

STED:

  
KAREN E. RUTAN

ENACTED: NOVEMBER 7, 2000  
CERTIFIED COPY

---

TOWN OF BREMEN  
Earth Material Extraction and Use Ordinance  
Of the  
Town of Bremen, Maine  
Enacted—NOVEMBER 7, 2000

**I. Title.**

This ordinance shall be known as and may be cited as the "Earth Material Extraction and Use Ordinance" of the Town of Bremen, Maine.

**II. Authority.**

This ordinance is enacted pursuant to the home rule authority of the Town, including 30-A M.R.S.A. § 2101 et. Seq.

This ordinance is also enacted consistent with the Comprehensive Plan – Town of Bremen, 1988.

**III. Definitions.**

- [A] Town: Town means the Town of Bremen, Maine, United States.
- [B] Earth: Earth means soil, loam, peat, clay, sand, gravel, rock, and stone or other mineral or organic deposits in, on or from the land, wetlands or water bodies.
- [C] Extraction: Extraction means the removal and movement of earth from one place to another, it includes lagooning, dredging, excavation, filling, and grading.
- [D] Use: Use means processing and storage of earth.
- [E] Significant traffic increase: Significant traffic increase means increase the use of public roads through entry and exit of heavy trucks and other heavy equipment to public roads from private property that occurs more than thirty (30) times in a 24 hour period.
- [F] Small, small scale: Small and small scale means earth extraction, movement, and uses involving less than five thousand (3000) cubic yards of earth and involving a total surface alteration or disturbance of less than five (5) acres. When applied to ledge mining, small scale means one thousand (1000) cubic yards of ledge.

[G] Large, large scale: Large and large scale means earth extraction, movement and uses involving more than five thousand (3000) cubic yards of earth and involving a total surface alteration or disturbance of more than five (5) acres. When applied to ledge mining, large scale means more than one thousand (1000) cubic yards of ledge.

[H] Processing: Processing means combining earth with substances designed to make an aggregate such as asphalt or concrete.

[I] Temporary: Temporary means six (6) weeks or less during any fifty-two (52) week period.

[J] Mobile: Mobile means on wheels and able to be moved onto or off of a site on a daily basis.

#### **IV. Purpose, Findings, and Intent**

[A] Purpose: It is the purpose of this ordinance is to promote and protect the public health, safety and welfare by providing that:

- [1] Small scale extraction and movement of earth materials may be done without review, and
- [2] Large scale extraction and movement of earth material be done in accordance with certain standards so as to protect the environment, maximize compatibility between adjacent land uses and protect property values.

[B] Findings: The Town finds as follows:

- [1] Sand and gravel are valuable natural resources required by the Town for the needs of the Town residents,
- [2] Bremen does not have extensive sand or gravel resources,
- [3] Earth extraction can leave unsightly scars on the earth's surface that may damage the natural beauty of Bremen,
- [4] Large-scale earth extraction can damage the Town's systems of aquifers, ground water, wet lands, and ponds,
- [5] Earth extraction operations can produce excessive noise, dust, and other by-products,
- [6] Earth extraction operations can increase road use, cause traffic safety hazards and increase the road maintenance requirements, and
- [7] The Town's residents and visitors enjoy a peaceful rural setting with a pace of life derived from the historic custom and uses of the Town's natural and scenic resources.

[C] Intent: It is the intent of this ordinance to:

- [1] Allow small scale earth extraction operations to operate with a minimum of regulation provided they are well-screened from public view, do not adversely affect the Town's ground water or other natural resources, and do not create unreasonable public nuisances such as noise, dust, and significant traffic increases:
- [2] Establish performance standards to which larger operations are subject to, and
- [3] Prohibit large ledge mining.
- [4] Permit temporary, mobile-processing facilities.

## **V. Application:**

This ordinance shall apply to and govern all "earth material extraction, movement or use" with in the Town of Bremen except that it shall not apply to:

- [A] Normal excavation operations incidental to and at the site of:
  - [1] Permitted construction activities such as the construction of buildings, parking areas, and driveways, or
  - [2] The construction of roads.
- [B] To the earth extraction, movement and use operations involving less than one thousand (1000) cubic yards of earth within any 12 month period.
- [C] To sand and gravel operations involving less than three thousand (3000) cubic yards of sand and gravel within any 12 month period.
- [D] To agricultural operations including, but not limited to, tilling of soil, creation of ponds, runoff and erosion control, agricultural grading, or other agricultural use such as the mixing, adding and redistribution of materials to the land for increasing its fertility.
- [E] The construction of Town or State roads and parking lots located within the Town of Bremen.

