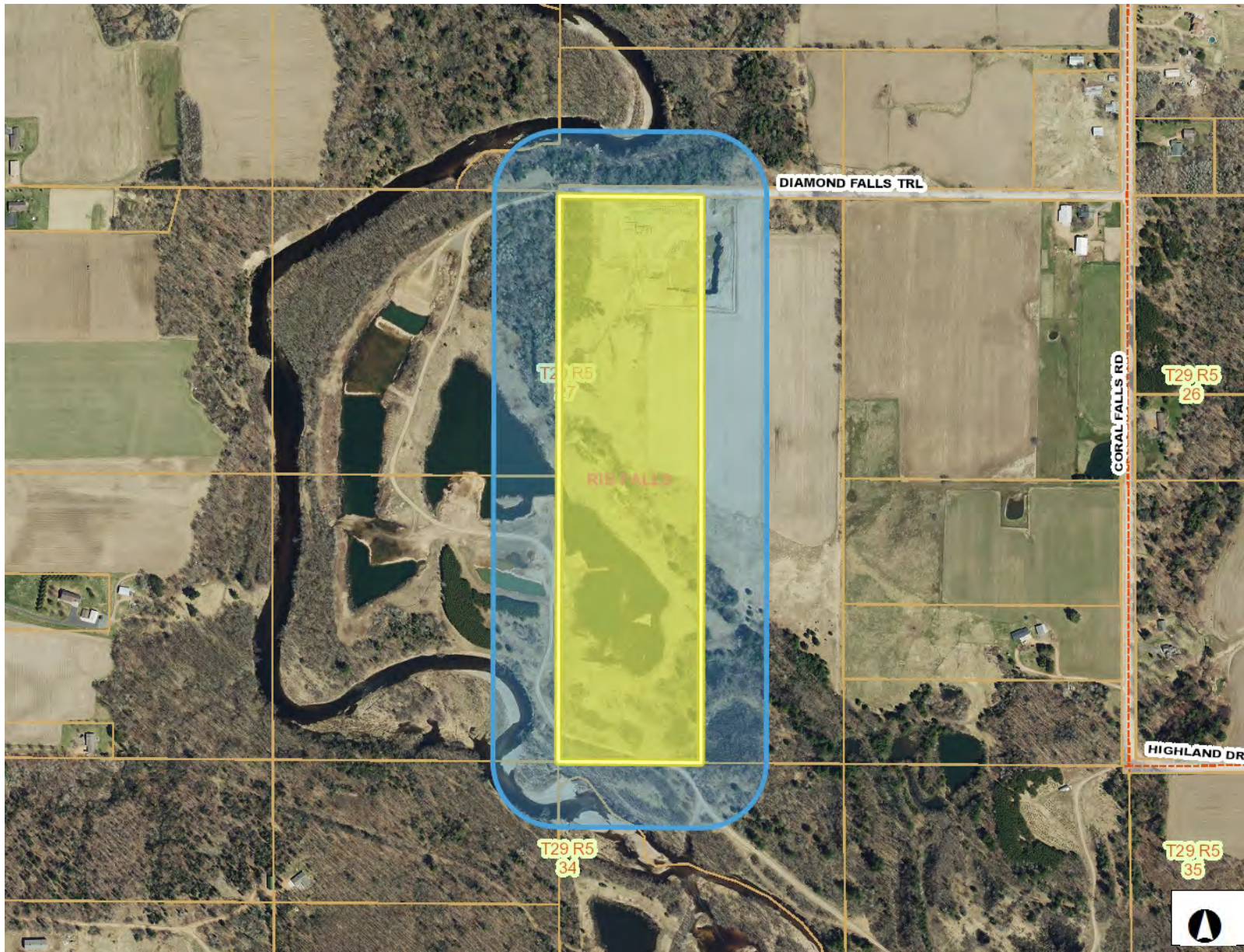
TAYLOR

LINCOLN



WOOD

PORTAGE



## Legend

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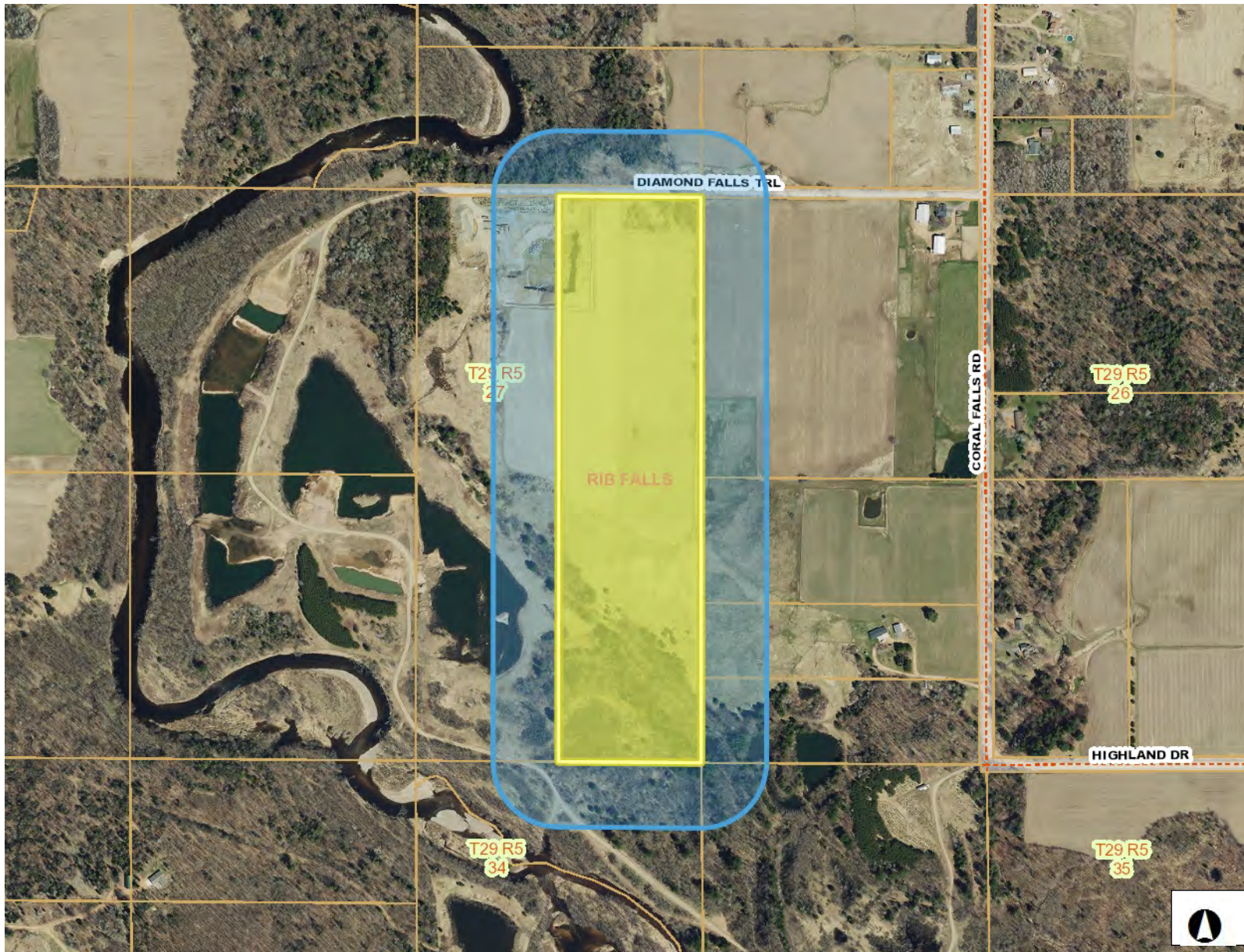
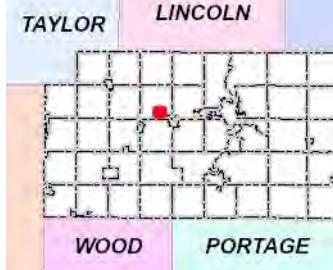
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## Notes





