

CHAPTER 29 Extraction

Section 1. **Name**

1.01 This Ordinance shall hereinafter be known and cited as Freedom Township Extraction Ordinance.

Section 2. **Purpose and Authority**

2.01 Freedom Township recognizes that sand, gravel and other earthen deposits within the Township's boundaries are nonrenewable natural resources necessary and beneficial to the welfare of its inhabitants and the surrounding regional area. To provide for the utilization of these resources in a manner compatible with nearby residential uses, to protect human health and the environment, and to insure complete restoration for another land use at the conclusion of the extraction, it is necessary to regulate and provide procedures and standards for extraction of earthen materials and for the restoration of the land at the conclusion of the extractive operation. These regulations are required because such extraction operations and the related activities can cause unique and substantial impacts upon the environment and the welfare of adjacent properties and the community as a whole. They can disrupt the environment, impair the water supply and quantity, cause noise and, dust nuisances, damage the roads and create conditions that are dangerous to Township residents. Extraction operations can also leave land in a condition that is unsightly and presents an unattractive and dangerous nuisance. The Township has authority to regulate extraction operations to protect the public health, safety and welfare pursuant to P.A. 246 of 1945, as amended, MCL 41.181, et seq, as amended.

Section 3. **Exemptions**

3.01 Subject to compliance with all other applicable statutes, ordinances, rules and regulations, this ordinance does not apply to the following:

- A. The ordinary and necessary grading of land for the tilling and cultivation of soils for the growing of crops and trees.
- B. The ordinary and necessary grading or excavation for construction of buildings, structures or related septic systems pursuant to all required permits from the Township and any other governmental authority having jurisdiction over such activities.
- C. Excavation by any governmental authority having jurisdiction over any public right-of-way road, or drainage easement.
- D. Any removal of minerals of less than five hundred (500) cubic yards per calendar year.

Section 4. **Definitions**

- 4.01 **Applicant/Owner/Operator** - The terms "applicant", "owner", and "operator" shall include the tenants, lessees, agents, servants or assigns thereof.
- 4.02 **Aquifer** – A porous stratum material, bounded by an impervious layer of earthen material, in which ground water accumulates as part of the hydrologic cycle.
- 4.03 **De-watering** – The removal of on-Site ground water off-Site or to other portions of the Site which lowers the Ground Water Elevation on the Site.
- 4.04 **Extraction** - The extraction, quarrying, excavation, or other removal of sand, gravel, soil, minerals or any other material from any Site.
- 4.05 **Fines** - Materials mined from the Site passing 200 mesh sieve opening as defined by the National Standard Sieve Size (ASTM-E11) that are a by-product of any Extraction operations at the Site.
- 4.06 **Ground Water** – Water that infiltrates the topsoil of the earth as part of the hydrologic cycle, and which is stored for long periods in underground reservoirs.

- 4.07 **Ground Water Elevation** – The naturally occurring topmost level of the saturated layer of water in an aquifer measured in relation to sea level.
- 4.08 **Ground Water Recharge** - The processes and rate by which the Ground Water **Elevation** is affected by the inflow and outflow of water from the aquifer by natural hydrologic processes and/or manmade activities.
- 4.09 **Ground Water Recharge Area** – Any area on the ground where Ground Water Recharge occurs.
- 4.10 **Interflow** – Water that seeps through the surface of the ground and then flows laterally or percolates further into the ground.
- 4.11 **Overburden** - Earth materials situated below the layer of topsoil and above the materials to be extracted from the Site.
- 4.12 **Processing** - The washing, sorting, crushing, aggregating, grinding, blending, mixing, or cutting of extracted material from the Extraction Site.
- 4.13 **Sediment Ponds** - Disposal areas for the “fines”. Typically a series of ponds that are designed to clarify and filter the water used for processing materials extracted from the Site for the purpose of recycling it through any machinery or processing plant used for processing the material extracted from the Site.
- 4.14 **Site** - The entire real property or properties upon which the Extraction(s) is or are to occur, whether or not Extraction is to occur on the entire real property(s).
- 4.15 **Surface Runoff** – Water that precipitates onto and then flows on the ground surface.
- 4.16 **Topsoil** - The earth materials with high organic content that cover the surface of the Site.
- 4.17 **Wetland** – Any area where Ground Water accumulates, the surface of which is at or above the elevation of the ground surface.

Section 5. Permit Required; Nature and Limitations of Permit

- 5.01 It shall be unlawful for an owner, leaseholder, operator or any other persons or entities who own, manage, or otherwise occupy the Site to conduct any Extraction operation without first having complied with and obtained the Extraction Permit required by this Ordinance.
- 5.02 Any party having any interest in the land comprising the Site, including the owner, leaseholder, and operator, or any other persons or entities who own, manage or otherwise occupy the Site, shall be jointly and severally responsible for complying with the requirements of this Ordinance and for any violation of this Ordinance. Each party having any of the interest or interests mentioned above, shall have the responsibility of taking all necessary precautions and actions to prevent any violation of this Ordinance.
- 5.03 No person or entity to whom a permit has been issued pursuant to this Ordinance shall engage in any activity on the Site contrary to the terms of the permit or contrary to the terms of this Ordinance.
- 5.04 All required County, (including but not limited to the Washtenaw County Road Commission), State of Michigan and Federal permits shall be approved and on file with Freedom Township prior to the commencement of any Extraction activity on the Site.
- 5.05 **No Other Use** - An Extraction Permit does not allow, unless specifically referred to and accepted within the approved Permit, any other uses, including but not limited to on-Site processing of material obtained from off-Site, the making of asphalt, cement or other manufacturing or processing operations of any nature.
- 5.06 **Non-transferability** - Any Permit for Extraction operations issued pursuant to this Ordinance shall not be transferable by the Permit holder.

- 5.07 **Extraction Below the Ground Water Elevation** – Extraction below the Ground Water Elevation may be conducted if specifically approved by the Planning Commission and specified in the Extraction Permit issued pursuant to this Ordinance and subject to such other terms and conditions deemed appropriate by the Planning Commission.
- 5.08 **Term of Permit** - The Term of the Extraction Permit shall be Seven (7) years from the date of its issuance, and is renewable in accordance with the provisions of Section 6.09 of this Ordinance.

