

**LODI TOWNSHIP  
WASHTENAW COUNTY  
MICHIGAN**

Ordinance No. 2015-002

AN ORDINANCE TO SECURE THE PUBLIC SAFETY, HEALTH, AND WELFARE OF THE RESIDENTS AND PROPERTY OWNERS OF THE TOWNSHIP OF LODI, WASHTENAW COUNTY, MICHIGAN BY AMENDING THE "LODI TOWNSHIP EXTRACTION AND FILLING REGULATIONS" TO CLARIFY AND UPDATE VARIOUS PROVISIONS AND DEFINITIONS IN THE ORDINANCE, INCLUDING BUT NOT LIMITED TO, THOSE REQUIREMENTS CONCERNING PROCEDURES FOR VIOLATIONS, OPERATION AND RESTORATION, CLEANING OF TRUCKS, FEE AND ESCROW, TYPE OF FINANCIAL GUARANTEE, ACCESS TO THE PROPERTY, AND ANNUAL REPORTING, AND TO ASSURE THAT IMPORTED MATERIAL MEETS THE STANDARDS OF LODI TOWNSHIP.

**THE TOWNSHIP OF LODI, WASHTENAW COUNTY, MICHIGAN, ORDAINS:**

Section 1: Amendments, additions, and deletions:

That Lodi Township Ordinance #103 adopted February 4, 2003 as amended March 2, 2004, and April 1, 2014, the Lodi Township Extraction and Filling Regulations, is hereby amended to read as follows:

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**A. Purpose.**

This Ordinance is enacted for the purpose of promoting the public health, welfare and safety of the residents of the Township and to preserve the natural resources and to prevent the creation of nuisances and hazards to the public health, welfare and safety.

**B. Interpretation.**

In the interpretation and application of the provisions of this Ordinance, they shall be held to be minimum requirements for the promotion of public health, morals, 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.

**C. Definitions.**

The following words, terms and phrases when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. **Bench** - An intermediate level area in a slope to facilitate travel or landscaping.

2. **Mining** - The removing of any sand, soil, gravel, stone or similar material from the property.
3. **Quarry** - Any tract or parcel of land or part thereof used for the purpose of searching for or the extraction of stone, gravel, marl, peat, topsoil, or similar materials including stripping and pit-type operations. The land remains a quarry until it has been fully restored compliant with a restoration plan approved by the Township Board.
4. **Person** - The term “person” includes an individual, trustee, executor, fiduciary, corporation, firm, partnership, association, organization, sole proprietor, or other legal entity acting as a unit.
5. **Soil** - Soil, topsoil, subsoil, sand, gravel, land, earth or any other material proposed to be moved from or onto the land.

**D. Enforcement and penalties.**

1. Any person who violates this ordinance or any person who is an owner or has control or use of any ~~mineral extraction related~~ activity regulated by this ordinance and permits or allows a violation of this ordinance is responsible for a municipal civil infraction which is punishable as set forth below. Each day that a violation is permitted to exist ~~shall~~ will constitute a separate offense. The rights and remedies provided herein are cumulative and in addition to other remedies provided by law, including but not limited to equitable relief in district court pursuant to MCL 600.8302.
2. The Lodi Township Supervisor ~~shall be~~ is responsible for enforcing this ordinance. Except for the issuance of citations and municipal civil infraction violation notices, the Supervisor may delegate the actual enforcement of the provisions of this ordinance to other township officials and personnel. For the issuance of citations and municipal civil infraction violation notices, the Lodi Township Supervisor, the Lodi Township Zoning Inspector, any other official, individual, firm, or entity the Lodi Township Board designates to perform all or part of the duties of the Zoning Inspector, any Washtenaw County Sheriff’s Deputy, and any Lodi Township Constable, Police Officer, and Ordinance Enforcement Officer, who have jurisdiction within Lodi Township, are authorized to issue citations and municipal civil infraction violation notices as an “authorized local official” pursuant to MCL 600.8707.
3. Procedures and fine schedule.
  - a. Procedures for violations where violator has **not** been provided written notice or has not plead or been found responsible for a similar violation for an incident within the last two (2) years; or where the violator has received written notice pursuant to subsection (a)ii and has not yet obtained an approved resolution but is otherwise in compliance with subsection (a)iii.
    - i. A citation or a municipal civil infraction violation notice may be issued daily until the violation is corrected or ceases and the civil fine for each offense is One Hundred Dollars (\$100.00).
    - ii. If written notice has not been provided or a violation not issued for a similar violation within the last two (2) years, ~~the~~ Lodi Township Supervisor, or designee, ~~shall~~ will provide written notice of violations of this ordinance by certified and first class mail, approve proposed resolutions and proposed completion schedules received in response, and monitor to ensure that the violations are resolved in an expeditious manner in accordance with the stated plans and schedules.