## **VI. Permitted Uses:**

Earth material extraction, movement and use shall be a permitted use within the Town of Bremen provided it complies with the provisions of this ordinance.

Processing facilities shall be a permitted use within the Town of Bremen provided the processing facility is temporary and remains on the site for no more than six weeks annually.

## **VII. Ledge Mining:**

Ledge mining within the Town of Bremen shall be permitted as follows:

- [A] The large-scale mining of the Town's ledges is prohibited.
- [B] The small-scale mining of the Town's ledges is permitted provided that if explosive devices are required:
  - [1] The entity using the explosive device has given due public notice of its intentions to the Town,
  - [2] The entity using the explosive device has given notice by mail to all of the Town's residents within a one (1) mile radius of the blast site,
  - [3] The Selectmen hold public hearing after due public notice given,
  - [4] An environmental impact study, showing no significant impact to the Town's aquifers, is filed with the Town's Planning Board,
  - [5] The Planning Board, after review and verification of the environmental impact study, has issued a permit for the schedule of explosions.
  - [6] The entity using the explosive device has mailed a schedule of explosions to all residents in the Town.

### **VIII. Existing Operations:**

Any extraction or movement site legally existing, legally operating and fully permitted as required by M.R.S.A. 38 § 490 et seq. on or prior to June 23, 2000 AD may continue to operate without a permit from the Town. Any expansions of operations shall comply with the standards of this ordinance. Any extraction or movement site continuing to operate shall file with the Planning Board, within ninety (90) days of the enactment of this ordinance, the information required by the Application for Permit. Any existing extraction or movement site that continues to operate after the enactment of this ordinance shall comply with this ordinance's requirements for reclamation.

### **IX. Non-conforming Uses:**

If an existing site does not conform to the standards of this ordinance, but was legally existing, legally operating and fully permitted as required by M.R.S.A. 38 § 490 et seq. on or prior to June 23, 2000 (the effective date of the Bremen Commercial and Industrial Development Moratorium Ordinance of the Town of Bremen), that site shall be considered a non-conforming use. It may continue to operate so long as it does not increase any non-conforming aspect of the site such as by decreasing setbacks from surrounding property, or from a road in the event the operation is already too close, or by placing a processing facility.

### **X. Expansions:**

No extraction or movement site existing prior to the enactment of this ordinance, that is designated a non-conforming use under Section IX. of this ordinance, shall expand its operation unless it complies with the performance standards set forth within this ordinance.

### **XI. Permit Required:**

Any person or legally constituted entity that plans to engage in any earth material extraction or movement governed by this ordinance shall first apply for and obtain a Special Exception Permit from the Planning Board.

### **XII. Application for Permit**

An application for permit for earth material extraction or movement shall be in accordance with and progress through the following:

- [A] Before making out an application, the prospective applicant shall attend an informational meeting with the Planning Board to discuss the nature and scope of the project and to determine what information, finding and materials may be necessary for the Planning Board to issue a permit.
- [B] The application shall be filed first with the Code Enforcement Officer (CEO) before being forwarded to the Planning Board.
- [C] The application shall be in writing include the following:
  - [1] The name and current address of the owner of the property involved, the name and the current address of the individual or legally constituted entity operating the site, if different from the property owner.

- [2] A description of:
  - [a] The proposed extraction or movement operations,
  - [b] The estimated longevity of operation at the site and of the site,
  - [c] The proposed reclamation of the site upon completion of operations, and
  - [d] The details of any temporary, mobile processing facilities.
- [3] Information on the financial capacity of the applicant to comply with the Ordinance standards and carry out site reclamation.
- [4] If blasting is proposed, a blasting plan that includes an environmental impact study for the site, a hydrologic study, and an environmental assessment study for the surrounding areas.
- [5] A plan of the proposed extraction or movement site showing:
  - [a] All relevant property lines and roads,
  - [b] The names of abutting landowners,
  - [c] The site's topography in not greater than five (5) foot contour intervals, together with the related, most recent US Geodetic Survey Map,
  - [d] The location and slope of the grades existing and as proposed upon completion of the extraction and movement operation,
  - [e] The location and slope of the grades after the completion of reclamation,
  - [f] The details of proposed fencing, buffer strips, signs, lighting, parking and loading areas, and the sites entrances and exits.
  - [h] A traffic assessment that includes:
    - [i] The anticipated maximum volume of traffic entering and exiting of the site,
    - [ii] The kinds of vehicles and equipment that will be entering and exiting the site,
    - [iii] Any existing potential traffic hazards on roads with in the Town of Bremen which service and or feed into service roads for the site together with the applicants plans to address them, and
    - [iv] The ability of service and feeder roads to physically withstand the additional traffic generated by the site's operation together with the applicant's plans to address any deficiencies.
    - [v] The traffic assessment shall consider actual, existing traffic conditions in the vicinity of the site.
- [i] A Reclamation Plan showing the manner in which the site will be returned to as near its natural state as possible by grading, filling, draining and planting. Each site reclamation plan must provide for, at a minimum, the following:
  - [i] The storm drainage and watercourses shall leave the site at the original natural drainage points and in a manner so that the amount of drainage at any point is not significantly increased,