Section 6. Application for an Extraction Permit

- 6.01 **Filing of Application**- An application for an Extraction Permit shall be filed with the Township Clerk by the Applicant, Owner, and Operator, if any, of the Site for which a Conditional Use Permit was issued for Extraction operations. The Application shall be forwarded to the Township Planning Commission by the Clerk. Each Application shall be accompanied by the Application Fee required in Section 6.02 and the Escrow Deposit required in Section 6.03.
- 6.02 **Amount of Application Fee** - The amount of the Application Fee shall be One Thousand Dollars (\$1,000.00).
- 6.03 **Costs** - In addition to the basic Application Fee, applicants for an Extraction Permit shall pay the costs of review of Applications. Such costs shall be in an amount equal to the Township’s actual expenses incurred for reviewing and/or relating to the Application, including but not necessarily limited to the cost of:
 - A. Planning Commission subcommittee meetings;
 - B. Special meetings;
 - C. Reports and review by Township attorney and preparation of appropriate approving resolutions or ordinances;
 - D. Reports and review by Township Planner,
 - E. Reports and review by Township engineer;
 - F. Additional notices of public hearing;
 - G. Traffic studies;
 - H. Environmental impact studies;
 - I. Any other costs and expenses incurred by the Township in the course of review and processing of the application.

The Applicant/Owner/Operator shall pay into escrow, at the time of filing of the Application for an Extraction Permit the sum of Five Thousand Dollars (\$5,000) to be used by the Township to reimburse the Township for actual expenses incurred by the Township in reviewing and processing the Extraction Permit Application. No Application shall be forwarded to the Planning Commission prior to the required escrow fee having been deposited with the Clerk. The Township Planning Commission shall approve and direct the expenditure of the Escrowed Funds used to engage consultants and other providers to assist the Planning Commission in the review and processing of the Application. All other Township costs and expenses to be reimbursed to the Township from the Escrowed Funds shall be as determined by the Planning Commission.

As funds in the escrow account are depleted, the Applicant/Owner/Operator shall make an additional deposit sufficient to cover any deficit and to re-establish and maintain a balance of at least Five Thousand Dollars (\$5,000.00). No further action shall be taken on an Application until the escrow account has been re-established to such level and certified to that effect by the Township Clerk.

The Township Treasurer shall maintain accurate records regarding the expenditures made on behalf of each Applicant/Owner/Operator from the escrow account. Such escrow funds (from one or more Applicant/Owner/Operators) shall be accounted for separately from other Township funds.

Any excess funds remaining in the Escrow Account after the Extraction Permit Application has been fully processed, reviewed, and a final decision rendered regarding the Extraction Permit Application will be refunded to the Applicant/Owner/Operator with no interest to be paid for these funds. If the balance of the expenses for the Application for any reason exceeds the amount remaining in escrow following final action by the Township, the Township shall send the Applicant/Owner/Operator a statement for such additional fees, Until the Applicant/Owner/Operator pays such fees for the expenses of review, an Extraction Permit shall not be issued.

6.04 Information and Data Required for an Extraction Permit - The Applicant/Owner/Operator shall submit the following as part of the Application for an Extraction Permit.

- A. Survey.** A survey prepared and scaled by a surveyor licensed and registered in the State of Michigan in compliance with the minimum standards and requirements of the American Land Title Association and showing:
1. Its scale and a north directional arrow.
 2. A legal description, with street address and identity of city, village or township and county, and the property's location and dimensions by metes and bounds written on the survey map from a fixed point of beginning or, if applicable, the lot and block numbers, by subdivision name and recording information.
 3. The means of ingress and egress to and from the property, if not by abutting street(s). The established building line(s), if any, the line of the abutting streets identified by names and widths, and the location of all utility lines and connections. All structures and improvements by location, nature (including character of construction and number of stories), dimensions, distance from the property lines on all sides, and occupants.
 4. All servient and beneficial easements, if any, and all easements appurtenant to the property, if any, indicating the identity, by Liber and Page, if any, the origin (e.g., Deed from A to B), if applicable, and nature (e.g., ten foot sewer easement).
 5. The location, dimensions and nature of all encroachments upon the property and from the property on adjoining lands and all party walls.
 6. The location of all waterways, wet lands and established flood plains, if any.
 7. Designating the existing uses surrounding the permit area.
 8. The benchmarks utilized for the Survey.
 9. The following certificate executed by the surveyor:

CERTIFICATE

I certify to Freedom Township, this print of survey is based on a survey made by _____ Civil Engineer/Registered Surveyor No. _____, on _____, _____, and correctly shows the location of all buildings, structures and other improvements situated on the described property and that except as shown, there are no visible easements or rights-of-way across the property, no easements or rights-of-way of which I have been advised, no party walls or encroachments upon adjoining property, streets or alleys by any of said buildings, structures or other improvements, no cemeteries or family burying grounds, and no encroachments of any nature upon the property. I further certify that the property abuts an accessible street or that there is ingress and egress to and from the property. I further certify that on the above date, I found the following person(s) to be in possession of the property in the indicated capacities: _____.

Dated: _____ Civil Engineer/

- B. A list of any deed restrictions appearing in the chain of title;
- C. A list of names, address, telephone number, telefax number and e-mail address of any and all persons, firms or corporations having legal or equitable interests in the property.
- D. **Base Map Documents**
 - 1. **Topographical map** containing two (2) contour intervals at scale of one inch equals one hundred feet (1" = 100') or, depending on the size of the Site, at a scale no greater than one inch equals two hundred feet (1" = 200'). The map shall extend a distance of two hundred feet (200') beyond the boundaries of the requested Extraction area on the site. This topographic map shall include boundary lines of the Site with dimensions and bearings correlated with the legal description and all required setback lines.
 - 2. **Aerial Photographs** which shall show the Site and not less than five hundred feet (500') beyond the boundary lines of the Site together with the boundaries of the Extraction Area on the Site, boundary lines and setback lines with the scale of the photograph at one inch (1") equals two hundred feet (200')
 - 3. **Township Map** illustrating the location of the requested Site and proposed haul route(s).
- E. **Extraction Plan(s)** - Graphically descriptive extraction plan documents shall be submitted based upon the Topographical Map required in Section 6.04 D 1 above and including, where appropriate, supporting documents such as plan enlargements, sections, details and elevations. It shall also include the following:
 - 1. Site boundary lines and setback lines.
 - 2. Location, elevation and area of any proposed processing plant.
 - 3. Location, size and elevation of all structures, including maintenance and storage buildings, office, scale house, and fuel storage facilities, and chemical and oil storage facilities as required by the applicable Washtenaw County Pollution Prevention Regulations and any other applicable ordinances and regulations.
 - 4. Location of outdoor storage areas including materials extracted from the Site.
 - 5. Location and size of sediment ponds, drainage diversions and discharge points.
 - 6. Location of fences and gates.
 - 7. Location and contour (2-foot contour interval) of proposed berms and landscape plantings proposed to be constructed to screen Site from surrounding areas.
 - 8. Entrance road design, as approved by the Washtenaw County Road Commission.
 - 9. Wooded areas, drainage courses, wetlands and other natural features to be protected.
 - 10. Landscape plan, with typical planting details, identifying:
 - a. Grass seed mix and application rate.
 - b. Fertilizer mix and application rate.
 - c. Name, size, location and quantity of trees and shrubs.