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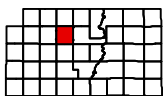


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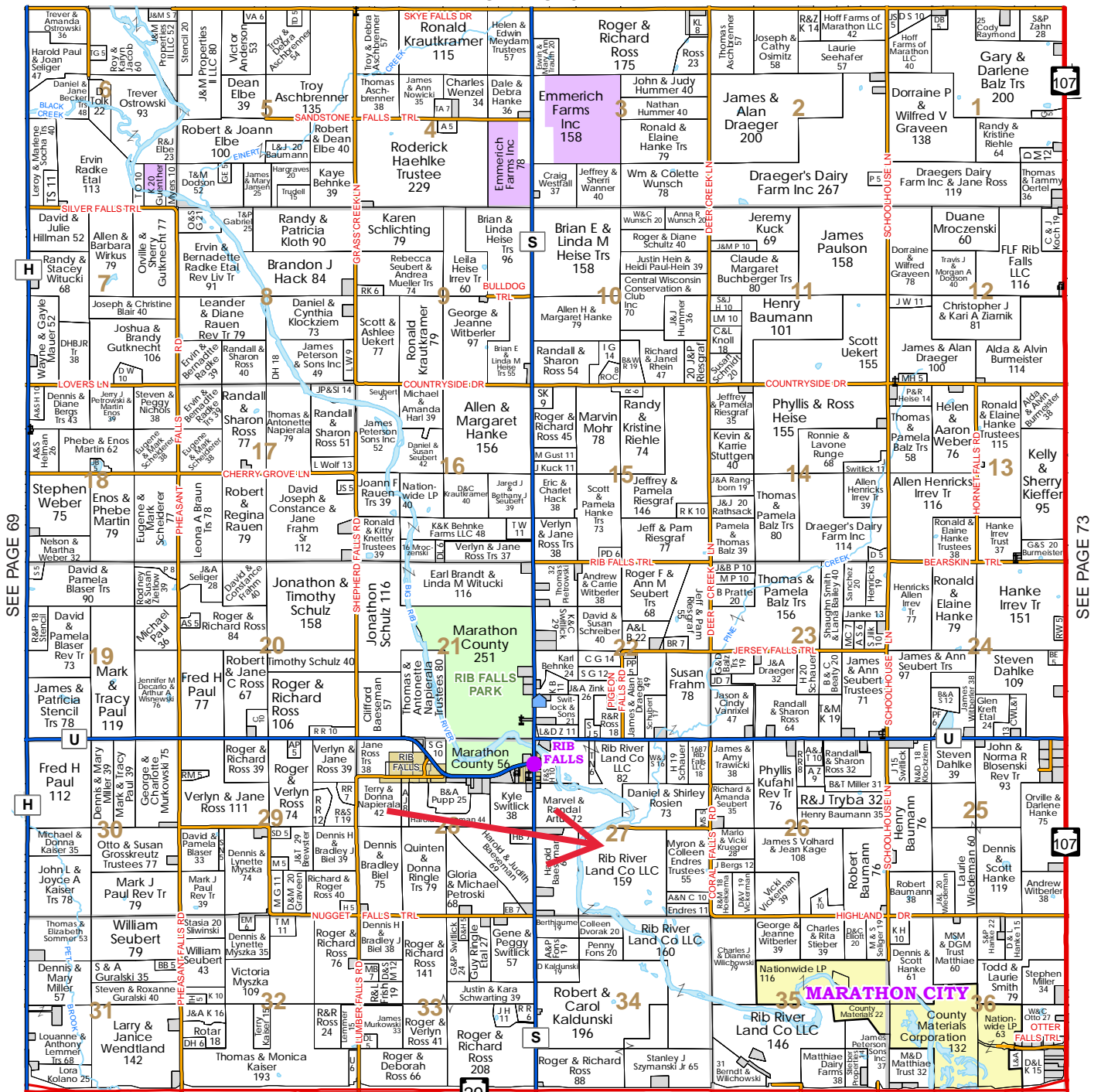


# Rib Falls

# Township 29N - Range 5E

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SEE PAGE 87



SEE PAGE 53



*Peterson / Kraemer*

Funeral Homes & Crematory Inc.

Greg Zoromski, Owner/Funeral Director

Athens  
Edgar  
Marathon  
Wausau East  
Wausau West  
715-845-6900



**Morgan Sand and Gravel LLC**  
**Conditional Use Permit Application**  
**Staff Report, July 27<sup>th</sup>, 2023**  
**Marathon County Board of Adjustment**

**PETITIONER:**

Morgan Sand and Gravel LLC – 228975 Granite Falls Trail, Marathon, WI 54448

**PROPERTY OWNERS:**

Rib River Land Co., LLC – 228975 Granite Falls Trail, Marathon, WI 54448

**REQUEST:**

The application of Morgan Sand and Gravel LLC. for a conditional use permit per 17.204.54 “Nonmetallic Mining” of the General Code of Ordinances for Marathon County Chapter 17 Zoning Code, for the purpose of mine boundary expansion and continued operation of an existing permitted nonmetallic mining operation (Reclamation Permit #r06007) on properties currently owned by Rib River Land Co LLC. The properties are located in the G-A General Agricultural district, on parcels described as W ½, SE ¼ Section 27, T29N, 5E Town of Rib Falls, further described as PIN# 066.2905.274.0997, 006.2905.274.0998.

An opportunity will also be provided to give testimony on reclamation related matters as required by Chapter 21, Nonmetallic Mining Reclamation Code.

**PUBLIC HEARINGS/MEETINGS:**

- Town of Rib Falls Town Board Meeting: July 11<sup>th</sup>, 2023
- Marathon County Board of Adjustment Meeting: July 27<sup>th</sup>, 2023; 9AM