iii. The violator ~~shall~~ will have seven business days to provide a written response to the Supervisor or designee indicating the plan and schedule for correcting the violation ~~or to file a written request for a public hearing before the Lodi Township Board to appeal as to whether a violation exists.~~ The Lodi Township Supervisor, or designee, ~~shall~~ will promptly approve or disapprove any proposed resolution and completion schedule. If the Supervisor, or designee, disapproves a proposed resolution and completion schedule, the Supervisor, or designee, ~~shall~~ will provide an alternative proposal. If the Supervisor, or designee, provides an alternative proposal, the violator ~~shall~~ will have seven business days to accept the proposal in writing ~~or file an appeal.~~ ~~Appeals as to violations can only be filed with regard to questions regarding the interpretation of the ordinance or to alternative proposals provided by the Supervisor, or designee, when proposed resolutions and completion schedules have been disapproved. All costs associated with the public hearing and board meeting must be paid at the time the written request is submitted.~~

iiiv. Citations and municipal civil infraction violation notices will not be issued for a violation for any day in which the violator is in compliance with an approved resolution or completion schedule. ~~Should the violator fail to timely provide a written response to the Supervisor or designee, or fail to comply with an approved resolution or completion schedule, or fail to comply with an alternative proposal provided by the Supervisor or designee, the violator may be issued a citation daily until the violation is corrected or ceases. Valid appeals shall stay the issuing of citations. During the first seven business days that a citation can be issued, violators shall be fined \$100.00. After the first seven business days have elapsed, violators issued citations shall be fined \$1,000.00 for each citation issued~~

b. Procedures for violations where violator has ~~been provided written notice~~ plead or been found responsible for a similar violation for an incident within the last two (2) years; or where the violator has received written notice pursuant to subsection (a)ii above and is not in compliance with subsection (a)iii above; or where the violator has obtained but is not in compliance with an approved resolution or completion schedule.

i. A citation or a municipal civil infraction violation notice may be issued daily until the violation is corrected or ceases and the civil fine for each offense is One Thousand Dollars (\$1,000.00).~~The violator may be issued a citation daily until the violation is corrected or ceases and the Lodi Township Supervisor, or designee, shall provide written notice of the violations of this ordinance by certified and first class mail.~~

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ii. ~~The violator shall have seven business days to provide a written response to the Supervisor or designee indicating the plan and schedule for correcting the violation or to file a written request for a public hearing before the Lodi Township Board to appeal as to whether a violation exists. The Lodi Township Supervisor, or designee, shall promptly approve or disapprove any proposed resolution and completion schedule. If the Supervisor, or designee, disapproves a proposed resolution and completion schedule, the Supervisor, or designee, shall provide an alternative proposal. If the Supervisor, or designee, provides an alternative proposal, the violator shall have seven business days to accept the proposal in writing or file an appeal. Appeals as to violations can only be filed with regard to questions regarding the interpretation of the ordinance or to alternative proposals provided by the Supervisor, or designee, when proposed~~

~~resolutions and completion schedules have been disapproved. Appeals regarding ordinance interpretation cannot be filed if the same issue has been previously appealed and the appeal was lost. All costs associated with the public hearing and board meeting must be paid at the time the written request is submitted.~~

- ~~iii. If the violator has timely provided a written response to the Supervisor or designee, or complied with an approved resolution or completion schedule, or complied with an alternative proposal provided by the Supervisor or designee, the violator shall be fined \$100.00 for each citation. Should the violator fail to timely provide a written response to the Supervisor or designee, or fail to comply with an approved resolution or completion schedule, or fail to comply with an alternative proposal provided by the Supervisor or designee, the violator shall be fined \$1,000.00 for each citation. Valid appeals regarding interpretation of the ordinance shall stay the issuing of citations. Valid appeals to alternative proposals provided by the Supervisor or designee shall only stay the fine from increasing to \$1,000.00.~~
- c. Citations and municipal civil infraction violation notices must ~~shall~~ be personally served by an authorized local official on the alleged violator unless the municipal civil infraction action involves the use or occupancy of land or a building or other structure. If the infraction involves the use or occupancy of land or a building or other structure, a copy of the citation need not be personally served on the alleged violator but may be served upon an owner or occupant of the land, building, or structure by posting the copy on the land or attaching the copy to the building or structure **and** by sending a copy by first-class mail to the owner of the land, building, or structure at the owner's last known address. Additionally, if an authorized local official issues and serves a municipal civil infraction violation notice and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by this ordinance for the violation are not paid at Lodi's Municipal Civil Infraction Bureau, a municipal civil infraction citation may be filed with the District Court and a copy of the citation may be served by first class mail upon the alleged violator at the alleged violator's last known address as permitted by Michigan law.
- d. In addition to the fine as designated above, each person who violates this ordinance shall be summarily taxed the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which Lodi Township has been put in connection with the municipal civil infraction, up to the entry of judgment. Costs of not ~~less than \$9.00 or~~ more than \$500.00 shall be ordered. Except as otherwise provided by law, costs shall be payable to the general fund of Lodi Township.
- e. In addition to the relief set forth above, Lodi Township may obtain and have enforced any judgment, writ, or order necessary to enforce this ordinance pursuant to MCL 600.8727(5), 600.8302(1), and 600.8302(4).
- f. Additionally, Lodi Township may obtain and enforce liens as authorized by MCL 600.8731 or as by the law of the State of Michigan providing for the enforcement of tax liens.
4. The Lodi Township Board of Trustees shall suspend or deny the issuance or renewal of an Operating Permit if any of the following conditions exist:

- a. A current reclamation plan has not been approved by the Lodi Township Board of Trustees.
- b. Required financial guarantees as set forth in this ordinance have not been provided or accepted by Lodi Township.
- c. A violation affecting the safety and health of workers or the public exists including but not limited to water quality, fencing, warning signs, and tracking of mud or dirt off the site.
- d. The operator has not presented evidence that violations cited in the current engineering inspection report have been resolved or in the process of being resolved.
- e. The operator has failed to end violations and pay penalties as set forth above within 45 days.