11. Typical sections, details, elevations and plan enlargements to accurately illustrate the proposed Extraction Plan elements, including:
 - a. Berm location heights , configurations and landscaping.
 - b. Relationship of the processing plant and Extraction Site to adjacent lands.
 - c. Extraction Site entrance area design and landscaping.
 12. Location and description of any water supply for human consumption and any sewage disposal system for human waste.
- F. Surface Physical Features Map** – showing surface features of the Site on a topographic map, including:
1. Woodlands, wooded fence rows and other natural features.
 2. Wetland boundaries.
 3. Drainage courses, structures and flood plain boundaries.
 4. Utility and other types of easements.
 5. Road right-of-ways.
 6. Existing structures.
 7. Photographs of the Site from surrounding areas.
 8. Potential entrance(s) to the Site.
 9. Other features of significance, such as archeological sites, special habitats and endangered flora and fauna.
 10. Soil map.
- G. Subsurface Physical Features Map** - prepared by a qualified licensed and registered engineer or geologist and certified to the Township as true and accurate showing the extent, location and nature of all subsurface materials on the proposed Extraction Site on a topological map including:
1. Estimated extent (outline) of deposit limits of Extraction materials.
 2. Location by GIS information and identification number of all excavation drill holes and drill logs and all other data or reports however embodied or obtained from excavation drill holes.
 3. Proposed location of observation wells.
 4. Report to include information about:
 - a. Depth of excavation drill holes and the claimed deposit of materials to be extracted from the Site..
 - b. Ground water elevation.
 - c. Estimated quantity of reserves.
 - d. Depth and estimated quantity of topsoil to be stripped.
 - d. Depth and estimated quantity of overburden to be stripped.
 5. Isopach Map with five foot (5') contours indicating the deposit extent and depth below existing surface elevations.
- H. Operations Report** – An Applicant prepared report describing the following:

1. Earth handling equipment to be used on-site.
 2. Excavation equipment.
 3. Methods of excavating.
 4. Methods of transporting material from mine Site to processing plant.
 5. Processing plant height and area requirements.
 6. Types of processing activities, such as screening, washing, crushing, etc.
 7. Use and stockpiling of topsoil.
 8. Use and stockpiling of overburden.
 9. Estimated quantity, use and disposal of fines.
 10. Estimated number and size of settling ponds.
 11. Estimated annual production.
 12. Estimated type, size and number of trucks leaving the Site daily, during peak season and annually.
 13. Fuel storage area requirements.
 14. Maintenance and storage area requirements.
 15. Other structures and facilities to be constructed on-site.
 16. Procedures for recording and handling complaints.
 17. Dust control plan.
 18. Proposed hours of operation.
- I. Site Inventory Map** - A Site Inventory Map and Assessment prepared by a qualified, licensed professional, certified to the Township and clearly showing the locations and types of existing natural features both on the Site and where possible those within a region 100 feet beyond the Site property boundary lines. The drawing should delineate edges of woodlands and wetlands, show applicable setbacks, show watercourse streambanks, pond ordinary highwater marks, floodways, floodplains, areas of hydric soils, highly permeable soils, groundwater recharge areas and percentages of slope on the site. Landmark trees on the site should be located by numbered dots, with an accompanying database table of corresponding specie and size listings. The site inventory should contain a written description of the quality, character and health of the natural features on the site.
- J. Environmental Impact Statement** - Based upon the Site Inventory Map and Assessment, an Environmental Impact Statement shall be prepared by a qualified, licensed professional, certified to the Township addressing impacts the operation will have on the Site's natural features flora, fauna and on adjacent lands and any mitigation measures needed to eliminate or minimize these impacts. The Statement should also address the following:
1. Noise and dust.
 2. Drainage, erosion and sedimentation.
 3. Views of the mine site from adjacent roads and properties.
 4. Wetlands, floodplains, and special habitats.
 5. Areas and features of historic, archeological and natural significance.

- a. Truck Traffic and access to and from the Site.
 - b. Compatibility with adjacent land uses.
 - c. Any additional items that the Applicant deems significant.
- K. Hydrogeological Study-** A hydrogeologic study and report prepared by a registered and licensed hydrogeologist, registered and licensed in the State of Michigan which report shall include:
- 1. Identification of and characteristics of the watershed in which the proposed extraction operation is located, any existing water bodies, wet lands, aquifers, aquifer recharge areas, streams, or areas of seasonal water accumulation located on the site and describing the methodology or means by which the identification of such were determined and located.
 - 2. Assessment of the impact the proposed operation will have on the watershed; groundwater, any existing water bodies, wet lands, aquifer recharge areas, streams or areas of seasonal water accumulation.
 - 3. Recommendations for the type, location, number of and specifications for devices to monitor the impact of the proposed operation on ground water, water bodies of any type, streams, wetlands, aquifers, and seasonal water accumulation areas and the quality thereof which shall include by not be limited to observation wells.
 - 4. A copy of all test results and any other data, however embodied, used for preparation of said report.
- L. Erosion and Sedimentation Control Plan** - The Applicant/Owner/Operator shall submit this plan to the Washtenaw County Soil Conservation department for approval and inclusion in this Extraction Permit Application.
- M. Operation Plan(s)** - The Operation Plan(s)_ shall be prepared by a registered landscape architect or engineer. These plans shall illustrate the pattern, direction and phasing of earth moving, excavation, land shaping and reclamation activities. The plans shall be of sufficient detail so they can be used to assess the performance of the mine operator during any inspection. The plan(s) shall be drawn on the Extraction Plan(s) described in Section 6.04 A above. These plans shall include the following information:
- 1. Location of entrance area, processing plant and support areas and structures.
 - 2. Division of the Site into a series of cells that illustrate the sequence of the proposed activities. Indicate the size of the cell and estimated dates each cell will be operative.
 - 3. Sequence of clearing and grubbing, including a description of the disposal methods.
 - 4. Sequence of construction and installation of facilities.
 - 5. Sequence of stripping, placement and/or stockpiling of topsoil, including the area to be stripped.
 - 6. Sequence of stripping, placement and/or stockpiling of overburden, including the area to be stripped.
 - 7. Sequence of extraction.
 - 8. Property boundaries.