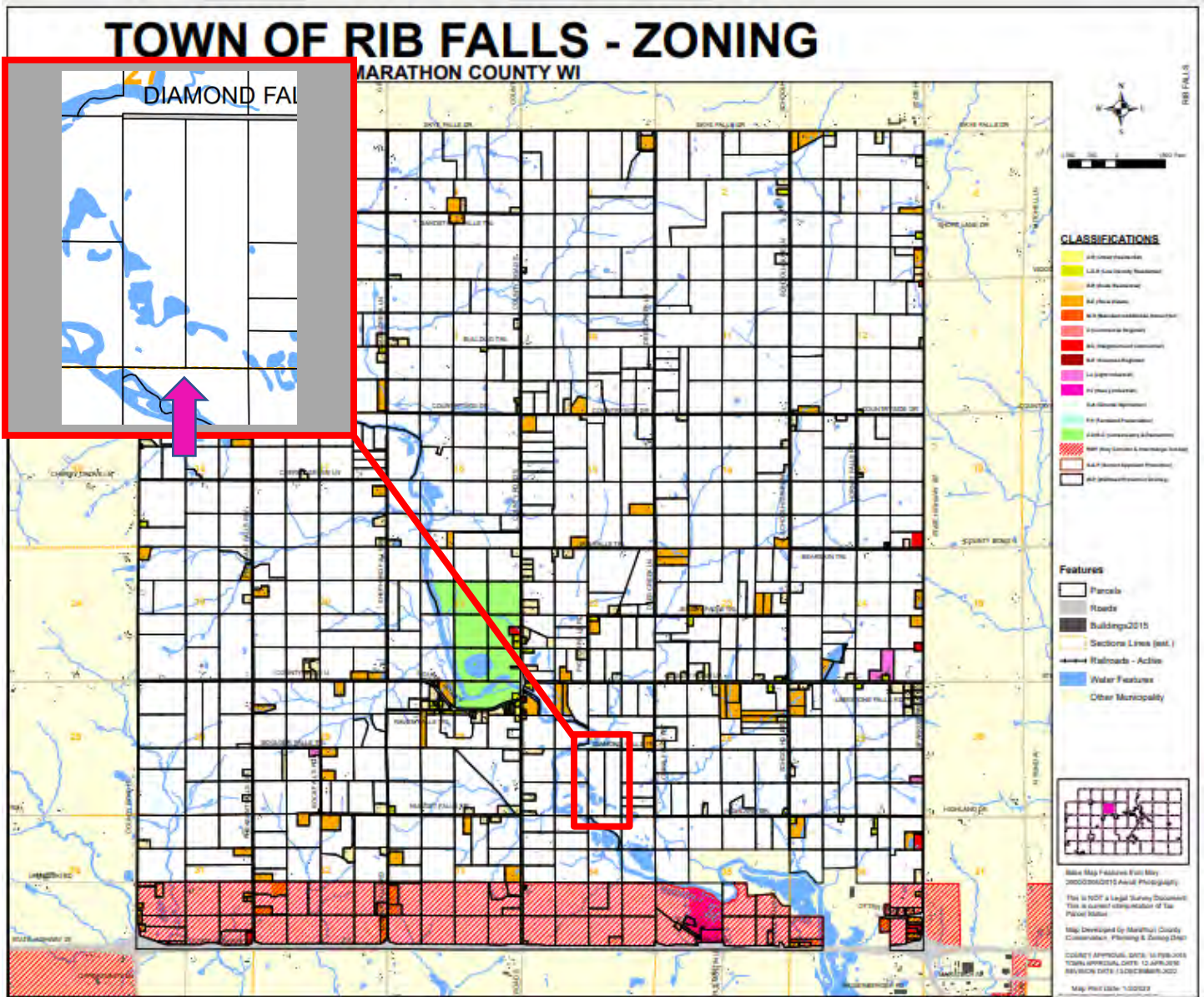
**Legal Notification:**

A legal advertisement was published in the *Wausau Daily Herald*. Notice of the CUP was also sent by regular mail to adjacent property owners within 300 feet of the subject property.

**EXISTING ZONING DISTRICT:**

- A. **G-A General Agricultural.** The purpose of the G-A district is designed to foster the preservation and use of agricultural land related uses and to provide for limited residential uses in a rural environment but not the division of land as classified in 18.07(2) and (3) into five or more tracts, parcels or lots within a five-year period. This district provides for limited residential development with modest densities that require relatively large land areas that are compatible with the surrounding rural land use activities. The district is intended to provide towns with multiple options to guide growth and development in concert with the comprehensive planning efforts.

Town of Rib Falls Zoning Map: The parcel proposed is currently zoned General Agriculture

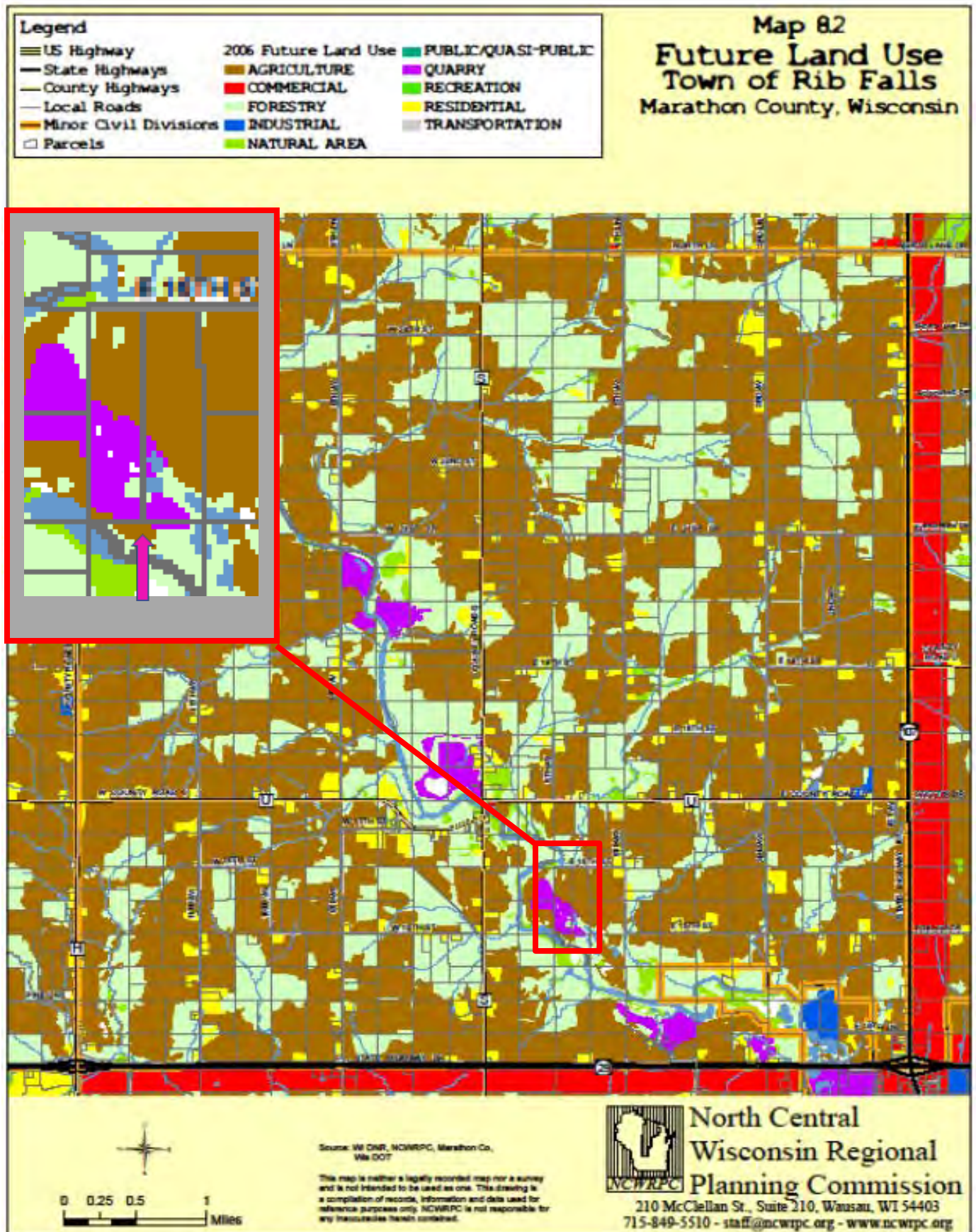


**Parcel Acreage:**

**066.2905.274.0997:** 40 acres

**066.2905.274.0998:** 39.25 acres

**Town Comprehensive Plan Future Land Use Map:** The parcels are shown to be designated as Agriculture, Quarry, and Forestry in the Town of Rib Falls Future Land Use Map.



