

**TOWN OF BETHLEHEM**  
**SPECIAL TOWN MEETING**  
**FEBRUARY 15, 2023**

**ORDINANCE AMENDING THE EARTH MATERIALS ORDINANCE**

**Section 1. Authority and Purpose**

This ordinance, amending the Earth Materials Ordinance of the Town of Bethlehem (Bethlehem Code of Ordinances, Chapter 75), is adopted pursuant to Connecticut General Statutes Section 7-148, including but not limited to subsection 7-148(c)(7)(B); which allows the regulation of the operation of vehicles on streets and highways; subsection 7-148(c)(H), which allows the Town to regulate the operation of any business that could become prejudicial to public health or a danger or unreasonable annoyance to those living or owning property in the vicinity or that could create disturbing noises, and to do all things necessary or desirable to secure and promote the public health; subsection 7-148(c)(8)(C), which allows municipalities that do not have a local zoning commission to regulate the filling of, or removal of, soil, loam, sand or gravel from land not in public use in the whole, or in specified districts of, the municipality, and to provide for the reestablishment of ground level and protection of the area by suitable cover; subsection 7-148(c)(8)(A), which authorizes municipalities to protect and improve the environment; and subsection § 7-148(c)(7)(H)(2), which authorizes a municipality to promote the health and safety of the public through the regulation and prohibition of any trade, manufacture, business or profession that creates an unreasonable annoyance to, those living or owning property in the vicinity.

The purpose of this amending ordinance is to regulate the extraction and processing of earth materials in such a manner as to protect the natural environment of the Town of Bethlehem, limiting potential adverse impacts such as, but not limited to, environmental degradation, traffic, noise, dust, and aesthetic deterioration. This ordinance is intended to control any earth material excavation or processing operations that may create a safety or health hazard to the public or the adjacent property owners, or be detrimental to the immediate neighborhood, and to provide for restoration of the operation site inkeeping with the character of the Town of the Town of Bethlehem. This amending ordinance is also intended to more clearly define the intended meaning of certain terms as they were used in the original Earth Materials Ordinance and as they continue to be used in the Ordinance as hereby amended.

**Section 2. Amendment and Replacement to the Code of Ordinances**

The Earth Materials Ordinance of the Town of Bethlehem (Bethlehem Code of Ordinances, Chapter 75) is repealed and the following is substituted in lieu thereof:

**Chapter 75**

**EARTH MATERIALS**

**[HISTORY: Adopted by the Town Meeting of the Town of Bethlehem 4-11-1977.  
Amendments noted where applicable.]**

GENERAL REFERENCES

Inland Wetlands Agency — See Ch. 27.

Watercourses — See Ch. 132.

Flood damage prevention — See Ch. 84.

**ARTICLE I  
General Provisions**

**§ 75-1. Title.**

This chapter shall be known and may be cited as the "Earth Materials Ordinance of the Town of Bethlehem."

**§ 75-2. Purpose.**

This chapter shall be construed and applied to promote its underlying purposes and policies, which are stated to be as follows:

- A. To regulate and control the excavation, deposition, processing, and removal of soil, loam, sand, gravel, silt, clay, rock or any other earth material from land or premises not in public use in the Town of Bethlehem. [**Amended \_\_\_\_\_**]
- B. To control and regulate excavation, processing, removal and deposition of earth materials so as to prevent the creation of any safety or health hazard, including, without limitation, soil erosion, stagnant water, water pollution, excessive drainage runoff, excessive noise, and other nuisance conditions, to the public or to owners of adjoining or adjacent property and to preserve land values of premises situated within the Town of Bethlehem, and to provide for the quiet use and peaceful enjoyment thereof. [**Amended \_\_\_\_\_**]
- C. To preserve the vegetation and other natural growth on premises situated within the Town of Bethlehem for the purpose of preventing erosion by wind or water.
- D. To ensure that the existing topography of areas of the Town of Bethlehem is not altered in a permanent manner inconsistent with the goals and recommendations of the Town of Bethlehem Plan of Conservation and Development. [**Amended \_\_\_\_\_**]
- E. To accomplish such other purposes as permitted by C.G.S. § 7-148, as amended and as the same may from time to time be amended.

### § 75-3. Definitions.

For the purposes of this chapter, the following definitions shall apply:

**DEPOSIT** — To fill or alter with earth materials existing swamps, wetlands, watercourses, or other bodies of water, or to change, by filling or grading, preexisting contours and elevations.