9. Set back lines.
 10. Fence locations.
- N. Noise Control Plan** - a study and report prepared by a qualified engineer/audiologist, certified to the Township estimating the noise levels at the property boundaries containing the Extraction operation and at successive stages of the operation.
- O. Restoration Plan(s)** - The Restoration Plan(s) shall be prepared by a registered landscape architect. These plans shall illustrate the proposed final shape and configuration of the Site upon termination of the extraction operation. The Plan(s) shall be prepared containing the following information:
1. Grading area with two foot (2 foot) contour levels.
 2. Fill areas, source of the on-Site fill, amount and place of fill material during extraction operation.
 3. Drainage patterns, floodplains, existing and proposed wetlands, and preserved woodlots, and other retained natural features.
 4. Cross-sections of remaining and restored slopes.
 5. Sketch plan of the proposed use or uses that may be developed on the reclaimed Site.
 6. Sequence and timing of reclamation, including:
 - a. Filling and shaping lands.
 - b. Seeding.
 - c. Planting of trees and shrubs.
 7. Final close-out activities including removing all processing and mining equipment, and stockpiles of material from the site.
 8. A description of the methods and materials to be utilized in restoring the Site; and
 9. Sketch plan of the proposed use or uses of the restored Site when restored. A landfill or other disposal or refuse Site is not a suitable, satisfactory as permitted use.
 10. Final Landscaping Plan showing typical planting details identifying:
 - a. Seed mix and application rate.
 - b. Fertilizer mix and application rate.
 - c. Name, size, location and quantity of trees and shrubs.
 - d. Guaranty or arrangements to the Township for removal or replacement of dead trees or shrubs.
- P.** Michigan State Fire Marshall and/or Michigan State Police permit for the on-Site storage or transfer of fuels. In the alternative, a written communication addressed to the Township from the applicable agency that a permit is not required.
- Q.** Copy of permit from the Michigan Department of Natural Environmental Quality (DEQ), or written communication addressed to the Township from the DEQ showing that a permit is not required for the proposed extraction or reclamation by any applicable statute granting the DEQ jurisdiction over such activity.

- R. Copy of stormwater control permit from the United States Environmental Protection Agency (EPA) and/or from MDNR.
 - S. Description of haul routes within the Township to be used in the Extraction operations, the estimated average and peak daily number of haul trucks accessing the Extraction Site, and the Estimated total number of other daily vehicle traffic from employees, customers and service vehicles.
- 6.05 Issuance or Rejection of Application** - The Freedom Township Planning Commission shall, once a complete application is submitted and fully reviewed, by resolution act on the submitted Application based upon the following:
- A. Approve the permit based on the following findings:
 1. The Applicant/Owner/Operator can comply with this ordinance;
 2. The operation will not adversely affect the health, safety, and welfare, of the residents of the Township and will not impair the environment;
 3. The Site will be restored so it is safe and harmonious with surrounding land uses.
 4. The necessary fees, bonds, security deposits and evidence of insurance have been submitted.
 5. The proposed operation will not adversely affect the water table, water quality or water supply to any surrounding land.
 - B. Disapprove the permit based on one or more of the following findings that the Applicant/Owner/Operator has failed to demonstrate that:
 1. The Applicant/Owner/Operator can or will comply with this ordinance; or
 2. The operation will not adversely affect the health, safety, and welfare of the residents of the Township, or impair the environment; or
 3. The Site will be restored so it is safe and harmonious with the surrounding land uses; or
 4. The proposed operation will not adversely affect the water table, water quality or water supply of any surrounding land.
 - C. Conditionally disapprove the permit until the Applicant/Owner/Operator submits revised document(s) providing evidence satisfactory to the Township Planning Commission that the Application should be approved.
- 6.06 Issuance of Permit**-if a permit is approved, the Freedom Township Planning Commission shall issue the permit in duplicate upon receiving the required fee, bond, irrevocable bank letter of credit, or security deposit, proof of insurance and reimbursement for any costs not yet reimbursed to the Township by the Applicant. One duplicate original shall be provided to the Owner/Operators and the other shall be retained by the Township for its records. The fee shall consist of \$5,000.00 for the first ten (10) acres and \$1,000.00 for each additional ten (10) acres or fraction thereof in the extraction site. One duplicate original permit will be provided to the Applicant/Owner/Operator, and the other will be maintained by the Township.
- 6.07 Form of Permit**-The permit shall be prepared in duplicate originals and signed by the Township Supervisor and Township Clerk and contain the following:
- A. A full written description of the operation and all conditions and restrictions permitted by the permit based on approved plans and drawings.
 - B. A full description of the restored Site based on the approved plans and drawings.
 - C. Dates for the completion of the operations and the scheduled dates for each restoration stage and for completion of the restoration.