[ii] All proposed ponds, or other water entrapments must be shown and comply with local, state and federal regulations regarding the creation of water containment areas.

[iii] All disturbed areas along the buffer zone of abutting properties must be graded and filled to minimize the discontinuity of between the reclaimed site and abutting properties.

[iv] All stumps left on the site shall be buried and adequately covered.

[v] All disturbed areas shall be graded, cover with sufficient topsoil or loam and re-seeded so that they are properly restored to stable condition, and

[vi] Reclaimed slopes shall, in no instance other than a documented natural feature (photographed prior to commencing operation) be steeper than one (1) foot vertical to two (2) foot horizontal.

[6] An application fee, payable to the Town of Bremen in accordance with the following schedule:

[a] One hundred dollars (\$100) in US funds if the total area used or affected is less than or equal to five (5) acres.

[b] One thousand dollars (\$1000) in US funds if the total area used or affected is greater than five (5) acres.

The Planning Board may assess additional fees for any profession reviews, consultation, or work that the Planning Board determines is necessary for the Planning Board to render a decision regarding the application.

[7] Any performance bond or guarantees that the Planning Board may require.

[D] The Code Enforcement Officer (CEO) shall perform a preliminary review of the completed application and then forward it with his recommendations to the Planning Board.

[E] The Planning Board shall review the application and verify that it is complete. The Planning Board may return the application to the applicant if the application is incomplete or if, in the Board's opinion, the application requires additions or changes.

[1] The Planning Board shall cause to be created, by professional consultants, an impact study the proposed expansion or extraction operation will have upon the Town's water system, natural resources, marine environment, and public services. Using this study, the Planning Board will recommend to the Selectmen, for review at Town Meeting, impact fees to be assessed on the project.

[G] When the Planning Board determines that the application is complete, the Board shall issue the applicant a dated receipt. The Planning Board shall then begin its review of the application to determine if it meets the Ordinance standards.

[1] The Planning Board may hold a public hearing on the application. For any hearing, the Board shall cause to be published in a newspaper in general circulation in Lincoln County for not less than ten (10) days prior to the public hearing a notice of the hearing. The Board shall also send notice, by mail, of the hearing to all abutting property owners and their immediate abutters not less than fifteen (15) days prior to the public meeting.



[2] The Planning Board may decide after a public hearing that the proposed project requires acceptance by the legislative body of the Town. In the event the Planning Board reaches this decision, it shall request the Board of Selectmen hold a Special Town Meeting for this purpose.

[3] Within sixty (60) days of the public hearing or ninety (90) days of the receipt of the completed application, whichever is greater, the Board shall render a written decision either granting or denying the permit unless an extension of the granting period is mutually agreed upon in writing. The Board may grant the permit with or without additional conditions.

### **XIII. Permit Standards**

Any proposed extraction and movement operation must comply with the standards set forth in this ordinance. The Planning Board shall review the application for compliance with these standards. The Board, if it grants a permit, may impose any conditions necessary to ensure compliance with these standards.

[A] The operation shall not cause any adverse effects:

[1] No undue pollution of air or water, including ground water. None of the Town's aquifers may be disturbed without a study of the potential impacts upon the Town's future.

[2] No undue impact on existing and foreseeable traffic patterns.

[3] Significant traffic increases shall not be permitted.

[4] No undue adverse impact on existing or approved but not constructed land uses.