**EARTH MATERIALS** – Any mineral or organic matter, whether natural or man-made, that is now or was previously located at or below the surface of the earth and any man-made products formed by mixing and/or reducing the size of (as by grinding, crushing, fracturing, splitting, etc.) such matter. The term “earth materials” includes, without limitation, soil; organic mulch and compost; minerals; sediments; rock; ores; petroleum products; concrete; asphalt; cement; and mineral particles such as sand, silt, clay, stones, or gravel. [**Added** \_\_\_\_\_]

**EXCAVATE** — To sever from the earth's surface or to remove from the ground soil, loam, sand, gravel, clay, rock, or topsoil, all of which, together with any other natural physical composition in the ground, are herein referred to as "earth materials."

**PERMIT AREA** — The limits of the area, not greater than five acres, within the premises for which a permit is requested. [**Amended** \_\_\_\_\_]

**PREMISES** — The entire area of land owned by the owner and identified as one piece of property by the Bethlehem Assessor's office within which the permit area is proposed.

**PROCESSING** – Any physical or chemical action performed on earth materials, including, without limitation, breaking, fracturing, grinding, crushing, and mixing with other natural or man-made substances, and any transportation of such materials or from a location where any such physical or chemical action may be performed. [**Added** \_\_\_\_\_]

**SOIL** – The unconsolidated mineral and/or organic material, whether naturally occurring or man-made, that is located on and below the surface of the earth but above ledge (bedrock). Soil is a form of earth material under this ordinance. [**Added** \_\_\_\_\_]

**STORAGE AREA** — An area within the permit area in which the applicant proposes to stockpile excavated materials and/or to locate any equipment and structures which will not be in the work area.

**WORK AREA** — One contiguous area of not more than three acres within the permit area which is disturbed at any time while a permit is valid. [**Amended** \_\_\_\_\_]

### § 75-4. Applicability; exemptions.

This chapter shall be applicable to all excavation and deposition of earth materials and to the processing of earth materials within the Town of Bethlehem, except in instances which qualify under the following exemptions:

- A. Necessary excavation and/or deposition in direct connection with the construction or alteration of buildings, other structures, off-street parking and loading areas or other improvements for which a site plan has been approved and a permit issued, specifically including authorization for such excavation and deposition, and for which any other required permit or authorization has been issued by agencies of the Town of Bethlehem, Torrington Area Health District, and by the state or federal government. [**Amended \_\_\_\_\_**]
  
- B. Necessary excavation or deposition in direct connection with the construction of streets, drainage and all other required improvements, and the altering of preexisting contours, provided that same is carried out as part of an approved subdivision or resubdivision in accordance with construction and grading plans approved by the Planning Commission of the Town of Bethlehem.
  
- C. Necessary excavation or deposition in direct connection with the construction or alteration of a single detached dwelling designed to be occupied by one or two families, and of buildings and structures accessory thereto, including the construction of driveways, sidewalks, walls, terraces, on-site subsurface sewage disposal systems, and other site improvements therefor, provided that all of the following conditions are met: [**Amended \_\_\_\_\_**]
  - (1) The buildings, structures and site improvements shall be shown on the plot plan required by the application for a building permit.
  - (2) There shall be no transporting of any topsoil from the lot, except that which is excavated from the location of buildings, structures, driveways, sidewalks, terraces and other paved areas on the property.
  - (3) A building permit, together with any other required permit or authorization, has been issued to permit the construction of such dwelling or accessory buildings or improvements.
  
- D. Excavation or deposition of not more than 500 cubic yards of earth materials during any calendar year, provided that same is not located in a floodplain or inland wetland mapped area unless specifically authorized by the Inland Wetlands Agency of the Town of Bethlehem. [**Amended 12-20-1999; 5-17-2007**]
  
- E. When earth materials are for use on the property and not for sale:
  - (1) Necessary excavation, grading and removal in connection with improvements on property solely for such farming or landscaping purposes as burying stones or debris, regrading of difficult slopes.
  - (2) The construction of ponds, filling or excavation of wetlands, and the improvement of watercourses, with the approval of the Bethlehem Inland Wetland Agency, if applicable. [**Amended \_\_\_\_\_**]

**§ 75-5. Permit required.**

Before any excavation or deposition or processing of earth materials is commenced or continued, the owner and/or any other person, firm or corporation (hereinafter referred to as "applicant" or "permittee") claiming a right to excavate, deposit or process earth materials from or on premises shall obtain a written permit therefor from the Board of Selectmen of the Town of Bethlehem ("the Board"). [Amended \_\_\_\_\_]

**§ 75-6. Application for permit.**

Each applicant for a permit shall submit to the Board of Selectmen the following:

- A. Information required: an application, in such form as the Board may prescribe, which shall contain at least the following information:
- (1) A deed description of the premises on which the proposed excavation or deposition is to occur, which description shall include the volume and page reference of the recorded deed on the land records of the Town of Bethlehem.
  - (2) If the person, firm or corporation claiming a right to excavate from or deposit or process earth materials on the premises is other than the owner of record, a brief description of the nature of the interest under which the right to work is claimed, which description shall at least identify the nature of the interest (e.g., leasehold, easement, license), the scope of the interest and its term. A notice of any such interest, if not the lease, easement or other agreement itself, must be filed on the land records of the Town of Bethlehem prior to the date of issuance of an earth materials permit.
  - (3) A detailed statement describing the existing premises, the proposed work to be performed on the premises, the purpose and duration of said proposed work and the proposed condition and potential reuse of the premises after the work is completed, which statement shall also include:
    - (a) A statement of the acreage of the entire premises and of the acreage of the area for which a permit is requested as shown on the map required by Subsection D.
    - (b) A statement of the types of earth materials to be excavated, deposited and processed and, in the case of deposition, a statement of the condition of the area to be filled.
    - (c) A calculation of the number of cubic yards of material to be excavated and/or deposited within the area for which a permit is requested and a statement as to how the calculation was made. The statement must include computations prepared by a professional engineer or land surveyor licensed to practice in the State of Connecticut [Amended \_\_\_\_\_]

- (d) Where on-premises processing of earth materials excavated from the premises is permitted by this chapter, a description of the equipment and/or structures to be erected on the premises to perform such processing in order to provide a clear indication of the nature and extent of such permitted processing.
  - (e) An inventory list of all equipment to be used to carry out the proposed work, including an estimate of the number of vehicles to be used solely to transport material to or from the premises.
  - (f) A statement of the provisions to be made to prevent and to control any nuisance conditions which might result from the proposed work.
  - (g) A detailed statement as to how the premises will be restored in accordance with § 75-11 of this chapter, including a calculation of the amount of topsoil and approved ground cover required for such restoration, and an estimate of the final date (subject to any modification approved by the Board and made public in writing) by which complete restoration of the premises shall be accomplished.
  - (h) Any additional information that the Board may deem necessary to evaluate adequately the application and to carry out the purpose set forth in § 75-2 of this chapter.
- B. Agreement statement: an agreement, the text of which shall be contained in the application, by the owner and/or the applicant stating that they will comply with and fulfill all of the requirements and provisions of this chapter and all provisions contained in their application and in other submissions made to the Board under this section.
- C. Signatures: the names and signatures of the owner and the applicant.
- D. Maps and plans: four copies of survey maps and plans and/or such other graphic documentation in such form as the Board may require to carry out the purposes of this chapter, prepared by a land surveyor and professional engineer licensed to practice in the State of Connecticut, all of which documentation shall be identified as part of the application and shall be kept on permanent file for enforcement purposes. The survey maps and plans shall be drawn to a scale of one-inch equals 40 feet and shall show the following:  
**[Amended 5-17-2007, \_\_\_\_\_]**
- (1) The entire premises owned by the owner and, within said premises, the proposed permit area, the exterior limits of which having been determined by measurements from fixed reference points along the boundary lines of the premises. In addition, the area of the designated permit area shall be expressed in terms of acreage or square footage.
  - (2) The names of all adjoining property owners, including those separated from the

premises by a road.

- (3) The location, elevation and extent of all existing and proposed roads, highways, storm drainage, drainage ponds, watercourses and bodies, swamps, wetlands, wells and septic systems on and within 200 feet of the premises; and steps to be taken to ensure proper drainage and to avoid pollution of wetlands and groundwater.
- (4) The locations on the premises of wooded areas, rock outcrops, existing buildings and structures, and a description of existing and proposed ground cover and vegetation.
- (5) Such evidence, in the form of boring logs, deep test pits or otherwise, as the Board may in its sole discretion deem necessary to demonstrate the feasibility of excavating and/or grading to the proposed contour elevations within the permit area and that water is available for any proposed water bodies.
- (6) Existing conditions survey, including contours and elevations, and proposed grading showing final future contours and elevations in and within 200 feet of the permit area at two-foot intervals (ten-foot for rock quarries) or at such intervals as deemed appropriate by the Board in order to adequately evaluate the application. Existing topography shall be obtained from either a ground survey or aerial photogrammetry meeting the T-2 standards of accuracy established by the Connecticut Department of Consumer Protection. Existing contours of the bottom of water bodies of courses to be altered or created shall also be shown. [**Amended** \_\_\_\_\_]
- (7) A permanent benchmark or point existing in the permit area in a location safe from disturbance for the duration of the permit, with a designation of its elevation.
- (8) Existing and proposed vehicular access to the lot and any work roadways within the premises.
- (9) The location (shown in the manner prescribed in Subsection D (1) above) of a storage area(s) which shall not exceed in the aggregate two acres in area, within which the applicant proposes to stockpile reserve topsoil and fill and excavated or processed materials and/or to locate any equipment and structures which will not be in the permit area.
- (10) An Erosion and Sedimentation Control Plan meeting the requirements of the Connecticut Department of Energy and Environmental Protection *2002 Guidelines for Soil Erosion and Sediment Control* (CTDEEP 2002 Guidelines) as may be amended from time to time. [**Added** \_\_\_\_\_]
- (11) Such other data as the Board may in its sole discretion conclude is necessary in order to carry out the purposes of this chapter.