- D. The dates for which the permit is valid based on the continual restoration schedule approved by the Freedom Township Planning Commission.
 - E. An Extraction Permit Agreement signed by all parties having an interest in the land and the operation that they will comply with the Ordinance and the permit, and that such parties will reimburse the Township for all legal, engineering, consulting, and investigation costs incurred by the Township for any enforcement action taken by the Township.
 - F. That Applicant/Owner/Operator remains subject to required annual Inspections by the Township's designated agent(s) and liable for payment of designated fees as specified by this ordinance and reimbursement of the Township's cost for monitoring to determine compliance with the permit.
 - G. All required attachments to the Application.
- 6.08 Compliance with Future Amendments to Ordinance - Any Applicant/Owner/Operator shall be required to comply with the provisions of any future amendments to this Extraction Ordinance and the Extraction Permit Agreement shall contain a provision to that effect.**
- 6.09 Extraction Permit Renewal**
- A. **Renewal Period-** The Extraction Permit may be renewed every seven (7) years ("Renewal Permit") for an additional seven (7) year period commencing upon expiration of the previous Extraction Permit. The Applicant/Owner/Operator shall submit a renewal Application to the Township Planning Commission not less than six (6) months nor more than one (1) year before the end of the then current seven (7) year Permit term together with the Renewal Fee and an Escrow Deposit in the same amount and to be administered in the same manner as provided in Section 6.03 to reimburse the Township for costs and expenses incurred in processing and reviewing the Renewal Application .
 - B. **Information and Data Required for a Renewal Permit-** The Applicant shall include the following in the Application for a renewal permit:
 1. A current Environmental Impact study addressed and certified to the Township summarizing the impacts the extraction operation has had on the community, the environment and the Site and how these impacts have been addressed.
 2. Updates to the information and plans contained in the last Mining or Extraction Permit Application.
 3. Report on the proposed extraction and reclamation activity for the next seven (7) years, including any requested modifications to the original plan.
 - C. **Township Review Process -** The Township Planning Commission shall undertake the following activities to determine whether or not to renew the Extraction Permit:
 1. Conduct a public hearing to hear public comments on the past performance and continuation of the extraction operation/
 2. Review the Operator's annual reports and the inspection reports received during the term.
 3. Review the Application for Renewal Permit.
 4. If deemed appropriate, renew, adopt additional conditions for the renewal of the Extraction Permit, or revoke the Permit.
 - D. **Standards for Approval or Denial -** Reasons for denial of a request for the Renewal of a Permit.
 1. Documented negative impacts of the extraction operation on the environment and the health, safety, and welfare of the community.

2. Substantial non-compliance with the previous approved Extraction Permit.

E. **Extraction Permit Renewal Fee** - The amount of the extraction permit renewal fee shall be One Thousand Dollars (\$1,000.00).

Section 7. Annual Report and Inspections

7.01 **Annual Report** – Each year at the February meeting of the Township Planning Commission the Applicant/Owner/Operator shall submit a report to the Township Planning Commission. The report shall include the following information:

- A. Tonnage of sand, gravel, and other materials removed from the extraction Site.
- B. Description of restoration activities undertaken during the year.
- C. Description of landscaping activities undertaken during the year.
- D. Acres of land restored during the year.
- E. Total acres of disturbed land (not restored) at the end of the year, including processing plant area, un-seeded berms and slopes, un-restored areas, un-restored shorelines, areas stripped of topsoil, and water areas where active extraction is occurring.
- F. Monitoring well records certified by a registered engineer, geologist, or hydrogeologist regarding ground water elevations and chemical analysis of the water.
- G. Statement regarding planned extraction and restoration activities for the next year.
- H. Statement regarding conformance to the approved extraction operations and reclamation plans and compliance with required State and Federal regulations including but not limited to the volume of material excavated and removed from the Site, the volume of restoration material stockpiled on Site, and the sufficiency of the stockpiled material to restore the then excavated Site pursuant to the approved Restoration Plan.
- I. Description of any complaints received during the prior calendar year and procedures used to resolve the complaints.
- J. A list of all equipment that is located on and used at the Site, whether temporary or permanent together with a statement of the Dollar value of each piece of said equipment.
- K. An aerial photograph of the entire Site of oblique perspective on a scale of not more than one (1") inch equals two hundred (200') feet, taken after extraction operations for the year have ceased and prior to the date of the Annual Report required under this Ordinance.
- L. Written evidence that the financial guaranties and liability insurance required pursuant to the Ordinance are in full force for a period of not less than twelve (12) months from the date of the Annual Report.
- M. Applicable permits and/or reports that may be required from other governmental agencies including but not limited to information required within the Washtenaw County Pollution Prevention Regulation Act of 1992.

7.02 **Additional Meeting(s)** - Following receipt of the Annual Report, the Freedom Township Planning Commission may require additional reports, presentations and/or meetings with representatives of the Extraction Permit holder to review the Annual Report and to discuss any existing or anticipated issues associated with the extraction operation.

7.03 **Inspections** - Representatives of the Township including but not necessarily limited to the Township Engineer shall conduct not less than one inspection of the Site each year. A representative of the Operator shall accompany the inspectors. The purpose of the inspection is to evaluate the operations in terms of the annual report and in terms of compliance with the approved Extraction Permit conditions. A series of photographs will be taken to establish a historic record

of activities and Site changes over the life of the extraction operation. An inspection report shall be submitted to the Township Planning Commission. This report shall include:

- A. An evaluation of the Annual Report submitted by the extraction company.
- B. Evaluation of the Site and operations in terms of performance and compliance with the Extraction Permit.
- C. Determination of the size of the reclamation bond based upon the amount of land disturbed and reclaimed.
- D. Photographs of the Site.
- E. Recommendations.

The Township may require additional inspections by representatives of the Township from time to time.

7.04 Inspection by Planning Commission - An annual inspection date for Township officials to visit each Extraction Site shall be determined at the meeting of the Freedom Township Planning Commission when the Annual Report is presented.

7.05 Annual Inspection Fee - An Escrow Account shall be established by the Township for each inspection required by the Township Planning Commission in an amount based upon the estimated cost for each inspection as determined by the Township Planning Commission. The Applicant/Owner/Operator shall fund such Escrow upon written demand and notice from the Township Planning Commission and in any event shall be responsible to reimburse the Township all costs and expenses incurred by the Township for any such inspection. In the event funds remain in such Escrow Account after such inspection(s), the funds remaining shall be refunded to the Applicant/Owner/Operator. In the event the funds in the Escrow Account are not sufficient to pay the costs and expenses incurred by the Township for such inspection, the Applicant/Owner/Operator shall reimburse the Township for such deficiency within ten (10) calendar days of the date written demand is made by the Township for such reimbursement, and if not so paid the Extraction Permit shall be deemed automatically suspended until such time as the deficiency is paid to the Township.