**E. Extraction Permit.**

**1. Required.**

- a. It shall be unlawful for any person to operate a quarry as defined in this ordinance or strip topsoil, sand, clay, gravel, or similar material without a permit from the Township Board. No permit will be required where the moving, grading or leveling of the aforesaid materials is carried on for the immediate use or development of the land upon which these substances are found or pursuant to a building permit; provided however, that where sand, gravel, topsoil, or other substances are removed from the site that a permit as above mentioned will be required.
- b. **Minimum Frontage** – All means of direct access to the property shall be from major or secondary thoroughfares and no direct access shall be allowed from subdivision or primarily residential streets. Each tract of land for natural resource development shall have a minimum frontage of at least two hundred and fifty (250) feet on a major or secondary thoroughfare (a thoroughfare of at least eight-six (86) feet of right-of-way, existing or proposed).

**2. Exception.**

Soil, sand, gravel or stone removed from a construction site must be strictly conditioned upon the following requirements:

- a. Not more than five thousand (5,000) yards of material shall be removed from any site unless and until the soil extraction permit shall first have been issued.
- b. The removal of soil in excess of twenty (20) yards and less than five thousand (5,000) yards shall not be undertaken unless and until first approved by the Township Board of Trustees and obtaining applicable permits from Washtenaw County Soil Erosion. The request for approval shall contain a description of the site and method of removal signed by the owners of the property from which the soil is to be removed, and the removal shall not endanger the safety of drainage, structures, adjoining property, persons or environment, and shall be approved by the Township Engineer at the expense of the applicant. The application for removal shall be made at least thirty (30) days prior to commencement of the operation.

- c. No approval for soil removal as described in paragraphs (1) and (2) shall be permitted for a time period in excess of ninety (90) days unless the Board of Trustees approves the proposed time extension.
- d. The Board of Trustees shall approve the proposed traffic flow, security fencing, and signs and may impose any condition to ensure the public safety of such location, subject to this section.

**3. Application to Operate a Quarry or for Removal in excess of Five Thousand Yards of Material.**

Before the Township Board grants an extraction permit, the Township Planning Commission shall conduct a public hearing concerning such application and file its recommendations with the Township Board. A separate permit shall be required for each separate site. Each application for a permit shall include the application escrow deposit and excavation and restoration plan drawings. The excavation and restoration plans shall be submitted as five (5) full-size (24-inch x36-inch) plan sets, eight (8) reduced size (12-inch x 18-inch) plan sets, and electronic (pdf) plan file(s). The application shall be made to the Township Clerk and shall contain the following information as a condition precedent to the obligation to consider such request:

- a. Names and addresses of parties of interest in the premises setting forth their legal interest in the premises.
- b. Full legal description of the premises wherein operations are proposed.
- c. Detailed statement as to method of operation, such as wet or dry method, what type of machinery or equipment will be used, and estimated period of time that such operation will cover.
- d. Detailed statement as to exactly what type of deposit is proposed to be extracted.
- e. Proposed method of filling excavation where extraction results in extensive dangerous undersurface excavation.
- f. Topographical survey map.
- g. Restoration plan acceptable to the Township Board shall be included. The restoration plan shall provide the following information:
  - (1) Boundary lines of the property and dimensions and bearings of the property lines correlated with the legal description;
  - (2) Location and extent of all natural features, as outlined in Section 55.08 of the Lodi Township Zoning Ordinance, to be retained after extraction operations, including but not limited to wetlands, streams, and wooded areas;
  - (3) The slope of all restored areas;
  - (4) Proposed completed topography at contour intervals of not more than two (2) feet;
  - (5) A schedule integrating the areas of progressive restoration with the final restoration plan;

- (6) Proposed ground cover and other plantings to stabilize the soil surface and to beautify the restored areas. Topsoil sufficient in type and amount to establish and support the landscaping proposed in the restoration plan shall be specified;
  - (7) A description of the methods and materials to be utilized in restoring the site;
  - (8) Sketch plan of the proposed use or uses of the site when restored;
  - (9) Proposed after-use that complies with the Lodi Township Zoning Ordinance. A landfill or other disposal or refuse site is not a suitable or satisfactory use;
  - (10) Proposed after-use and;
  - (11) Any other information determined by the Board to be pertinent to review the application.
- h.** Such other information as may be reasonably required by the Township Board to base an opinion as to whether a permit should be issued or not.