## SPECIFIC PARCEL LIMITATIONS OR NATURAL FEATURES:

- The proposed mine expansion area is:
  - **Not** located within mapped floodplain
  - **Not** located within DNR mapped wetlands, or water features.
  - **Is** located within the shoreland overlay district (overlay is over mapped. Ponds from a previous mine are triggering the overlay)

## VIOLATIONS

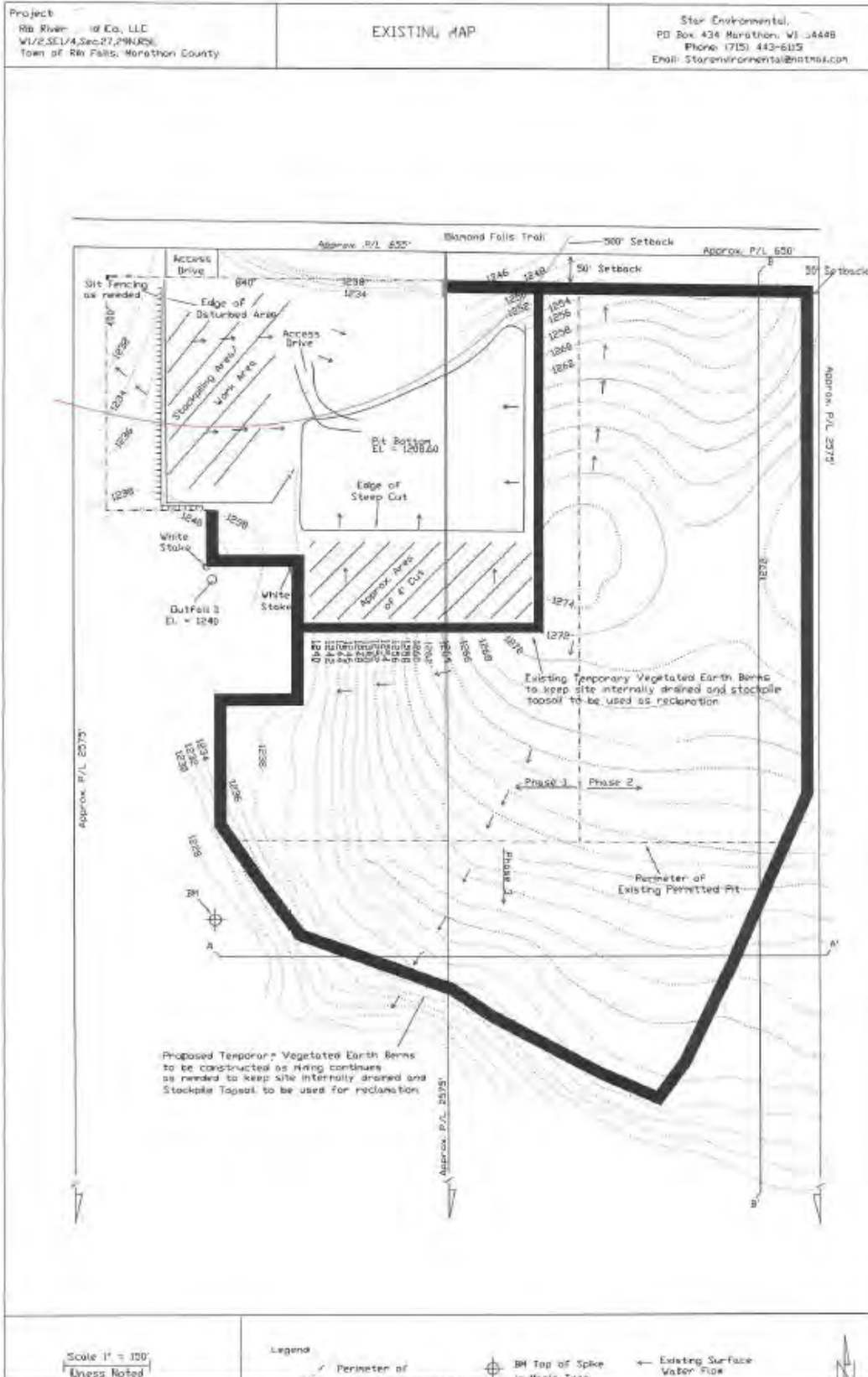
There are no known violations on the property.

## Aerial Photo



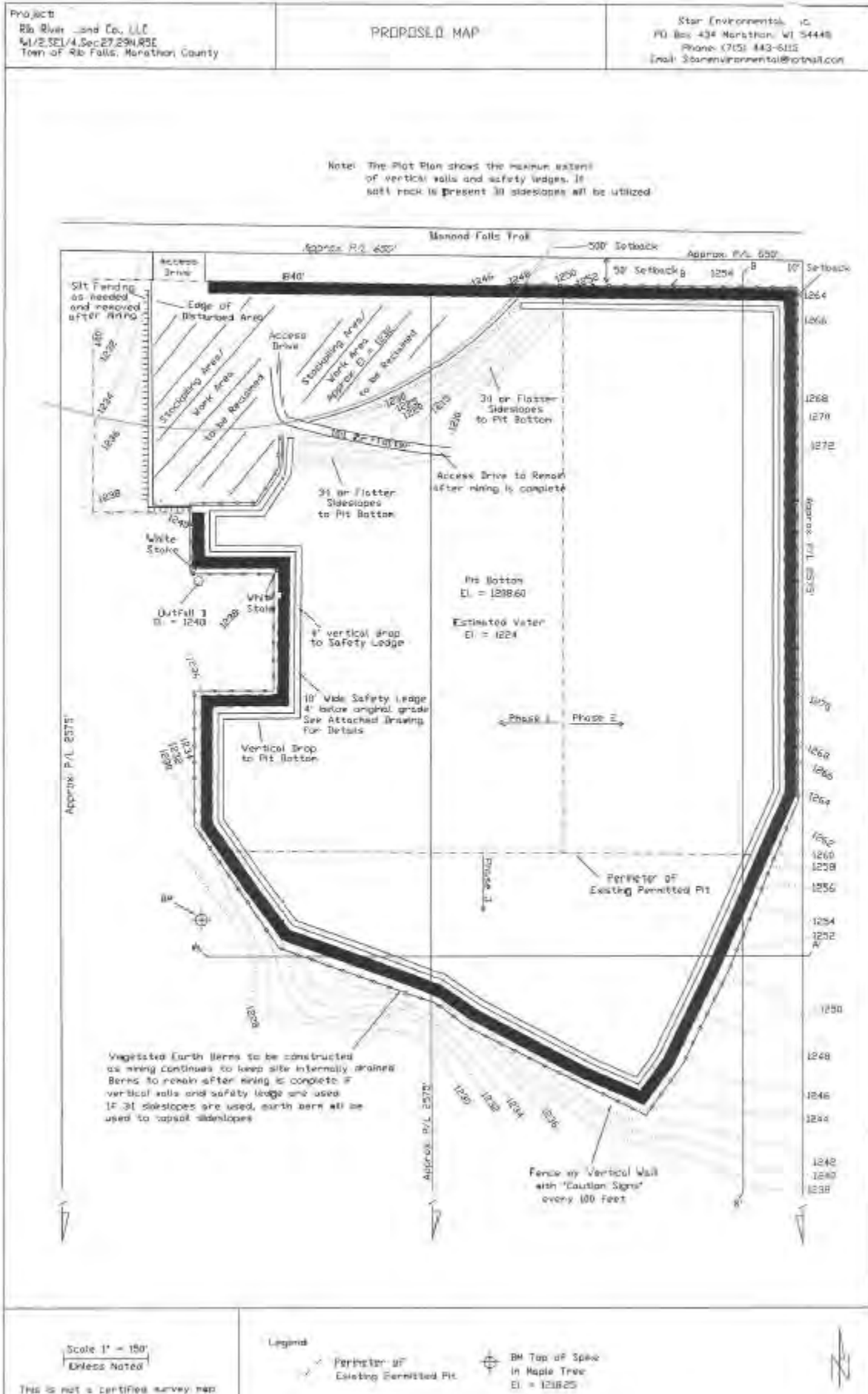
# Site Plans

## Existing





# Proposed



Approximate (staff rendered)