- E. Release of encumbrance: proof that written notice of the excavation has been given to the holders of any mortgages or other encumbrances on the property as recorded with the Town of Bethlehem and a written statement from the Tax Collector of the Town of Bethlehem certifying that all taxes levied against the premises have been paid in full and that there are no unreleased tax liens encumbering the same.
- F. Fee: an application fee for the purpose of engineering review and site inspection in the amount of \$200 and an additional \$25 per acre for each acre in excess of five acres, excluding the maximum permitted storage areas. The fees set forth herein are the minimum application fees required. If the Town finds that the application involves activities that may have a substantial impact on the site, the surrounding area, or nearby properties or landowners due to environmental conditions (e.g., air quality, groundwater quality or quantity, wetlands or watercourses, noise, heat, vibration), traffic, or other concerns, it may retain appropriately qualified consultants to review the application and to make any suggestions they may have at the applicant's expense. When the actual cost of processing an application exceeds the minimum application fee, including but not limited to the hiring of professional services, the Board shall charge the applicant an appropriate surcharge fee to fund the actual cost of processing the application. The applicant will be informed that there will be a surcharge and it will be documented in the file. No permit shall be issued by the Board unless and until all such fees have been paid. [**Amended \_\_\_\_\_**]
- G. Liability insurance: evidence by way of an insurance binder that the applicant has sufficient liability insurance to save the Town of Bethlehem harmless from any liability resulting from his operations. Such evidence shall be reviewed and approved by Town Counsel prior to the issuance of a permit.
- H. Bonds: an irrevocable letter of credit, cash or corporate surety bond written by a bonding company licensed to write surety bonds in the State of Connecticut, in an amount set by the Board and not in excess of \$10,000 per acre of permit and storage area for the purposes set forth in § 75-11, which bond may be in addition to any other bond required by any other regulatory agency of the Town or the State of Connecticut. Said letter of credit, bond or other surety arrangement shall be approved in writing by Town Counsel prior to the issuance of the permit, provided that Town Counsel has determined that said surety arrangement adequately protects the interests of the Town of Bethlehem and assures full compliance with this chapter and with any stipulations assigned to the permit by the Board. The said surety arrangement shall provide that if the Board or its qualified engineer designee certifies that the permittee has violated this chapter and/ or any assigned permit stipulations and has failed to abate said certified violation within 30 days of the date of notice to the applicant and surety of said violation, then said surety shall be paid over in its face amount to the Town of Bethlehem, which shall be authorized to disburse from said sum paid over the cost of abating said violation. Any excess of the amounts paid over, after deduction of all disbursements required to abate the violation, shall be returned to the applicant or the surety, as the case may be. [**Amended \_\_\_\_\_**]
- I. Right of entry for inspection and correction of violations: a written agreement by the owner of the premises and the applicant and approved by Town Counsel which permits the Town



of Bethlehem or its designee to enter upon the premises for the purposes of inspection to ensure compliance with the approved plans and to perform all work necessary to correct and abate any violations of this chapter and of stipulations which the permittee has made and failed to correct within the required time, such right of entry to arise upon the certification of such violation(s) by the Board of Selectmen or its qualified engineer designee and shall continue for such time thereafter as is required for the Town or its designee to remedy such default. [Amended \_\_\_\_\_]

**§ 75-7. Initial permit.**

Each application for a permit submitted after the effective date of this chapter shall be considered, in the first year of submission, an initial permit application, whether or not the application refers to a property that is now being used for the excavation of earth materials, and is subject to the following regulations:

- A. Duration. Each permit issued hereunder shall be valid for a period of one year or for such shorter period of time as may be requested by the applicant barring suspension or revocation of the permit because of certified violations. [Amended 5-17-2007]
- B. Denial of application. The Board may deny any such initial permit application if, at the time of the filing of such initial permit application, the requirements set forth in Section 75-6 herein have not been met, permits from other regulatory agencies of the Town or State of Connecticut have not been issued, and the issuance of the permit would result in the violation of any other section of this chapter or of any other regulation, code or ordinance of the Town of Bethlehem or of any statutes of the State of Connecticut or of the United States. [Amended \_\_\_\_\_]

**§ 75-8. Renewal procedure.**

- A. The Board may renew a permit for the same permit area described in the initial permit application upon payment of the required permit fee, the filing of a new bond and the other documentation required under § 75-6G, H and I and upon the filing of a statement of the number of cubic yards of earth material which have been removed and/or deposited under the existing permit, provided that the Board finds:
  - (1) The permitted work is being diligently performed by the permittee. A failure by the permittee to actively work the area covered by the permit for a period of six months, excluding November, December, January, February, and March, shall be prima facie evidence that the work authorized has been completed, and the burden shall be on the applicant to show why the permit should be renewed;
  - (2) The permittee has taken steps to restore those portions of the permit area where work is apparently completed and has made provisions to assure that restoration can be effected in accordance with the original plan and this chapter;
  - (3) There have been no violations of regulations within the meaning of § 75-7B; and

- (4) The renewal will not extend the permit period beyond the applicant's estimated completion date.
- B. Accuracy of documentation. If the Board has reason to question the continued accuracy or applicability of the other documents required by § 75-6 and submitted by the applicant as part of the initial permit application, it may require the submission of modified documents to reflect conditions existing at the time of the application for permit renewal. **[Amended \_\_\_\_\_]**
- C. Renewal time. Renewal applications containing all required documentation shall be submitted at least 45 days but not more than 60 days prior to the expiration of the existing permit. If the applicant desires to change the boundaries of the area for which a permit is sought as an initial permit application, all of the documentation required under § 75-6 shall be submitted.

**§ 75-9. Revocation of permit.**

A permit issued under this chapter can be revoked by the Board for reasons specified hereunder:

- A. Failure to work. The failure of any permittee to actively work the permit area for a period of six months (excluding the months of November, December, January, February, and March) without the prior written approval of the Board shall be cause for revocation of a permit. Such revocation shall become effective 30 days after the mailing of notice by certified mail, return receipt requested, to the permittee and owner, unless the permittee sooner proves to the Board that the area has been actively worked during such six-month period or provides written assurance satisfactory to the Board that work will be resumed and continued. The failure of the permittee thereafter to actively work the area in accordance with such written assurance shall be grounds for revocation without further notice. **[Amended \_\_\_\_\_]**
- B. Violations of regulations. Any permit issued under this chapter may be revoked by the Board when there has been a violation of any provision of this chapter or any permit issued hereunder, provided that notice of said violation has been given to the permittee, together with an order to comply therewith within 21 working days as set forth in said order, and the permittee has failed to comply with said order.

**ARTICLE II  
Regulations**

**§ 75-10. Operation procedures and standards.**

Any earth materials operation requiring a permit under this chapter shall be conducted in compliance with the following regulations, in addition to any more restrictive stipulations contained in any approved permit:

- A. Location of operation. The permit area and work area shall be field delineated before excavation or deposition commences. No excavation, deposition, processing, or other

disturbance of preexisting ground cover shall occur on the premises outside the permit area. The permit area shall be worked in conformance with the approved plans and this chapter. **[Amended 5-17-2007, \_\_\_\_\_]**