**4. Fees.**

Every year, the sum of seven thousand five hundred dollars (\$7,500.00) shall be established in the application escrow account and shall accompany the application for an extraction permit. Such sum is to be used to defray the cost of consulting services, investigation, publication charges, inspection fees, and other miscellaneous administrative expenses occasioned by processing such application. Permits issued by the Township Board shall be for a period of up to one (1) year expiring on March 31 of each year, and such permits may be renewed by the payment of an amount sufficient to establish the application escrow account at two thousand five hundred dollars (\$2500.00) and compliance with the following. Such permits shall be renewed as herein provided for as long as the applicant complies with all of the provisions of this Ordinance and other conditions of the permit. All fees are the responsibility of the applicant. The applicant, to ensure that at no time the application escrow account goes below the sum of five hundred dollars (\$500.00), shall replenish the application escrow account as required to be above this amount. Failure to pay in advance the sums provided for herein shall require an automatic denial of permit.

In addition to the fees required by the above paragraph, each active mineral extraction operator operating in Lodi Township shall pay its pro-rata share of any fly-over inspection required by Lodi Township. The pro-rata share shall be determined by dividing the cost of the fly-over inspection between all active mineral extraction operators operating in Lodi Township. If an operator is operating at more than one location, each location shall be considered a separate operation. "Active mineral extraction operator" shall include any operator currently operating at that time or any mineral extraction operator which has operated at any time since there was a fly-over completed for its location. Lodi Township may require fly-overs if the Township determines that such fly-overs are reasonably necessary. Fly-overs will be determined necessary if:

- a. The information, less than four years old, is not available from other sources, or
- b. Significant site changes have occurred since the most recently available information. In this case, the pro-rata share shall be charged only to the sites with significant changes and the pro-rata share shall be determined by dividing the cost of the fly-over by the number of locations with significant site changes.



**5. Issuance, Denial.**

After reviewing all of the information submitted by the applicant and such other information as may be in the hands of the Township Board, the Board shall at a regular or special meeting determine whether or not a permit will be issued or renewed. The permit shall be issued or renewed in the event the Township Board determines that the issuance or renewal of the permit complies with this ordinance and would not detrimentally affect the public health, safety, morals and general welfare of the citizens of Lodi Township.

**F. Operational Standards.**

**1. Mandatory Requirements.**

**a. Pit Operations.**

- (1) Where an excavation in excess of a depth of five (5) feet results from such operations the applicant shall erect a fence completely surrounding the portion of the site where the excavation extends, such fence to be not less than five (5) feet in height complete with self-locking gates, which gates shall be kept locked when operations are not being carried on. Gate keys must be kept in a secure location accessible only by authorized persons.
- (2) Finished slopes of the banks of the excavation shall in no event exceed a minimum of four (4) feet horizontal to one (1) foot vertical, and where a slope results from the operation, this slope must be maintained and extended into the water to a depth of five (5) feet. Steeper slopes may be allowed by the Township Board provided intermediate benches are provided and the overall slope is a minimum of four (4) feet horizontal to one (1) foot vertical.
- (3) Where extraction operations result in a body of water, the owner or operator shall place appropriate "Keep Out-Danger" signs around the premises not more than two hundred (200) feet apart. In order to protect water wells and water supply of the Township, the pumping or draining of water from or into such extraction operations is absolutely prohibited. A dragline or other method of extraction approved by the Township Board shall be followed.
- (4) This Township Board may require such other performance standards where because of peculiar conditions they deem it necessary for the protection of health, safety, morals and well being of the citizens of the Township.
- (5) If dewatering operations are to be performed on the site, the following must be provided:
  - i.) A hydrogeological analysis, prepared by a Registered Professional Engineer, Geologist or Qualified Groundwater Scientist, demonstrating no significant impact to existing private water supply wells within the influence of site dewatering operations. The hydrogeological report shall include test pumping data at the site and analytical computations used to assess potential site dewatering impacts. The hydrogeological report shall determine the direction and rate of ground water movement, the upgradient and downgradient water quality, aquifer characteristics, extent of dewatering influence, and impact on

surrounding water supply wells. All monitoring wells installed shall be retained for future monitoring and be constructed to Type I production well standards of the Michigan Department of Environmental Quality.

The report shall also demonstrate the effect the proposed operation will have upon the watershed of the area. If water bodies are to be created, the anticipated permanence of such, depth of any lake and other pertinent data.

- ii. An environmental impact statement that assess the operation's impact on the natural features, flora and fauna on the property which is to be the subject of the extractive operation and upon the surrounding area.

**(6)** If washing operations are to be performed on the site, the following must be provided:

- i. A hydrogeological analysis, prepared by a registered professional engineer, geologist or qualified groundwater scientist. At a minimum, the study must include:

- a. A description of how the washing operations are to be performed.

- b. A plan showing the location, sizes, and depths of monitoring wells, location of washing basins, location of wells and any other information determined to be pertinent by the Board.

- c. Description and maps identifying the direction of groundwater flow and potential impacts to surrounding property.

- d. If pumping is to be performed as part of the washing operations, a description of the pumping must be provided. The hydrogeological report must address the effects the pumping will have on the surrounding property and effects on the local/regional groundwater aquifer.

- e. A sample analysis must be performed on the sediment discharged from the operations on a semiannual basis. The testing must include both total metals and a Toxic Characteristic Leaching Procedure (TCLP) leach test for a minimum of the following parameters.