## Chapter 17 Sections that apply to this application

**Table 3. Uses Permitted by District**

USE	Key:											Development Standards	
	P Permitted Use				C Conditional Use				(Blank) Use Not Permitted				
	Residential Districts				Agricultural Districts			Nonresidential Districts					
	U-R	L-D-R	R-R	R-E	F-P	G-A	C-V/R-C	N-C	C	B-R	L-I	H-I	
<b>INDUSTRIAL and EXTRACTION USES</b>													
Manufacturing, Fabrication, and Processing (light)												P	
Manufacturing, Fabrication, and Processing (heavy)													P
Sales (indoor) of Products Manufactured Onsite												C	C
Solid Waste Disposal, Composting, and Recycling Facility							C						C
Junk Yard, Storage/Impound Yard, and Salvage yard							C						C
Warehousing/Distribution							C					P	P
Nonmetallic Mining				C	C	<b>C</b>	C						C
Metallic Mining Exploration			P	P	P	P	P	P	P	P	P	P	P
Metallic Mining Bulk Sampling							P						
Metallic Mining Prospecting							C						
Metallic Mining							C						

### Section 17.204.54 NONMETALLIC MINING

Nonmetallic mining may be permitted as a conditional use in the R-E, F-P, G-A, C-V/R-C, and the H-I districts in accordance with the following:

**General Requirements.** Mining of nonmetallic minerals and the processing for manufacture of materials incidental to such extraction and the erection of buildings and the installation of equipment and machinery are subject to the following requirements:

**A. Aerial Photograph and Map.**

Information included in the packet and found in site plan.

1. The boundary of the affected parcel and any adjacent parcel, pipelines, railroads, streams, utilities, and wetlands on the proposed extraction site and any adjacent parcel.
2. The name of the owner of each adjacent parcel and the location of all structures within 300 feet of the proposed mine site.
3. The proposed location, extent, and depth of the intended sand, gravel, and rock excavation, showing the setback distances.
4. The proposed location of any ponds, sediment basins, and stockpiles showing the setback distances.
5. The surface drainage and estimated depth to groundwater.

**B. Operational Information.**

1. The duration of any applicable lease.
  - No Lease is required; Morgan Sand and Gravel owns the property.
2. The estimated date that operations will commence and terminate.
  - Operations started in 2007 and have been active since. Operations are expected to terminate in 2037.
3. Anticipated hours of operation.
  - Approved Hours of operation are 6am-6pm Monday thru Saturday.

4. The proposed primary travel routes to transport material to and from the site.
  - Access to the Quarry is off of Diamond Falls Trail.
5. A description of the excavation and processing equipment to be used.
  - Blasting is Required for this Quarry. Additional equipment used includes backhoes, dump trucks, and crusher. A portable fuel tank will be used for fueling. No material washing or flocculants will be used. No permanent manmade structures associated with mining have, or will be constructed.
6. A description of measures to be taken to screen or buffer the operation from view from any adjacent residential parcel.
  - Operations are at the end of a dead-end road. Additionally, Earth bears shield much of the activities from view.
7. A description of measures to be taken to control dust, noise, and vibrations from the operation.
  - Much of this is contained by the surrounding berm and existing cut, approximately 30 feet deep.

**C. Operation.**

1. All blasting must be done by a state licensed and certified blaster, who must have a certificate of liability or proof of liability insurance.
  - All blasting will be completed by a state licensed and certified blaster.
2. All excavation equipment must be constructed, maintained, and operated in such a manner as to eliminate, as practicable, dust, noise, or vibration that might adversely affect or injure any person living in the vicinity of the operation.
  - All machinery used will be kept in good working condition. All activities will be confined to within the permitted, bermed area and at the bottom of the existing cut. Historic practices at this site will continue which has worked to alleviate these concerns.
3. Any excavation access road must have and be maintained with a dustless surface.
  - The access road will continue to be maintained to minimize dust concerns.
4. Operations must be conducted in such a manner that any water runoff from the operation does not adversely affect any adjacent parcel.
  - The quarry was/is designed to keep the site internally drained.
5. All equipment and temporary structures, such as stone crusher, conveyor, or screener, must be removed from the site within 90 days of the termination of extraction operations.
  - Upon completion, all manmade structures will be removed except for the resulting pond, safety fence, safety ledge and access road.

**D. Setback Requirements.**

1. The excavation must be setback at least 100 feet from any existing occupied structure other than the owner's.
  - All activities are greater than 100 feet from occupied structures.
2. All operations shall be at least 50 feet from the centerline of any right-of-way and 10 feet from any property line unless there is a written agreement between adjoining owners both of whom hold valid nonmetallic mining permits under which they both agree to mine up to their common property line. Mining up to or into the right-of-way may be authorized where it is determined by the unit of government having jurisdiction over the road that such mining would be beneficial.
  - All activities will continue to maintain a minimum of 50-foot setback from the centerline of the road and 10 feet from all property lines.
3. All accessory uses such as offices and parking areas shall be at least 75 feet from any right-of-way or property line.
  - No offices or parking lots are proposed.

E. Nonmetallic mining shall comply with the terms of Marathon County Nonmetallic Mining Code, Chapter 21, General Code of Ordinances.

F. ~~All nonmetallic mining shall be required to provide for the proper closure and reclamation of the extraction site to an agricultural use.~~ (Error in Chapter 17. This standard in the wrong section and was intended for Farm Preservation Districts. This will be addressed in annual updates).

A. Nonmetallic mining activity and operation shall be consistent with Wisconsin Statute, Chapter 91, Farmland Preservation, 91.46(6)

**Farmland Preservation Districts.** Nonmetallic mineral extraction in Farmland Preservation Districts may be permitted if the all of the following apply:

The location of the Quarry is not in a Farmland Preservation District. This section does not apply.

- A. The operation complies with Subchapter 1 of Chapter 295, Wis. Stats., and rules promulgated under that subchapter, with General Code of Ordinances for Marathon County Chapter 21 Nonmetallic Mining Reclamation Code under Wis. Stats., 295.13 or Wis. Stats., 295.14, and general requirements standards under this section and provided the reclamation of the extraction site is to an agricultural use (including all applicable provisions of this ordinance), and with any applicable requirements of the Wisconsin Department of Transportation concerning the restoration of nonmetallic mining sites.
- B. The operation and its location in the Farmland Preservation zoning district are consistent with the purposes of the Farmland Preservation zoning district.
- C. The operation and its location in the Farmland Preservation zoning district are reasonable and appropriate, considering alternative locations outside the Farmland Preservation zoning district, or are specifically approved under state or federal law.
- D. The operation is reasonably designed to minimize the conversion of land around the extraction site from agricultural use or open space use.
- E. The operation does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
- F. The owner agrees to restore the land to agricultural use, consistent with any required reclamation plan, when extraction is completed.