[B] No part of any extraction or movement operation shall occur within a buffer strip that is two hundred (200) feet wide next to a right-of-way line for any public road and no part shall occur within fifty (50) feet of any property line, or legally existing private right-of-way. Natural vegetation in these strips shall be left and maintained on the undisturbed land. Commercially valuable trees, shrubs, and herbs may be removed, by exception, provided that this vegetation is replaced by replanting and/or fencing or other screening sufficient to screen the site from neighbors and from the public view. The Planning Board shall require the applicant to plant vegetation or place fencing or screening within the buffer strip areas, whether or not the strip area has been altered, if necessary to screen the site from neighbors and from public view.

[C] The extraction site shall have no slopes steeper than one (1) foot vertical to (2) feet horizontal unless a safety fence four (4) feet high is erected to limit access to such locations. All safety fences shall be of durable construction and maintained to prevent injuries arising from an attractive nuisance.

[D] Topsoil and subsoil suitable for purposes of re-vegetation shall, to the extent required for reclamation, be stripped from the site of the extraction and movement operations and be stockpiled for use in reclaiming the site after operations have ceased. Stockpiles shall be protected from erosion by being seeded, mulched, anchored or otherwise stabilized for the storage period.

[E] Sediments shall be trapped by diversion ditches, silt basins, dikes, terraces, or other similar control measures as necessary to prevent sediments from entering classified bodies of water.

[F] The sides and bottom of cuts, fills, channels, and artificial watercourses shall be constructed and stabilized to prevent erosion and any potential failure.

[G] Lagooning shall be conducted in such a manner as to avoid the creation of fish trap conditions. If lagoon is proposed, the applicant shall submit a written approval from the Department of Marine Resources or the Department of Inland Fisheries and Wildlife, as applicable.

[H] Loaded vehicles shall be suitably covered to prevent dust and contents from blowing or spilling from the load. All trucking routes shall be compatible with the neighborhoods through which they go and with the ability of the Town roads to carry such loads.

[I] All roads leading from the site to public ways shall be treated with suitable materials to reduce dust and mud for a distance of at least two hundred (200) feet from such public ways.

[J] After the completion of operations at any site or at any location within a site, ground levels and grades shall be established in accordance with the Reclamation Plan that was filed with and approved by the Planning Board.

[K] Petroleum products, or other substances that could contaminate a ground water or surface water must be stored on the affected land in accordance with the approved spill prevention, control, and containment procedures. Refueling operations, oil changes, and maintenance activities requiring the handling of hydraulic fluids, as well as any other on-site activity involving the use of products which, if spilled, could contaminate ground water or surface water, must be conducted in accordance with approved procedures.

[L] At all sites the following noise levels shall not exceed at the property lines of the site:

[1] In Resource Protection, and Residential Areas: Sixty (60) decibels

[2] The Planning Board shall determine noise levels for other areas when such other areas in the Town are identified.

[M] The hours of operation shall normally be limited from 8:00 a.m. to 4:30 p.m., Monday through Friday, for the operation of all heavy equipment including trucks. The Planning Board may, temporarily, set different hours so long as operational compatibility with the neighborhood is maintained. In no case shall the hours of operation exceed (10) hours per twenty-four (24) hour period.

[N] No signs marking and extraction or movement site shall be permitted.

[O] Every property owner, before commencing an extraction or movement operation shall file with the Town Clerk a certificate of insurance in the amount of:

[1] Five hundred thousand dollars (\$500,000.00 - US Funds) for small-scale operations.

[2] Five million dollars (\$5,000,000.00 - US Funds) for large-scale operations.

The insurance protection shall be for any liability arising from the operation, and such insurance shall be kept in full force and effect during the period of operations and for one year thereafter.

[P] The Planning Board may require for small-scale and shall require for large-scale earth extraction and movement operations a performance bond and guarantee.

[1] The applicant shall file with the Town Clerk a commercial surety bond, a certified check, or a savings account passbook payable to the Town in such amount and upon such conditions as the Planning Board determines may be adequate to:

[a] Indemnify against any claims that could arise out the proposed operation, and

[b] Ensure satisfactory performance of all conditions imposed or otherwise applicable.



#### **XIV. Appeals**

Any person or legally constituted entity aggrieved by a decision of the Planning Board may appeal to the Board of Appeals within thirty (30) days of the date of the Planning Board's written decision. The Board of Appeals shall hear the appeal in accordance with 30-A M.R.S.A. § 2691. Any person or legally constituted entity aggrieved by the decision of the Board of Appeals may appeal the decision to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure within 30 days of the date of the written decision.