- |             |             |
|-------------|-------------|
| 1) Arsenic  | 6) Lead     |
| 2) Barium   | 7) Mercury  |
| 3) Cadmium  | 8) Selenium |
| 4) Chromium | 9) Silver   |
| 5) Copper   | 10) Zinc    |

- f. A semiannual groundwater monitoring program must be implemented and must include:

- 1) Water level records.
- 2) Water quality parameter tests including test for:
  - a) pH (standard units)
  - b) Total Alkalinity
  - c) Chloride
  - d) Sulfate
  - e) Total Dissolved Solids
  - f) Calcium
  - g) Magnesium
  - h) Sodium
  - i) Potassium
  - j) Arsenic
  - k) Barium
  - l) Cadmium
  - m) Chromium
  - n) Copper
  - o) Lead
  - p) Mercury
  - q) Selenium
  - r) Silver
  - s) Zinc

ii.) Locations, sizes and depths of monitoring wells for monitoring water quality as may be required based upon conclusions of studies submitted with the permit application.

**b. Regulations for Stripping Operations.**

- (1) No soil, sand, clay, gravel or similar materials shall be removed in such manner as to cause water to collect or to result in a place of danger or a menace to the public health. The premises shall at all times be graded so that surface water drainage is not interfered with.
- (2) All topsoil from the site shall be stockpiled on the site and utilized to restore the site and the replacement of such topsoil shall be made immediately following the termination of the stripping operations. In the event, however, that such stripping operations continue over a period of time greater than thirty (30) days, the operator shall replace the stored topsoil over the stripped areas as he progresses.
- (3) The Township Board shall require such other and further requirements as is deemed necessary in the interest of the public health, safety, morals and general welfare of the citizens of the Township.

**c. Restoration Required.**

- (1) A pit must be restored within 365 days after operations cease or an extraction permit is denied. If the pit has not been restored within this time, The Township shall have the authority to withdraw funds from any escrow and/or financial guarantee to pay for rehabilitation, reclamation, or restoration, and to perform the work immediately. This time may be extended by the Township Board provided acceptable evidence is given by the pit operator that restoration is being diligently pursued.
- (2) All obligations under this Ordinance continue until the restoration is fully completed whether or not an extraction permit has been granted.
- (3) Operations are deemed to have ceased if less than 5000 cubic yards of material have been removed in any 365 day period. The Township may on good cause

shown extend the 365 day period an additional 365 days so long as the operation maintains a valid extraction permit, complies with this ordinance, and doing so would not detrimentally affect the public health, safety, morals and general welfare of the citizens of Lodi Township.

- (4) All filling and restoration even pursuant to an extraction permit must additionally comply with the requirements of Section G: Site Alteration.

## **2. Financial Guarantees.**

The Township Board shall, to ensure strict compliance with any regulations contained in this ordinance or required as a condition of the issuance of an extraction permit, require the applicant to furnish a financial guarantee prior to the commencement of mining operation. The financial guarantee shall be in the form of a surety bond payable to Lodi Township executed by the applicant and a reputable surety company or a security deposit in the form of cash, certified check, or irrevocable letter of credit from a bank with offices in southeastern Michigan. The total amount shall be an amount as determined by the Township Board to be reasonably necessary to ensure compliance and to complete the approved restoration plan. A surety bond must meet the following minimum requirements:

- a. The surety bond must be issued by a corporate surety licensed to do business in the State of Michigan and rated either AAA or A+.
- b. Lodi Township must be named as obligee.
- c. The surety bond must be renewed thirty (30) days in advance of its expiration.
- d. The corporate surety must guarantee renewal of the surety bond unless released by Lodi Township.

Initially, unless the Township Board determines that a different amount is reasonably necessary, the financial guarantee shall be in a total amount of \$250,000, and the Restoration Escrow shall be zero.

Annually, thereafter, the financial guarantee shall be reduced by the total amount deposited in the Restoration Escrow. The applicant shall make the deposit to the Restoration Escrow within thirty (30) days after the expiration of the permit each year. The deposit shall be a sum equal to two cents (\$.02) per ton for all sand, gravel, and other material removed from the extraction site. The Restoration Escrow shall be maintained at a banking institution mutually agreed upon by the Township and the applicant, in an interest bearing account, and shall be in the joint names of the Township and the applicant. The signatures of both parties shall be required for withdrawals from the Restoration Escrow except as provided in (b.) below. For tax purposes, the interest on the Restoration Escrow shall be income to the applicant. Additionally, by the date the deposit to Restoration Escrow is due, the applicant shall submit to the Township Board 1) the annual report detailed in Section I, and 2) an annual account of the amount of funds deposited. After the Township Board reviews the submitted information and finds that it is accurate and unless the Township Board finds that there has been a substantial change to the scope of the mining operations or the cost of rehabilitation, reclamation, and restoration, the Township Board shall authorize the applicant to reduce the financial guarantee by the amount of the deposit. Applicant shall furnish the Township with proof of the revised financial guarantee immediately upon obtaining it.