**Section 17.803.01 PURPOSE AND AUTHORITY**

- A. **Purpose.** Certain uses are of such a nature, or their effects are as dependent upon specific circumstances as to make impractical the determination in advance of where and when and under what conditions they should be permitted. Provision has been made in this chapter for the determination of such uses as conditional uses. Conditional uses are land uses listed as such in [Table 3](#) Uses Permitted by District. They may be established in such district only upon approval by the Board of Adjustment.

The procedures and standards in this Chapter are intended to provide a consistent and uniform method for review of conditional use permit proposals. These review procedures and standards are intended to accomplish the following purposes:

1. Ensure full compliance with the standards contained in this ordinance and other applicable local ordinances, and state and federal laws.
2. Achieve efficient use of the land.
3. Prevent adverse impact on adjoining or nearby properties.
4. Protect natural resources.
5. Facilitate development in accordance with the County's land use objectives per the Comprehensive Plan.

**Section 17.803.02 APPLICATION PROCEDURES**

- I. **Board of Adjustment Determination.** The Board of Adjustment shall review the application for conditional use, together with the previous meetings' findings and reports and recommendations from the Zoning Administrator, public safety officials, and other reviewing agencies. The Board of Adjustment shall then make a determination on the conditional use application, as set forth in Section [17.803.03](#) and based on the Substantial Evidence, other requirements and standards of this ordinance. The Board of Adjustment may approve, approve with conditions, or deny a conditional use request as follows:
1. **Approval.** Upon determination by the Board of Adjustment that the final plan for conditional use is in compliance with the standards and requirements of this ordinance and other applicable ordinances and laws, approval shall be granted.
  2. **Approval with Conditions.** The Board of Adjustment may impose reasonable conditions with the approval of a conditional use proposal, to the extent authorized by law. Conditions imposed shall meet all of the following requirements:
    - a. Conditions must be to the extent of practical and measurable
    - b. Conditions shall be designed to protect natural resources, the health, safety, and welfare and the social and economic well-being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
    - c. Conditions shall be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
    - d. Conditions shall be necessary to meet the intent and purpose of this ordinance, related to the standards established in this ordinance for the land use or activity under consideration, and necessary to insure compliance with those standards. These conditions may include, but are not limited to the following:
      - 1) Permit duration, transfer or renewal
      - 2) Setback and yard dimensions.
      - 3) Specified sewage disposal and water supply facilities.
      - 4) Landscaping and planting screens.
      - 5) Operational controls.
      - 6) Sureties.
      - 7) Deed restrictions.
      - 8) Location of structures, docks, piers or signs.
      - 9) Location and amount of parking facilities.
      - 10) Type of construction.
      - 11) The obtaining of other permits required by the state or federal government agencies, and other county requirements based upon other ordinances as conditions that must be met before issuance of such permit.
  2. **Denial.** Upon determination by the Board of Adjustment that a conditional use proposal does not comply with the spirit or intent or standards and regulations set forth in this ordinance, or would constitute a nuisance by reason of noise,

dust, smoke, odor, or other similar factors, or otherwise would be injurious to the public health, safety, welfare, and orderly development of the county, the conditional use proposal shall be denied.

### Section 17.803.03 BASIS OF DETERMINATION

- A. **Conformance with Requirements.** The applicant shall be required to establish by clear and convincing evidence that the applicable standards of this Chapter, the specific standards pertinent to each conditional use, including site plan review criteria set forth for applicable site development standards for specific uses set forth elsewhere in this Chapter (refer to Chapter [17.204](#), Development Standards for Specific Uses) have been met.
- B. **General Standards.** The Board of Adjustment shall review the particular facts and circumstances of each proposed conditional use in terms of the following standards:
1. **Compatibility with Adjacent Uses.** The proposed conditional use shall be designed, constructed, operated and maintained to be compatible with uses on surrounding land. The site design shall minimize the impact of site activity on surrounding properties. In determining whether this requirement has been met, consideration shall be given to:
    - a. The location and screening of vehicular circulation and parking areas in relation to surrounding development.
    - b. The location and screening of outdoor storage, outdoor activity or work areas, and mechanical equipment in relation to surrounding development.
    - c. The hours of operation of the proposed use. Approval of a conditional use may be conditioned upon operation within specified hours considered appropriate to ensure minimal impact on surrounding uses.
    - d. The bulk, placement, and materials of construction of the proposed use in relation to surrounding uses.
  2. **Comprehensive Plan.** The proposed conditional use will be harmonious with and in accordance with the general objectives or with any specific objective of the town and county comprehensive plan.
  3. **Compliance with Applicable Regulations.** The proposed conditional use shall be in compliance with all applicable federal, state, and local laws and ordinances.
  4. **Use of Adjacent Property.** The proposed conditional use shall not interfere with the use and enjoyment of adjacent property.
  5. **Public Services.** The proposed conditional use will be served adequately by essential public facilities and services including but not necessarily limited to utilities, highways, streets, police and fire protection, drainage structures, refuse disposal, and school(s); unless the project proposal contains an acceptable plan for providing necessary services or evidence that such services will be available by the time the conditional use is completed.
  6. **Impact of Traffic.** The location of the proposed conditional use shall, within the zoning district, minimize the impact of traffic generated by the proposed use. In determining whether this requirement has been met, consideration shall be given to the following:
    - a. Proximity and access to major thoroughfares.
    - b. Estimated traffic generated by the proposed use.
    - c. Proximity and relation to intersections.
    - d. Adequacy of driver sight distances.
    - e. Location of and access to off-street parking.
    - f. Required vehicular turning movements.
    - g. Provision of pedestrian traffic (if applicable).
  7. **Enhancement of Surrounding Environment.** The proposed conditional use shall provide the maximum feasible enhancement of the surrounding environment and shall not unreasonably interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value. In determining whether this requirement has been met, consideration shall be given to:
    - a. The provision of landscaping and other site amenities. Provision of additional landscaping over and above the specific requirements of this Ordinance may be required as a condition of approval of a conditional use.
    - b. The bulk, placement, and materials of construction of proposed structures in relation to surrounding uses.
  8. **Impact on Public Health, Safety, and Welfare.** The proposed conditional use shall not involve any activities, processes, materials, equipment, or conditions of operation, and shall not be located or designed in a manner that is detrimental to public health, safety, and welfare. In determining whether this requirement has been met, consideration shall be given to the production of traffic, noise, vibration, smoke, fumes, odors, dust, glare, light, and environmental impact.

9. Isolation of Existing Uses. The location of the proposed conditional use shall not result in a small residential area being substantially surrounded by non-residential development, and further, the location of the proposed conditional use shall not result in a small non-residential area being substantially surrounded by incompatible uses.
10. Substantial Evidence. Substantial evidence means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions.



Previous CUPs

2007 Conditional Use Permit

2017 CUP

2007 - BOA - 9



**COUNTY OF MARATHON**

Board of Adjustment  
210 River Drive  
Wausau, Wisconsin 54403-5449

FILED IN  
THE OFFICE OF  
FEB 09 2007

(715) 261-6020 or 6021  
Fax: (715) 261-4116

February 2, 2007

MARATHON COUNTY  
BOARD OF ADJUSTMENT

Morgan Sand and Gravel  
430 Morgan Lane  
Marathon WI 54448

Mr. Stieber:

On January 25, 2007, the Marathon County Board of Adjustment held a public hearing on your application for a special exception permit to establish a nonmetallic mine in the A-1/5 Agricultural district as authorized by Chapter 17.49(3)(s) of the General Code of Ordinances for Marathon County. The property is located in the W 1/2 W 1/2 SE 1/4 and the E 1/2 W 1/2 SE 1/4, Section 27, T29N, R5E, Town of Rib Falls.