Section 8. Access to Site

8.01 The Township, through its agents, shall have the reasonable right to enter any private property, upon notification to the Applicant/Owner/Operator, to conduct the necessary inspections while reviewing the application. The Township shall also have the right to conduct the necessary periodic inspections to determine if any violation of any provisions of this ordinance or conditions of the permit. Refusal to permit entry shall result in rejection of the Application or automatic revocation of the Extraction Permit as of the date of denial of such access.

Section 9. Financial Guaranty and Indemnity Insurance

9.01 Financial Guaranty - The Township Planning Commission shall, to ensure strict compliance with any regulations contained in this Ordinance or required as a condition of the issuance of an Extraction Permit, restoration of the Site in accordance with the approved Restoration Plan, shall require the Applicant/Owner/Operator to furnish a financial guaranty prior to the commencement of extraction operation. The financial guaranty shall be in the form of a letter of credit or surety bond payable to Freedom Township executed by the Applicant/Owner/Operator and a reputable surety company. The total amount shall be an amount as determined by the Township Planning Commission to be reasonably necessary to ensure compliance. A surety bond or letter of credit must meet the following minimum requirements:

- A. The letter of credit or surety bond must be issued by a corporate surety licensed to do business in the State of Michigan and rated AAA, as provided by the current Best's Key Rating Guide.
- B. Freedom Township must be named as obligee.

- C. The surety bond or letter of credit must be renewed thirty (30) days in advance of its expiration.
- D. The corporate surety must guaranty renewal of the surety bond unless released by Freedom Township.

Initially, unless the Township Board determines that a different amount is reasonably necessary, the surety bond shall be in a total amount of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00). In fixing the amount of such security, the Freedom Township Planning Commission shall take into account the size and scope of the proposed excavation, probable cost of rehabilitating the premises upon default of the operator, recommendation of appropriate consultants, estimated expenses to compel the operator to comply by court decree, and such other factors and conditions as might be relevant in determining the sum reasonable in the light of all facts and circumstances surrounding each application. The Planning Commission shall review and adjust the amount of the letter of credit or surety bond annually taking into account the information obtained in the Annual Report, and inspections, and compliance with this Ordinance but in any event the amount of the surety bond shall be not less than Two Hundred Fifty Thousand Dollars (\$250,000.00).

- 9.02 **Site Insurance** - The applicant shall provide a specific liability insurance policy of not less than Five Million Dollars (\$5,000,000.00) per incident for all liability claims arising out of the Site issued by an insurer rated AAA, as provided by the current Best's Key Rating Guide. The adequacy of this amount shall be subject to yearly review by the Freedom Township Planning Commission. The liability insurance is to cover property damage for surface and/or subsurface occurrences and bodily injury in an amount and form approved by the Freedom Township Board of Trustees, naming Freedom Township, its elected officials and appointed officials as additional named insureds and provide a copy of this policy to the Township clerk. Said insurance shall provide an endorsement that provides that the general aggregate limit of the operations commercial and general liability applies separately to the Site, and that Freedom Township shall be sent a notice of intent to cancel the insurance not less than 30 days before the cancellation thereof. Failure of the operator, or any persons, firm or corporation named in the policy to maintain the insurance shall cause immediate suspension of the Extraction Permit.

Section 10. Specific Operating Conditions Applicable to every Extraction Permit

For any Extraction Permit granted pursuant to this Ordinance, the Applicant/Owner/Operator shall jointly and severally comply with the following regulations.

- 10.01 **Setback** - No Excavation, washing, stockpiling of extracted material or other extraction activity of any sort shall be conducted closer than, two hundred (200') feet from the closest boundary of any road right of way to the Site, five hundred (500) feet from any existing residence, and not less than two hundred (200) feet from any other property boundary of the Site, or such other setback as the Planning Commission shall establish for the health and welfare of adjoining property owners and other residents of the Township, whichever is greater. The Setback area shall not be used for any use related to the extractive operation, except access roads and public notice signs identifying the use as an excavation. Greenbelt plantings and landscaping shall be provided in the Setback area as required by the Freedom Township Planning Commission. Before commencement of extraction operations on the Site, 4" X 4" white painted posts, a minimum of five (5) feet in height above grade, shall be placed along the designated setback lines around the Site. Such posts shall be placed at a distance, not to exceed three hundred (300), from each post. The posts shall be placed at intervals so that from the location of any post two additional posts are visible.
- 10.02 **Access** - All means of access to the Site shall be from major or secondary thoroughfares and shall not be from residential roadways.
- 10.03 **Fencing** - Before the commencement of any extractive operations, a 10/47/6 fence (standard farm-type fence) shall be erected around the perimeter of the active extraction Site and maintained in good condition until excavation and extraction operations have been completed. A lockable gate shall be provided at all access points from the public road to the extractive operation. Said gates shall be closed and locked at all times except during the permitted hours of operation.