The Township Board shall review the total amount of the financial guarantee and Restoration Escrow every year. After review, the Township Board shall make a determination as to whether the total amount of the financial guarantee and Restoration Escrow should be adjusted up or down to reflect the actual projected restoration costs at that particular stage of the extraction operation. The Township Board shall make the adjustment to the total amount of the financial guarantee and Restoration Escrow that it finds reasonably necessary.

Right to withdraw Restoration Escrow funds.

- a. **Applicant.** If the applicant desires to withdraw Restoration Escrow funds, the applicant must submit to the Township Board evidence of the amounts of costs incurred for rehabilitation, reclamation, or restoration of some or all of the property involved in the extraction operation. After review, the Township Board shall make a determination of the amount the applicant should be allowed to withdraw and authorize the applicant to withdraw that amount.
- b. **Township.** If the applicant should fail to substantially comply with the terms of its restoration plan, the Township shall have the authority to withdraw funds from the Restoration Escrow to pay for rehabilitation, reclamation, or restoration.

In determining the area to which the financial guarantee or Restoration Escrow is to apply, the following shall be included:

- a. Any area stripped of topsoil or overburden;
- b. Areas from which material is extracted;
- c. Areas utilized for stockpiling extracted material, overburden and topsoil; and
- d. Any other disturbed land determined by the Township Board as integral to the operation, which is directly deemed by it to warrant protection under a financial guarantee.

In determining whether the total amount of the financial guarantee required by this ordinance is reasonably necessary to ensure compliance and in determining the actual projected restoration costs at a particular stage of the extraction operation, the Township Board must apply the following rules:

- a. The actual projected restoration cost is the Township's cost to complete the restoration determined as if the applicant had abandoned the pit;
- b. The actual projected restoration cost includes all costs the Township would incur if the Township contracted the work out, including but not limited to, contract administration and inspection, preparing bid package, bidding job, selecting bidder, executing contract, legal costs, site inspection, pay estimate preparation, and project closeout, in addition to the cost of work and cost of materials including overhead and profit.

The financial guarantee and Restoration Escrow shall remain in effect until such time as it is determined by official inspection that the acreage they guarantee is rehabilitated, reclaimed, and restored. The release of the financial guarantee or Restoration Escrow or any portion thereof shall require Township Board approval.

### 3. **Setback Requirements.**

To reduce the effects of airborne dusts, dirt and noise, all equipment for sorting crushing, loading, weighing and other operations and structures shall not be built closer than three hundred (300) feet from any: public street, right-of-way, house used as a residence, and adjoining property not used for agricultural purposes.

No earth work including digging, stockpiling, excavating, stripping, or equipment storage and repair nor roads on said site shall be closer than one hundred fifty (150) feet from the nearest street or highway right-of-way line nor nearer than one hundred fifty (150) feet to the nearest property line; provided, however, that the Township Board may prescribe more strict requirements in order to give sublateral support to surrounding property where soil or geographic conditions warrant it.

Berms are required unless adjacent land is used for agricultural purposes.

- a. Berms must meet the following conditions:
  - i. Berms shall be no higher than thirty (30) feet.
  - ii. Berms shall be constructed solely of overburden.
  - iii. Berms shall be seeded and maintained with grasses which shall create a healthy uniform coverage exceeding 90% over any 10\_square foot area to prevent erosion onto other premises.
  - iv. The design, height, slopes, and location of berms must be approved by the Lodi Township Board.
  - v. Berms that are not permanent improvements shall not be removed until the final restoration of the entire plan is being completed and shall only be used for restoration purposes. Sufficient room may be left in the area being restored next to any berm so that the berm may be pushed into that area during final restoration.
  - vi. Berms must comply with county, state and federal law and receive any necessary approvals.

Notwithstanding the setback requirements set forth above, the following may be permitted within the setback:

- a. One scale house and the road to that scale house may be allowed if the following conditions are met:
  - i. The scale house is no closer than one hundred (100) feet to the centerline of the nearest highway or street.
  - ii. The scale house is no closer than three hundred (300) feet to the nearest property line other than the nearest highway or street.
- b. Roads for ingress and egress that cross the setback by the shortest direct route.

- c. Roads no closer than one hundred (100) feet to the nearest property line so long as all the following conditions are met:
  - i. All property owners adjacent to the road where it infringes on the setback agree in writing to the location of the road.
  - ii. The written agreement be properly recorded at the Register of Deeds so that the agreement is put into the chain of title for each adjacent property.
  - iii. A copy of the recorded agreement be provided to the township.

**4. Entrance Requirements.**

All means of access to the property shall be from major or secondary thoroughfares with rights-of-way width equal to or greater than eighty-six (86) feet (existing or proposed) and shall not be held from residential streets.

**5. Roads for Ingress and Egress.**

Each operator ~~shall~~ must keep all public roads dust free, and clean of any and all spillage of material and dirt, rock, mud and any other debris left on ~~carried onto~~ these roads by extraction operation trucks or ~~other~~ by equipment or vehicles entering or leaving the site. Any deterioration of public roads directly caused by these vehicles and extraction operations ~~shall be~~ is also the responsibility of the operator to repair.

Any roads used for the purpose of ingress and egress to the ~~excavation~~ site which are located within three hundred (300) feet of occupied residences ~~shall~~ must be kept dustfree by hardtopping with cement, bituminous substance or chemical treatment.