Testimony and documents presented to the Board disclosed the following.

1. The project totals approximately 25 acres; 4.7 acres wooded and 20.3 acres of farm field. The site is zoned A-1/5 Agriculture. The Rib River lies about 200 feet to the north and 1200 feet west. The mine will be located outside the floodplain of the river.
2. Phase 1 will begin along the northwest side of the site. The pit floor will be about 1235 feet msl. The regional flood of the Rib River at this location is about 1226 feet msl.
3. The site will be reclaimed with trees planted on the entire 25 acres.
4. The pit depth will average 15-45 feet from original grade and drain internally to the southwest.
5. No wetlands will be impacted by this project.
6. Access to the site will be off East 16<sup>th</sup> Street; a dead-end town road.
7. An application has been filed for a nonmetallic mining permit to mine approximately 500,000 cubic yards from the site over the next 20 years.
8. This will be a hard rock mine with blasting 1 or 2 times a year and crushing to a 5-6 inch size. Material will be stockpiled on site and hauled as needed to the main plant along State Highway 29.
9. No accessory structures are proposed, the pit will be 10 or more feet from the property line and 50 feet off the road right of way.
10. Topsoil and overburden will be stored on the west side of pit until needed for reclamation. All slopes will be 3 feet horizontal to 1 foot vertical or flatter.
11. The Town of Rib Falls has recommended approval.

Based on the testimony and documents presented the Board granted the special exception permit subject to the following conditions.

1. Obtain a Nonmetallic Mine permit and operate the mine according to the conditions of the permit issued.
2. Obtain all required DNR permits.
3. Reclaim all disturbed areas with vegetation using 4-6 inches of topsoil, seed, and mulch.
4. Crushing and blasting operations take place between 6:00 a.m. and 6:00 p.m., Monday thru Saturday.

This permit will expire within six months of the date of the last signature on this letter if substantial work pursuant to the permit has not begun. This decision is subject to appeal as set forth in §59.694(10) Wis. Stats. A complete record of the hearing is available for your inspection at the Conservation, Planning & Zoning Department.

Signed this 2nd day of February 2007

William Bruening, Chairman

Signed this 7th day of February 2007

Gerald Hoffman, Secretary

cc: James Burgener, CPZ Assistant Director  
Elroy Zemke, FRZ Chairman  
Board of Adjustment members (7)

Jan Wendtland, Town Clerk  
Robert Kaldunski, Deputy Zoning Administrator  
Kurt Gibbs, Supervisor, District

**MARATHON COUNTY CONDITONAL USE PERMIT PERMIT # 2017 B01003**

DATE: 05/25/2017

OWNER: Morgan Sand and Gravel

FOR: Conditional Use Permit –

Revise reclamation plan to mine deeper.

PIN: 066.2905.274.0997

SANITARY PERMIT #: N/A

PROJECT ADDRESS: N/A

TOWN OF: RIB Falls

SEC. 27 T29N R5E

All land uses on the property for which this permit is issued shall be conducted in accordance with the Marathon County Zoning and/or Shoreland Zoning Ordinance. Failure to adhere to the ordinance or the terms of the permit shall void the permit.

- All previous conditions outlined in January 25, 2007 Marathon County Board of Adjustment hearing shall continue to be met.
- Obtain all required DNR Permits (if applicable)
- Reclaim all disturbed areas with vegetation using 4-6 inches of topsoil, seed and mulch.
- Crushing and blasting operations take place between 6AM and 6PM Monday through Saturday.

Zoning Administrator or designee: *Jane Zoulov* Date: 5/25/17

# POST IN PLAIN VIEW

MUST BE VISIBLE FROM THE ROAD FRONTING THE LOT DURING CONSTRUCTION

**RECOMMENDATIONS FOR THE CUP**

If granted, the CUP should consider including the following conditions:

- The Board of Adjustment should specify in their decision (and subsequently the letter that is issued to the applicant)
  - Expiration of permit - Conditional Use Permit shall run concurrently with Reclamation Plan
  - All previous conditions from past Conditional Use Permits shall continue to be met.
  - All other required Federal, state, and local permits and approvals shall be obtained and followed.

**TOWN RECOMMENDATION:**

The **Town of Rib Falls** Town Boards Recommend **Approval** to Marathon County's Board of Adjustments.

THE STAFF RESERVE THE RIGHT TO AMEND THIS REPORT BASED ON NEW EVIDENCE PRESENTED PRIOR TO AND/OR DURING THE PUBLIC HEARING.

DECISIONS OF THE BOARD ARE SUBJECT TO APPEAL AS PROVIDED IN SS.59.694(10) WIS. STATS.

RESPECTFULLY SUBMITTED:



SIGNATURE

DATE

7/03/2023

not require approval or be subject to disapproval by any town or town board.

(b) If an existing town ordinance relating to shorelands is more restrictive than an ordinance later enacted under this section affecting the same shorelands, it continues as a town ordinance in all respects to the extent of the greater restrictions, but not otherwise.

(bg) A town may enact a zoning ordinance affecting the same shorelands as an ordinance enacted under this section, subject to the restrictions in ss. 60.61 (3r) and 60.62 (5).

(bm) If a town ordinance enacted by a town that is located entirely on an island in Lake Superior and authorized to exercise village powers under s. 60.22 (3) is more restrictive than an ordinance enacted under this section affecting the same shorelands, regardless of the order of enactment, the town ordinance applies in all respects to the extent of the greater restrictions, but not otherwise.

(c) Ordinances that are enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting counties, so far as practicable.

(2m) A county shoreland zoning ordinance may not regulate the construction of a structure on a substandard lot in a manner that is more restrictive than the shoreland zoning standards for substandard lots.

(3) All powers granted to a county under s. 236.45 may be exercised by it with respect to shorelands, but the county must have or provide a planning agency as defined in s. 236.02 (3).

(4) (a) Section 66.0301 applies to this section, except that for the purposes of this section an agreement under s. 66.0301 shall be effected by ordinance. If the municipalities as defined in s. 281.31 are served by a regional planning commission under s. 66.0309, the commission may, with its consent, be empowered by the ordinance of agreement to administer each ordinance enacted hereunder throughout its enacting municipality, whether or not the area otherwise served by the commission includes all of that municipality.

(b) Variances and appeals regarding shorelands within a county are for the board of adjustment for that county under s. 59.694, and the procedures of that section apply. Notwithstanding s. 59.694 (4), the department may not appeal a decision of the county to grant or deny a variance under this section but may, upon the request of a county board of adjustment, issue an opinion on whether a variance should be granted or denied.

(5) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 59.69 that relate to shorelands.

(5m) If a county has in effect on or after July 14, 2015, a provision in an ordinance that is inconsistent with sub. (1d), (1f), (1k), or (2m), the provision does not apply and may not be enforced.

(6) If a county does not enact an ordinance by January 1, 1968, or if the department, after notice and hearing, determines that a county has enacted an ordinance that fails to meet the shoreland zoning standards, the department shall adopt such an ordinance for the county. As far as possible, s. 87.30 shall apply to this subsection.

(6m) For an amendment to an ordinance enacted under this section that affects an activity that meets all of the requirements under s. 281.165 (2), (3) (a), or (4) (a), the department may not proceed under sub. (6), or otherwise review the amendment, to determine whether the ordinance, as amended, fails to meet the shoreland zoning standards.