- B. Size of operation. At no time during any permit year shall more than one contiguous area (herein called the "work area") be disturbed for excavation or fill within the permit area and said area shall not exceed three acres. The remainder of the premises, including the permit area, shall, except for the storage area and access routes, be either undisturbed land or shall be graded to the proposed final contours and elevations, and be otherwise restored, seasonal planting factors considered, pursuant to approved plans and the provisions of § 75-11 herein. If, at any time during the permit period, more than one area on the premises is disturbed, or the entire premises, including the permit area, with the exception of a three-acre contiguous excavation area, does not meet existing or proposed final contours, or is not properly regraded and reseeded in accordance with § 75-11 herein, the permit shall be revoked unless the premises are so restored within 30 days of notice to the permittee. Revocation shall have the effect of requiring complete restoration of the entire premises in accordance with § 75-11 within 90 days thereafter. **[Amended 5-17-2007, \_\_\_\_\_]**
- C. Depth above ledge. No excavation shall be made lower than three feet above ledge, or such greater distance above ledge as may be required to permit the regrading site to meet the proposed final contours at slopes not exceeding the maximum provided in § 75-11A.
- D. Relationship of work area to existing features. No excavation or fill shall be made within 200 feet of any river, stream or other watercourse, or which would reduce the final elevation below the floodplain or reduce the area of the floodplain, without specific prior approval of the Board, which shall be given only when, by proper analysis, it is determined that no pollution or silting of existing watercourses, or increased flood or erosion hazards, or other effect on water supply or purity, will result, and proper approvals have been obtained from all appropriate governmental organizations. No excavation shall be made below the grade of any abutting highway within 150 feet thereof, unless approved by the Board, or below the grade of any adjoining property at the property line within 25 feet thereof, or within 150 feet of any dwelling existing at the date the permit is issued, provided that, with the written approval of the abutting owner of private property or of the owner of the dwelling to be affected filed with the Board, such excavation may be made below the grade of such abutting property or closer than 150 feet to a dwelling to the extent approved by the Board.
- E. Slopes during excavation. Notwithstanding Subsection D, no slopes having a grade greater than one foot vertical to two feet horizontal shall be created during excavation within 150 feet of any property or street line unless the operator shall demonstrate to the reasonable satisfaction of the Board that material to regrade the slope in accordance with § 75-11A is available on the premises and the slope is so regraded within 60 days after excavation of the slope is commenced. In no event shall slopes having a grade greater than one foot vertical to one foot horizontal be created.
- F. Reuse and development. The excavation and grading shall not result in sharp declivities,

pits or depressions or cause soil erosion, drainage or sewerage problems or conditions which would impair the reasonable reuse and development of the premises.

- G. Runoff and erosion controls. At all stages of the work, proper drainage shall be provided to avoid stagnant water, erosion, excessive runoff, silting of streams and damage to public or private property, streams, roads, or drainage facilities.
- H. Equipment. No equipment directly or indirectly engaged in the excavation, processing or transporting of earth materials shall be operated on the premises other than that listed in the application for a permit and approved by the Board. No vehicles or equipment not used in connection with the work covered by the permit shall be operated, parked, repaired or serviced within the permit area. No processing machinery not in place on the effective date of this chapter shall be erected, maintained or operated within 300 feet of any property or street line. Such machinery shall be used only to process material from the permit area, and it and all foundations for such machinery shall be removed from the premises upon termination of the permit. [**Amended**\_\_\_\_\_]
- I. Time of operation. No equipment, processing plant or vehicles directly or indirectly engaged in the excavation, processing or transportation of earth materials shall be operated, repaired, or serviced on the premises earlier than 10:00 a.m. nor later than 3:00 p.m., Monday through Friday. All such operations on Saturdays, Sundays and legal holidays are prohibited. [**Amended**\_\_\_\_\_]
- J. Tree protection. All trees outside the work area, as defined in Subsection B above, shall be protected from damage. Measures shall be taken by the permittee to ensure that the boundaries of the work area are maintained for the duration of the permit.
- K. Pollution controls. Adequate provision shall be made for the muffling of sound and vibration and the prevention or dissemination of dust, including the treatment of all on-premises access routes with calcium chloride or similar material (provisions to be made to prevent the runoff of such chemicals). [**Amended** \_\_\_\_\_]
- L. Warning signs. Adequate provisions shall be made for warning signs as may be necessary or required, all subject to the approval of the Board, which may also require the permittee to install permanent guard fencing where needed for public safety.
- M. Stockpile of arable soil. Sufficient arable soil (and topsoil) should be retained on the site for restoration as shown on the approved plans. [**Amended 5-17-2007**]
- N. Depth to water table. No excavation shall be made below the normal groundwater table, nor soil contours changed, which results in a lake or pond or drainage ditch, unless, prior to initiating excavation, the owner of the premises submits the documents required under § 75-6D, and the plan presented is expressly approved by the Board and, if necessary, by the Inland Wetlands Agency. [**Amended 5-17-2007, \_\_\_\_\_**]
- O. Outside material. No earth materials from outside the premises shall be brought into the

permit area strictly for processing and subsequent removal.