For trucks and other equipment or vehicles leaving the site, a minimum of eight hundred (800) feet of asphalt paving or more as needed ~~shall~~ must be installed for trucks, equipment, and vehicles to pass over before leaving the site and entering a public roadway to prevent any mud or debris from being tracked onto the public roadway and the trucks and other equipment and vehicles leaving the site must pass over at least eight hundred (800) feet of the asphalt. The paving required by this paragraph must be kept clean to prevent mud or debris from being tracked onto the public roadway. If the asphalt is found to be not sufficient to keep trucks, equipment, or vehicles that are leaving the site from tracking mud or debris onto the public roadway, the Lodi Township Board may require additional measures to be taken so that mud or debris is not tracked onto the public roadway, such as the installation and use of washing stations and/or mud removal mats.

**6. Clean and Visible License or Registration Plates.**

The operator of any mining or soil removal, etc., operation must require, prior to the exit from the operator's premises, the drivers of all vehicles carrying the product described above, to clean thoroughly the license plates of their vehicles and the failure of the drivers to do so prior to exiting the premises of the operators described above shall be a violation of this Ordinance by the operators.

**7. Hours of Operation.**

- A. None of the described operations i.e., mining and soil removal and in particular the removal of sand, gravel, limestone or similar materials by excavations, stripping, mining or otherwise taking and including on-site operations appurtenant to the taking, including grading, sorting, crushing operations and the transport of the above described product within the Township shall be conducted except at the following times: From 7:00 a.m. to 5:00 p.m. daily, Monday through Friday only and Saturday 7:00 a.m. through 1:00 p.m. No activities shall take place within the site on the following legal holidays: New Year's Day, Memorial Day (Monday preceding May 30), July 4, Labor Day, Thanksgiving Day, December 24, December 25, and New Year's Eve (December 31).
- B. Only normal repair of equipment utilized in the extraction operation can take place outside hours of operation stated above.
- C. A sign stating the allowed hours of operation shall be posted by the operator at each entrance to the property.

**8. Explosives.**

The use of explosives shall not be allowed.

**9. Site Insurance.**

The applicant shall provide a site specific liability insurance policy of not less than \$5,000,000.00 per incident for all liability claims arising out of the site. The adequacy of this amount shall be subject to yearly review by the Lodi Township Board. 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 Lodi Township board of Trustees, naming Lodi Township, its elected officials and appointed officials as additional named insured. The Applicant shall 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 operator's commercial and general liability applies separately to the site. Lodi Township must be sent a notice of intent to cancel the insurance not less than 30 days before the cancellation. Failure of the operator, or any person, firm or corporation named in the policy to maintain the insurance shall be cause for immediate revocation of the permit.

**G. Site Alteration.**

**1. Importing and Movement of Soil, Sand, Clay, Gravel or Other Materials.**

- a. **Material Specifications** - All imported materials shall meet the following specifications:
  - (1) Materials shall be "inert materials" only as approved in the Michigan Department of Environmental Quality list of approved materials.
  - (2) Materials shall be free of contaminants.
  - (3) Lodi Township Board may have any imported material inspected and tested as it deems necessary to determine that the material is inert and free of contaminants. All inspections and testing shall be at the expense of the property owner.
- b. **Administrative Procedures** -
  - (1) Washtenaw County - A separate filling permit shall be required from the Washtenaw County Soil Erosion office for the importing or moving of fill on any property within Lodi Township that results in the altering of the contours of the land or is not part of a normal construction process.
  - (2) Michigan Department of Environmental Quality - Any filling of land within a floodplain, wetland or adjacent to a river or lake shall not commence unless and until all required approvals and permits have been issued by the Michigan



Department of Environmental Quality.

- (3) Lodi Township - An application shall be filed with Lodi Township prior to the importing of fill on any property within Lodi Township except for the following: inert and contaminant free material obtained from a commercial supplier of that material that regularly supplies such material in the normal course of its business. The application shall include names and addresses of the parties of interest in the premises, site of the proposed fill, amount of fill proposed, method of filling, list of materials to be deposited in the fill, source of the fill, proof sufficient to the Township's Engineer that the imported material meets the required material specifications, copies of all other required approvals and/or permits, and period of time that the operation will cover. No material may be imported until all permits and approvals have been obtained, including approval by the Township Engineer and the approval of the application by the Township Board. Any change from the information provided as part of the application requires approval of those changes prior to any fill being imported. For example, if an applicant with a valid extraction permit performing required restoration changes the type of material being imported or the source of the fill being imported, the applicant is prohibited from importing that material until it is approved by the Township's Engineer and the Township Board.
  - (4) Lodi Township - Additional requirements, if two hundred fifty (250) or more cubic yards of material are imported over a one (1) year period, full legal descriptions of the premises wherein filling is proposed, detailed statement as to method of operation, including what type of machinery or equipment will be used. Topographical survey map, and a restoration plan that complies with Section E(3)(g) for the removal of materials is required.
- c. **Record keeping** - For imported materials an accurate log shall be maintained that describes the amount, type, source, and date imported. Additionally, photographs may be required by the Board of Trustees.
  - d. **Bonding** - The Board of Trustees shall require a financial guarantee in the amount of one hundred (100) percent of the cost of removal of any and all unfit soil or materials at the fill site as estimated by the Township Engineer.
  - e. **Restoration** - All sites shall be restored to provide proper drainage and seeding to allow for all future land uses. Additionally, all restoration must comply with all federal, state, and local laws and regulations, and comply with the site's restoration plan if a restoration plan was required.