(7) (a) In this subsection, “facility” means any property or equipment of a public utility, as defined in s. 196.01 (5), or a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, or power to its members only, that is used for the transmission, delivery, or furnishing of natural gas, heat, light, or power.

(b) The construction and maintenance of a facility is considered to satisfy the requirements of this section and any county ordinance enacted under this section if any of the following applies:

1. The department has issued all required permits or approvals authorizing the construction or maintenance under ch. 30, 31, 281, or 283.

2. No department permit or approval under subd. 1. is required for the construction or maintenance and the construction or maintenance is conducted in a manner that employs best management practices to infiltrate or otherwise control storm water runoff from the facility.

**History:** 1979 c. 233; 1981 c. 330; 1983 a. 189 s. 329 (23); 1991 a. 39; 1993 a. 329; 1995 a. 201 s. 476; Stats. 1995 s. 59.692; 1995 a. 227; 1997 a. 27, 35, 252; 1999 a. 9; 1999 a. 150 s. 672; 2005 a. 112; 2011 a. 6, 170; 2013 a. 80; 2015 a. 55, 146, 167, 178, 391; 2017 a. 68; 2017 a. 365 ss. 28, 29, 110; 2017 a. 366 s. 99; 2019 a. 145; 2021 a. 105, 200.

**Cross-reference:** See also ch. NR 115, Wis. adm. code.

The Department of Natural Resources, as trustee of navigable waters in the state, has standing to appeal shoreline zoning decisions. *DNR v. Walworth County Board of Adjustment*, 170 Wis. 2d 406, 489 N.W.2d 631 (Ct. App. 1992).

The private right to fill lakebeds granted under s. 30.11 does not preempt the zoning power of a county over shorelands under this section. *State v. Land Concepts, Ltd.*, 177 Wis. 2d 24, 501 N.W.2d 817 (Ct. App. 1993).

The legal standard of unnecessary hardship requires that the property owner demonstrate that without a variance there is no reasonable use for the property. When the property owner has a reasonable use for the property, the statute takes precedence and the variance should be denied. *State v. Kenosha County Board of Adjustment*, 218 Wis. 2d 396, 577 N.W.2d 813 (1998), 96–1235. See also *State v. Outagamie*, 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376, 98–1046.

The burden is on the applicant for a variance to demonstrate through evidence that without the variance the applicant is prevented from enjoying any reasonable use of the property. *State ex rel. Spinner v. Kenosha County Board of Adjustment*, 223 Wis. 2d 99, 588 N.W.2d 662 (Ct. App. 1998), 97–2094.

The state, in administering the Fair Housing Act, may not order a zoning board to issue a variance based on characteristics unique to the landowner rather than the land. *County of Sawyer Zoning Board v. DWD*, 231 Wis. 2d 534, 605 N.W.2d 627 (Ct. App. 1999), 99–0707.

In evaluating whether to grant an area variance to a zoning ordinance, a board of adjustment should focus on the purpose of the zoning law at issue in determining whether an unnecessary hardship exists for the property owner seeking the variance. The facts of the case should be analyzed in light of that purpose, and boards of adjustment must be afforded flexibility so that they may appropriately exercise their discretion. *State v. Waushara County Board of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514, 02–2400.

The term “floor area” in sub. (1v) (b) unambiguously encompasses only the surface portion of a deck’s floorboards and, therefore, does not include portions of the deck’s support system that extend beyond the floorboards. If a portion of a structure is outside the setback area, that part is not in the setback area and it is not the portion “extending into” that area for purposes of calculating the 200 square foot restriction in sub. (1v) (b). *Propp v. Sauk County Board of Adjustment*, 2010 WI App 25, 323 Wis. 2d 495, 779 N.W.2d 705, 09–0209.

Appellants appropriately relied on the county’s zoning map to identify the ordinary high water mark of a nearby lake and determine that the sign’s proposed location was outside the county’s 1,000 foot zone of shoreland authority. It was reasonable for the appellant to rely on the map rather than conduct on-site measurements. *Oneida County v. Collins Outdoor Advertising, Inc.*, 2011 WI App 60, 333 Wis. 2d 216, 798 N.W.2d 724, 10–0084.

By enactment of this section and s. 281.31, the legislature intended that towns would not have authority to regulate shorelands except where such regulation fell within the language of sub. (2) (b) [now sub. (2) (b), (bg), and (bm)]. That statutory scheme does not distinguish between towns with village powers and those without. *Hegwood v. Town of Eagle Zoning Board of Appeals*, 2013 WI App 118, 351 Wis. 2d 196, 839 N.W.2d 111, 12–2058.

Although they often work together, zoning and subdivision regulations provide separate and distinct means of regulating the development of land. There are areas of overlap between the two powers, but there are also key differences. Subdivision control is concerned with the initial division of undeveloped land, while zoning more specifically regulates the further use of this land. *State ex rel. Anderson v. Town of Newbold*, 2021 WI 6, 395 Wis. 2d 351, 954 N.W.2d 323, 18–0547.

In this case, the town’s ordinance set minimum lot frontage requirements for each lake within its borders. Pursuant to the *Zwiefelhofer*, 2012 WI 7, factors, the town’s ordinance was not a zoning ordinance. It did not concern land use, and it did not separate compatible and incompatible land uses, which is a key purpose of a zoning ordinance. Because it was not a zoning ordinance, the restrictions on town enactment of zoning ordinances set by this section did not apply, and the ordinance was a permissible exercise of the town’s subdivision authority pursuant to s. 236.45. *State ex rel. Anderson v. Town of Newbold*, 2021 WI 6, 395 Wis. 2d 351, 954 N.W.2d 323, 18–0547.

County floodplain zoning ordinances may be adopted under s. 59.971 [now this section] and do not require the approval of town boards in order to become effective within the unincorporated areas of the county. 62 Atty. Gen. 264.

Counties may zone lands located within 300 feet of an artificial ditch that is navigable in fact. 63 Atty. Gen. 57.

County shoreland zoning of unincorporated areas adopted under s. 59.971 [now this section] is not superseded by municipal extraterritorial zoning under s. 62.23 (7a). Discussing ss. 59.971, 62.23 (7) and (7a), and 144.26 [now s. 281.31]. Municipal extraterritorial zoning within shorelands is effective insofar as it is consistent with, or more restrictive than, the county shoreland zoning regulations. 63 Atty. Gen. 69.



## MARATHON COUNTY BOARD OF ADJUSTMENT

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[Date]

Wisconsin Department of Natural Resources  
1701 N 4<sup>th</sup> Street  
Superior, WI 54880

Subject: Request to Issue an Opinion on Shoreland Variances - Wisconsin Statute 59.692(4)(b)

Dear Wisconsin Department of Natural Resources (WDNR),

On [Date] the Marathon County Board of Adjustment met and discussed the possibility of requesting the WDNR to issue an opinion on whether future shoreland variance requests before the board should be granted or denied. On the basis of this discussion, the Board of Adjustment voted to grant the WDNR permission to issue an opinion on whether a shoreland variance request before the board should be granted or denied per Wis. Stat. 59.692(4)(b)<sup>[1]</sup>.

Richard Lawson  
Vice Chairman

Carolyn Opitz  
Secretary

cc:  
Board of Adjustment Members

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<sup>[1]</sup> Wis. Stat. 59.692(4)(b): Variances and appeals regarding shorelands within a county are for the board of adjustment for that county under s. 59.694, and the procedures of that section apply. Notwithstanding, 59.694 (4), the department may not appeal a decision of the county to grant or deny a variance under this section but may, upon the request of a county board of adjustment, issue an opinion on whether a variance should be granted or denied.