- P. Securing loads. It shall be the responsibility of the permit holder to ensure that vehicles removing earth materials from the premises are so loaded and/or secured that there will be no spillage of such materials within the Town of Bethlehem. Any permittee under a permit granted under the terms of this chapter or any person acting for or under him who shall cause damage to any road or roads, whether private or public, within the Town of Bethlehem shall be liable for the cost of repairing said damage. [**Amended \_\_\_\_\_**]
- Q. Inspection. The Board or its agents shall at all times have reasonable access to premises on which work is being performed for the purpose of inspection and determination of compliance with this chapter. Each permittee and owner, by his agreement in the application to this chapter, shall be deemed to have granted such reasonable rights of access to the Board or its agents for this inspection purpose.

**§ 75-11. Restoration of excavated areas.**

Within 90 days (excluding from said period the months of November, December, January, February, and March) of the completion of the work authorized or the expiration or revocation of the permit, whether initial or renewed, the area of excavation, deposition or disturbed ground shall be restored as follows:

- A. Finished slopes. The area shall be refilled, if necessary, with clean non-burnable fill containing no garbage, refuse or other deleterious or unwholesome matter and evenly regraded to the final contours and elevations shown in the approved plans with slopes not in excess of one foot vertical in two feet horizontal or to such a lesser slope necessary for soil stability, safety or reasonable reuse and development of the land but yet with sufficient grade to ensure adequate drainage.
- B. Drainage swales. Adequate drainage swales of gradual contour shall be provided as needed as shown on the approved plans. [**Amended \_\_\_\_\_**]
- C. Debris removal. All loose boulders of less than 10 cubic yards shall be buried or removed from the site. All other material, including stumps and other wood debris, shall be removed from the site and disposed in a lawful manner. [**Amended \_\_\_\_\_**]
- D. Vegetation restoration. A layer of topsoil, substantially free of stones, meeting the standards set forth in Section M.13 of Connecticut Department of Transportation Standard Specifications for Roads, Bridges and Incidental Construction (CTDOT Form 818 and subsequent versions), shall be spread evenly over the entire area to a minimum depth of six inches, non-compressed and then fertilized, limed and seeded with a perennial grass/ground cover and maintained until the ground shall be stabilized with a dense cover in accordance with the provisions hereunder specified and there exists no danger of erosion as determined by the Board. Restoration stipulations are:
  - (1) The amount of fertilizer and lime to be applied shall be determined by a soil test

prepared and/or approved by the University of Connecticut, the Connecticut Agricultural Experiment Station, or another accredited soil testing laboratory approved by the Board.

- (2) Grass/ground cover shall be installed in accordance with the standards set forth in CTDOT Form 818.
- (3) The grass/ground cover mix shall conform to recommendations for permanent seeding in Section 5.3 of the CTDEEP 2002 *Guidelines* and shall be applied at a rate of 55 pounds per acre.
- (4) Seeding shall be performed in accordance with Section 9.50 of CTDOT Form 818.
- (5) Seedling trees shall be planted wherever trees have been removed and shall be limited to one or more of the following species: Norway spruce (*Picea abies*), white pine (*Pinus strobus*), or larch (*Larix decidua*) or other species approved by the Board.
- (6) Seedling trees, minimum of 12 inches in height measured from tip to soil line, shall be planted during the time from April 1 to May 15 and shall be spaced no closer than 12 feet nor further apart than 20 feet measured from center. Both grass/ground cover and trees shall be planted during the same season. The Board may require larger trees to be planted in areas where a vegetative buffer adjacent to residential properties would be needed.
- (7) If the seeding or planting fails in whole or in part, the area shall be reseeded, replanted and re-mulched until all eroded or uncovered areas have been reseeded and repaired to the satisfaction of the Board.
- (8) The Board may waive the requirements of this provision with respect to any area which shall be restored and stabilized in any other manner in conformance with the standards of the USDA Natural Resources Conservation Service and approved in writing by the Board.

**[Amended \_\_\_\_\_]**

- E. Stockpile maintenance. All arable soil set aside in accordance with § 75-10M for a period of more than 30 days shall be seeded with annual ryegrass.
- F. Restoration adjacent to water bodies. Areas shown as existing or proposed water bodies on the approved plans shall be considered restored when and to the extent that they have been excavated to the approved depth and all shorelines, other than those remaining within the work area, have been regraded to a slope not exceeding one foot vertical and two feet horizontal and have been stabilized to the satisfaction of the Board.

**§ 75-12. Failure to work and restore site.**

The failure of a permit holder, without the prior written approval of the Board, to actively work the area covered by the permit for a period of six months (excluding the months of November, December, January, February and March) shall be prima facie evidence that the work authorized by the permit has been completed, and the burden shall be upon the permit holder to prove to the contrary. Any failure to initiate restoration within the ninety-day period following completion, expiration or revocation of the permit, such as to reasonably assure complete restoration by the end of said ninety-day period (seasonal planting excepted), shall be a separate violation of this chapter.