## 2. Excavations.

### a. Excavations or Holes.

Any soil extraction done pursuant to this Ordinance that creates the existence within the limits of the Township of any unprotected, unbarricaded, open or dangerous excavations, holes, pits, or wells, or of any excavations holes, pits, or wells, which constitute or are reasonably likely to constitute a danger or menace to the public health, safety or welfare, are hereby prohibited and declared a public nuisance; provided, however, that this Ordinance shall not prevent the construction of excavations under a permit issued pursuant to the provisions of this Ordinance or the applicable building codes where such excavations are properly protected and warning signs and lights are located in such manner as may be approved by the Township Board, and provided further that this section shall not apply to drains created or existing by authority of the State, County, Township, or other governmental agency.

**b. Abatement of Nuisance.**

Where the Township Board or authorized person determines a nuisance exists as herein defined, they shall notify the owner as shown on the latest tax rolls in writing of such finding and require the owner to abate such nuisance. The abatement of such nuisance must be accomplished within a reasonable time. If the property owner fails to abate or cause to be abated such nuisance, the cost of abatement of such work shall be placed as an assessment against the property on the next assessment role.

**3. Inspections.**

All sites shall be inspected on a schedule established by the Board of Trustees and by the Township Engineer with all costs for such inspections being borne by the applicants. An application escrow account will be set up based upon the estimated costs for inspection for the current year. All fees for inspections shall be paid by the applicants prior to the inspections.

**4. Applicability.**

The requirements of Section G "Site Alteration" must be met even if the importing and movement of soil, sand, clay, gravel or other material is pursuant to an extraction permit or to complete an approved restoration plan.

**H. Access to Property.**

1. One or two Township Officials may enter upon the site to investigate suspected violations and must be escorted by a trained competent miner.
2. The Gravel Operator must provide to the Township a telephone number for the trained competent miner who when called will provide an escort onto the property for the investigation set forth in subsection H.1. above.
3. The Gravel Operator must provide to the Township a telephone number for a representative of the Gravel Operator who has the authority to address issues that require immediate response such as noise, dust, safety, mud on public roads, open gates, etc.
4. The Gravel Operator is responsible to insure that all telephone numbers provided to the Township pursuant to this section are valid and continue to be valid. It will be presumed that if the Township attempts to use a telephone number provided by the Gravel Operator and the telephone number does not work or does not reach the correct person that the Gravel Operator has violated this requirement.

**I. Annual Reporting Requirements**

The operator is required to submit an annual report to the Township by February 1st of each year. The report shall contain the following minimum information:

1. Statement regarding the status of the operation in reference to the approved mining and reclamation plan.
2. Material extracted and removed from site (Tons)
3. Material imported to site (Cubic Yards)
4. Reclamation completed (Acres)
5. Landscaping activities completed (Description of plantings, berms, etc)
6. Total disturbed area (Acres)

7. Complaint log
8. Copy of current Financial Guarantee
9. Copy of current Insurance Certificates
10. Copies of all necessary permits (including, but not necessarily limited to):
  - a. Washtenaw County Soil Erosion and Sedimentation Control
  - b. Washtenaw County Road Commission Haul Route Permit
  - c. MDEQ Joint Application Permit (if required)
11. Planned activity for the upcoming year, including areas to be mined and areas to be reclaimed.
12. Any additional information the operator deems is pertinent to the operation under the extraction permit.

### **Section 2: Severability**

The provisions of this Ordinance are hereby declared to be severable and if any part is declared invalid for any reason by a court of competent jurisdiction it shall not affect the remainder of the Ordinance which shall continue in full force and effect.

### **Section 3: Savings Clause**

The amendment to the Lodi Township Extraction and Filling Regulations ordinance herein do not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending fee, assessments, litigation, or prosecution of any right established, occurring prior to the effective date hereof.

### **Section 4: Effective Date**

This Ordinance shall be published once in a newspaper having general circulation in Lodi Township and shall take effect 30 days after the first publication as required by law following adoption by the Township Board.

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Jan Godek, Township Supervisor

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Christina Turner, Township Clerk

### **Clerk's Certification**

I, Christina Turner, Clerk for Lodi Township, Washtenaw County, Michigan,

hereby certify that the foregoing is a true and correct copy of Ordinance No. 2015-002 of Lodi Township, adopted by resolution at a meeting of the Township Board of Trustees held on February 3, 2015, and the whole thereof now in my custody.

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Christina Turner, Township Clerk

A copy of the complete ordinance text may be inspected or purchased at the Lodi Township Hall, 3755 Pleasant Lake Road, Ann Arbor, Michigan 48103. The office hours are 9:00 a.m. until noon Monday, Wednesday and Friday.

Adopted: February 3, 2015

Published: \_\_\_\_\_

Effective: \_\_\_\_\_