- 10.04 **Signs** - The Township Planning Commission may require the posting of “Keep Out – Danger” or similar signs, every one hundred feet along the entire perimeter fence.
- 10.05 **Noise, Vibration and Air Pollution** - Any noise, odors, smoke, fumes, or dust generated on said Site by any digging, excavating, loading or processing operation and borne or apt to be borne by the wind shall be confined so as not to cause a nuisance or hazard on any adjoining property or public road. The noise generated by the operation shall not at any one time exceed the maximum allowable decibel level as established any applicable Freedom Township ordinance.
- 10.06 **Pollution of Waters** - The removing of materials shall not cause pollution of any body of water or subsurface watercourse.
- 10.07 **Natural Drainage and Ground Water Recharge** - The Extraction operations and related activities shall not adversely affect the natural drainage of the other properties in the area nor affect any pre-existing Ground Water Recharge and filtering mechanisms of Wetlands in the area or on the Extraction Site.
- 10.08 **Site Access Roads** - Each Site shall be limited to one (1) access point and road into the Site from public roads as determined by the Freedom Township Planning Commission and the Washtenaw County Road Commission. The access road shall be paved for a minimum of three hundred (300') feet into the Site from the closest of the public road and a lockable gate.
- 10.09 **Slopes**-Each Restoration Plan shall provide for finished slopes of the banks of any excavation area to be not less than four feet horizontal to one foot vertical as measured from the nearest Setback line into any area disturbed by any extraction activity. Other alternatives such as terracing around the pit may be considered regarding finished slopes when in the view of the Planning Commission such alternatives would result in a more effective and visual pleasing representation of the pit for future uses. Where ponded water results from the operations, the shoreline will be shaped as follows: The slope into the water shall be not less than two foot horizontal to one foot vertical to a depth of two feet below high water elevation; then slope not less than fifteen feet horizontal to one foot vertical to a water depth of five feet. Slopes that are less vertical may be required by the Planning Commission as a condition of the Extraction Permit or if required as a condition of the Conditional Use Permit for the Site. This time for completion of said slopes shall be as provided in the approved Restoration Plan. Sufficient top soil shall be stockpiled on the Site so that the entire area, when excavation operations are completed, may be covered with a minimum of six (6") inches of top soil, and that such replacement of top soil shall be made immediately as the approved Restoration Plans provides. To prevent erosion of slopes, all replaced top soil shall immediately be planted with grass or other ground cover approved by the Township Planning Commission in the Restoration Plan.
- 10.10 **Elevation of Plant Site** - Any processing plant shall be located within the excavation area, at a point lower than the general level of the surrounding terrain, to reduce the visual and noise impact of such plant. In any event, the noise from the operation of such plant shall not exceed the noise levels permitted by any other Freedom Township ordinance, or such noise level at the boundaries of the Site than the Planning Commission may establish to protect the health, welfare and safety of surrounding property owners and the residents of the Township, whichever is less.
- 10.11 **Seeding of Stockpiles** - Stockpiles of stripped top soil and/or overburden shall be seeded with grass or other ground cover materials to prevent erosion.
- 10.12 **Domestic Water Supply and Domestic Sewage Disposal Systems**-Before the issuance of the Extraction Permit authorized by this ordinance and the commencement of any extractive activities on the Site, the applicant shall obtain approval, in writing, from the Washtenaw County Health Department or other governmental agency having jurisdiction for any proposed on-Site domestic water supply and domestic sewage disposal systems. A copy of this permit with the plans for the system(s) shall be furnished to Freedom Township.
- 10.13 **Impacts on Domestic Wells** - Prior to the issuance of any Extraction Permit, the Applicant/Owner/Operator shall be required to conduct, at no cost to affected well owners, a pre-extraction survey of each domestic well located within two thousand (2000) feet of the Site

property line. The survey will consist of taking baseline data, including the performance of a written pump test and associated laboratory test reports certified and submitted to the Township. The survey will be limited to those domestic well owners who provide written consent to the survey within 30 days of receiving a certified letter request from the Applicant/Owner/Operator. True Copies of such certified letters and consents shall be provided to the Township. Said tests shall determine the following baseline data for comparison with similar data to be monitored during extraction operations:

Temperature, static water level elevation, time-clapsed pump run elevation (drawdown), slug tests (hydraulic conductivity), turbidity, specific conductance, pH, dissolved oxygen, redox potential, calcium, iron, manganese, magnesium, phosphorus, potassium, arsenic, lead, nitrate, sodium, chloride, sulfate, organic and petroleum compounds, MTBE additive, total coliform bacteria.

All laboratory testing shall be conducted in conformance with current applicable U.S. Environmental Protection Agency ("EPA") Test Methods, and data shall be compared to Maximum Contaminant Levels (MCL) as set by U. S. EPA.

The Applicant/Owner/Operator shall develop and submit to Freedom Township a written Well Complaint Resolution Program, which specifies the procedures that the Applicant/Owner/Operator is committed to follow to resolve any domestic water well complaints, including multiple points of contact, response times and methods, and complaint evaluation and mitigation procedures, including reports to both the domestic well owner and the Township. Such Well Complaint Resolution Program shall be applicable to those domestic wells which provided consent for the pre-extraction well survey and for which pre-extraction well survey data was collected.

If analysis and evaluation of well complaints leads to the determination that an adverse impact did occur and was caused by the Applicant/Owner/Operator's extraction operation, the Applicant/Owner/Operator will replace the domestic water supply at the subject residence by the following, but not limited to, methods, at no cost to the homeowner: 1) repair or replace well components damaged by the extraction operation, 2) deepen the existing well or drill a replacement well, 3) provide another source of reliable water for the residence.

- 10.14 **Dewatering** – Dewatering for extraction or any other processing on site shall not be permitted.
- 10.15 **Blasting** - No blasting shall be allowed at any time under any Extraction Permit.
- 10.16 **Hours of Operation**
 - A. **Extraction Operations** – Extractive and processing operations shall be permitted only between the hours of 7:00 AM. and 5:00 P.M., Monday through Friday, and between 7:00 A.M. and 12:00 P.M. on Saturday.
 - B. **Transporting** – No transporting of aggregates or any materials from the Site shall be permitted prior to 7:00 AM. and after 5:00 PM., Monday through Friday, and prior to 7:00 AM. and after 12:00 P.M. on Saturday.
 - C. **Repair Of Equipment** - Repair of equipment on Site shall be permitted as allowed under the terms of this Ordinance.
 - D. **Sunday Operations** - There shall be no extraction operations or transporting of aggregates permitted on Saturday after 12:00 noon nor on Sundays or the official holidays of New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving, or Christmas.
 - E. **Emergency Hours** – Permission for emergency hours of operation shall be granted only by written agreement of the Township Supervisor and the Planning Commission Chair. Details of the need for emergency hours shall be within the written agreement.

- 10.17 Dumping of Materials on Site** - No material of any kind, including but not limited to soil, sand, clay or gravel shall be brought from elsewhere onto the Site unless specific written permission to do so has been obtained from the Freedom Township Planning Commission.

Section 11. Public Roads

The Applicant/Owner/Operator shall clean all spillage and/or trackage of material, dirt, rock, mud or any other debris onto any public roads under Township jurisdiction by trucks coming to or from the Site or by any other equipment which cleaning shall occur promptly after the spillage or trackage of the material has occurred. Further, to the extent permitted by law and as deemed necessary by the Planning Commission for the health, safety and welfare of residents of the Township, the Planning Commission may as a condition of the Extraction Permit designate which public roads within the Township that trucks or any other vehicle accessing the Site may utilize.