**§ 75-13. Reduction of bond.**

Upon completion of the work authorized by a permit and the restoration of the premises pursuant to §§ 75-10 and 75-11, the permit holder may file with the Board an application for a return of the bond filed, together with a written statement from the Tax Collector of the Town of Bethlehem certifying that all taxes levied against the premises and the machinery, equipment and vehicles used or located thereon and assessable in the Town of Bethlehem have been paid in full. If the Board is satisfied that the work and restoration have been completed as required by the permit and this chapter, the bond shall be returned to the permit holder, but otherwise the bond shall remain in full force and effect.

**ARTICLE III  
Rock Quarries**

**§ 75-14. Applicability.**

The regulations hereunder specified shall be applicable to the operation of bona fide rock quarries.

**§ 75-15. Exceptions.**

The provisions of §§ 75-10B, C, E and F, 75-11 and 75-13 shall not apply to bona fide rock quarries.

**§ 75-16. Fencing.**

All work faces having a vertical height greater than four feet shall be adequately barricaded or fenced at all times so as to prevent danger to persons other than the permit holder or his employees, and upon completion of operations upon any face, it shall be permanently fenced to the satisfaction of the Board. [Amended \_\_\_\_\_]

**§ 75-17. Site restoration.**

Upon completion of the work in a specific area authorized by a permit, all debris and loose rock shall be removed from the site, and adequate drainage shall be provided.

**§ 75-18. Protection of ridgelines.**

Any quarrying of rock which will affect existing ridgelines or create exposed cliffs or other permanent topographical features, in a manner detrimental to the Plan of Conservation and Development for the Town of Bethlehem, may be prohibited. [Amended \_\_\_\_\_]

**§ 75-19. Reduction of bond.**

Upon completion of the work in a specific area authorized by a permit and the restoration of the area, including the installation of fences, the permit holder may file with the Board an application for a return of the bond filed with respect to that area, together with a written statement from the Tax Collector of the Town of Bethlehem certifying that all taxes levied against the premises and the machinery, equipment and vehicles used or located thereon and assessable in the Town of Bethlehem have been paid in full. If the Board is satisfied that the work and restoration have been completed as required by the permit and this chapter, the bond shall be returned to the permit holder, but otherwise the bond shall remain in full force and effect.

**ARTICLE IV  
Miscellaneous Provisions**

**§ 75-20. Modification of plans after approval.**

If, during the conduct of the work or restoration of the premises, special circumstances unforeseen at the time of the application are encountered, the Board may grant modifications to the approved plan which, in the opinion of the Board, are reasonably necessary to complete the work within the intent of this chapter. No request for modification shall be considered if the applicant is in violation of the provisions of this chapter.

**§ 75-21. Penalties for offenses. [Amended 9-19-2019, \_\_\_\_\_]**

In addition to all other legal and equitable remedies to enforce this chapter, any person, firm or corporation violating or assisting in the violation of any of the provisions hereof or any permit granted hereunder shall be fined not more than \$250 for each offense. Each day of violation shall be deemed a separate offense.

**§ 75-22. Improvement of substandard Town roads. [Added 5-17-2007]**

If an earth materials application proposes a gravel mine or rock quarry that has as the only access a Town road which does not meet the minimum standards of Chapter 105, Roads, of the Code of the Town of Bethlehem, as amended, such application may be denied, unless the applicant has evidence of approval by the Board of Selectmen and Board of Finance for improvement of the road at the Town's expense or unless the applicant proposes to improve the necessary access at the applicant's own expense. In which case, the applicant shall execute an agreement and file a bond with the Board of Selectmen to guarantee the completion of the proposed public improvement within a period, not to exceed one year, as recommended by the Town Counsel and determined by



the Board of Selectmen, which shall be a cash bond or a combination of a cash bond and a letter of credit. Said bond or bonds shall secure to the Town the actual construction and installation of such improvements. No less than the first \$50,000 of the bond amount shall consist of a cash bond. Such agreement and bond shall remain in full force and effect until the street, drainage and other improvements have been accepted for public use and maintenance by the Town.

**Section 3. Effective Date of This Ordinance Amending the Earth Materials Ordinance**

This Ordinance Amending the Earth Materials Ordinance shall take effect fifteen (15) days after publication of a summary of its provisions pursuant to Connecticut General Statutes, §7-157(b).

Adopted by town meeting on \_\_\_\_\_, 2023.

Published in the \_\_\_\_\_, on \_\_\_\_\_, \_\_\_\_\_, 2023.