Section 12. Landscaping

The following are minimum requirements for each approved Site Plan. The Planning Commission may require additional requirements to protect the health, welfare and safety of Township residents.

- 12.01 Berm** - Prior to the commencement of any extractive operations under any Extraction Permit the Applicant/Owner/Operator shall have completed construction of a berm in accordance with the approved Site Plan, seeded to prevent erosion around those areas of the Site where adjacent properties are exposed to the views and noise of the extraction operation and as provided in the approved Site Plan. The berm shall be of variable height with the top and outside sides of the berm varying in slope from four feet horizontal to one foot vertical to ten feet horizontal to one foot vertical. The berms shall not be uniform or geometric in shape and shall be blended into the natural landscape. The lower or "valley" parts of the berm shall be heavily planted with a mix of evergreen and deciduous trees and shrubs to create an effective visual screen and as provided in the approved Site Plan. Each berm shall be constructed so as to prevent surface water running off the berm onto any property adjacent to the Site. The location of the berm shall be noted in the approved Site Plan.
- 12.02 Unexcavated Areas** - Unexcavated areas shall be left in such a condition so as to ensure growth of vegetation, soil stabilization and erosion control.
- 12.03 Seeding and Tree Planting** - On the top and outside slope of the berm and for other areas where seeding is required, the Applicant/Owner/Operator shall engage in fertilizing and sowing seed in a manner as specified in the approved Site Plan. The trees shall be planted on the berm as shown in the approved Site Plan. If a tree or other landscaping dies, it shall be promptly replaced by the Applicant/Owner/Operator who shall provide the Township with a maintenance and replacement guaranty satisfactory to the Township. All plants and trees shall be of sufficient size and quantity to assure effective screening as soon as disturbed areas of the Site are visible from the surrounding properties and as may be specified on the approved Site Plan. Smaller plants, including seedlings, may be planted in areas where Operational areas of the Site will not be immediately exposed. These plants shall be supplemented with larger plants if the Planning Commission determines that the original plants do not provide effective screens.

Section 13. Restoration Plan

Each Restoration Plan approved as part of the Extraction Permit shall include the following:

- 13.01 Removal of Structures Etc.** - Upon cessation of the extractive operations by abandonment or otherwise, the Applicant/Owner/Operator, within a time not to exceed twelve (12) months or such lesser time period as may be established by the approved Restoration Plan, shall remove all structures, buildings, stockpiles and equipment; provided that buildings and structures which have a function under the Restoration Plan, which can be lawfully used under the requirements of the zoning district in which they are located, may be retained if permitted.
- 13.02 Time for Restoration** - Restoration shall be completed by the Applicant/Owner/Operator within twelve (12) months after cessation of the extractive operation, whether cessation be by

abandonment or otherwise, or such lesser time period as may be established by the approved Restoration Plan.

Section 14. Penalties

14.01 Any violation of this ordinance or the permit given pursuant to it shall justify revocation of the permit provided that the Township gives the Applicant/Owner/Operator ten (10) days within which to cure the violation. Failure on the part of the Applicant/Owner/Operator to correct the reported violation within ten (10) days after such demand is made shall entitle the Freedom Township Planning Commission to cancel the Permit and demand that all activities cease and that restoration be done and completed as provided for in this ordinance.

14.02 Additionally, any person, firm, corporation, or any other organization, which violates, disobeys, omits, neglects or refuses to comply with, or resists the enforcement of any provision of this ordinance, shall be fined upon conviction not more than Five Hundred Dollars (\$500.00) together with the costs of prosecution, or shall be punished by imprisonment in the County Jail for not more than ninety (90) days for each offense, or may be both fined and imprisoned as provided herein in the discretion of the Court. Every day during which such violation continues shall be deemed a separate offense. The imposition of any sentence shall not exempt this offender from compliance with the provisions of this ordinance.

14.03 The above penalties and/or relief are in addition to any other provided by law.

Section 15. Severability

This ordinance and its various parts, sections, subsections, sentences, phrases and clauses are severable. If any part, sentence, paragraph, section, subsection, phrase or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of this ordinance shall not be affected. The Township Board declares that it would have passed this ordinance and, of its parts, sections, subsections, phrases, sentences and clauses irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid.

Section 16 Interpretation

The provisions of this ordinance shall be held to be minimum requirements for the promotion of public health, moral safety, comfort, convenience, or general welfare. It is not intended by this ordinance to repeal, abrogate, annul or in any way to impair or interfere with any existing provision of law or ordinance, or with any rules, regulations, or permits previously adopted, or issued, or which shall be adopted or issued pursuant to the law relating to the use of the premises described herein; provided, however, that where this ordinance imposes a greater restriction than is required by existing ordinance or by rules, regulations, or permits, the provisions of this ordinance shall control.

Section 17 Variances

The Township Board shall have the power to vary or modify the application of the provisions of this ordinance so that the intent and purpose of the ordinance shall be observed, public health and safety secured and substantial justice done.

Any applicant may apply for a variance from any provision of the ordinance by filing an application for variance with the Township Clerk. The Township Board shall hold a public hearing upon such application within Sixty (60) days from its filing. The Township Clerk shall give notice of the hearing to the owners of all property within two thousand (2,000) feet of the subject property. The notice shall be mailed to each such party and published in a newspaper of general circulation in the Township not later than seven (7) days before the hearing. Any party may appear and comment at the hearing in person or by agent or by attorney. The Township shall keep a record of said hearing and shall render a written decision not later than the next regular Township Board meeting after the hearing date. The Township Board may attach reasonable conditions in granting any variance from any provision of the ordinance, and the breach of any conditions or the failure of any applicant to comply with the conditions shall void the variance. This provision of the ordinance is intended, in part, to enable variances to be granted and conditions attached to the variances to facilitate the upgrading of prior extraction operations, in a reasonable and practical manner.

Section 18 Effective Date

This ordinance is adopted by the Township Board of the Township of Freedom at a meeting thereof held on the 10th day of February, 2004, and is ordered to be given publication according to law. This ordinance shall take effect on the 30th day after the date of the first publication of this ordinance.

LEGISLATIVE HISTORY				
	Date passed	Date Published	Where Published	Ordinance Number
Adopted:	February 10, 2004	February 17, 2004	Ann Arbor News Manchester Enterprise	29