#### **XV. Violations and Enforcement**

Whenever a violation of this Ordinance exists, the Code Enforcement Officer (CEO), shall notify the person responsible, setting forth each specific violation and the actions necessary to correct it. Such notice shall be in writing, shall be personally delivered to the person or legally constituted entity responsible or sent to it by certified mail, return receipt requested. Such notice shall set forth a specific, reasonable time to correct each specific violation. In no instance, unless an emergency exists, shall the time to correct each specific violation be less than ten (10) working days. A copy of such notice shall be retained by the Code Enforcement Officer, a copy filed with the Town Clerk, and a copy shall be forwarded to the Board of Selectmen at the same time it is sent to the person responsible or the legally constituted entity.

If the violation is not corrected within this time, the Selectmen (or the Code Enforcement Officer, if authorized) shall take appropriate legal steps to enforce the ordinance.

A violation of any condition of a permit or approval is also a violation of this Ordinance.

#### **XVI. Penalties**

If work is performed or an act is done which requires a permit or approval, but the permit or approval is not obtained until after the work or act, the permit fees for such after-the-fact permits or approvals shall be five (5) times the regular fee.

Any person responsible for a violation that remains uncorrected, after being notified to correct it, shall be liable for the penalties and sanctions set forth in 30-A M.R.S.A. § 4452, as amended. Each day the violation continues shall be considered a separate offense. Under this law the violator is liable for fines for each offense, may be ordered to correct or abate a violation, and may be liable for the Town's attorney's fees, except witness fees and costs.

All fines shall inure to the benefit of the Town.

#### **XVII. Severability**

If any section, subsection, sentence, or part of this ordinance is for any reason held invalid or unconstitutional, such section, subsection, sentence or part shall be deemed separable; such decision shall not affect the validity of the remaining portions of this ordinance, which shall remain in full force and effect and shall not be deemed rescinded or terminated thereby.

#### **XVIII. Effective Date**

This Ordinance shall become effective upon enactment.

Enacted:

11-7-2000



P.O. Box 171

Bremen, Maine 04551

(207) 529-5945

FAX (207) 529-6302

Dear Applicant:

The Bremen Planning Board is authorized to hear all applications for approval under the Commercial and Industrial Site Plan Review Ordinance. The first step in the process is a preapplication conference with the Planning Board. Although no formal submissions are required, you should discuss at the preapplication conference with the Planning Board any potential waivers of submission requirements. All required submissions are listed on the Site Plan Review Submission Checklist, a copy of which is attached for your information.

Following the preapplication conference, you will need to submit ten copies of the complete Site Plan Review Application Form, all submissions listed on the Site Plan Review Submission Checklist unless otherwise waived by the Planning Board or not applicable, and the Site Plan Review Fee. An additional Technical Review Fee will be determined by the Planning Board at a future date. Once this fee is determined, it must be paid before any future Planning Board review of your project. For additional information, please review the applicable sections of the Commercial and Industrial Site Plan Review Ordinance.

Bremen Planning Board

ENACTED: MARCH 31, 2001

CERTIFIED BY: *[Signature]*

TITLE: TOWN CLERK

## TOWN OF BREMEN

AN ARTICLE

VOTED UPON AT THE TOWN MEETING  
ON MARCH 31, 2001

**ARTICLE #40:** To see if the Town will vote to amend the Earth Material Extraction and Use Ordinance by the following four amendments. Each amendment to be voted upon separately.

**AMENDMENT 1:**

TO ADD THE FOLLOWING DEFINITIONS:

**III. DEFINITIONS:**

- (K) Town's ledges means a layer or mass of rock located within the Town of Bremen.
- (L) Expansion means to increase the scale of an earth extraction operation and/or change the nature of the earth extraction activity, an example would be to change from removing surface loam to dynamiting ledge for rip rap.
- (M) Permitted means subject to this ordinance.
- (N) Performance standards and permit standards mean the requirements to operate an earth extraction operation as set forth in this ordinance.
- (O) Due public notice means to cause information to be published in a newspaper in general circulation in Lincoln County and to post this information in three public places at least (10) days prior to an event.

**AMENDMENT 2:**

TO ADD THE FOLLOWING LANGUAGE:

**IV. PURPOSE FINDINGS AND INTENT:**

(B) Findings: The Town finds as follows:

(8) On October 4, 2000 the Superior Court of Lincoln County ruled that:

- (a) Ledge mining on the property owned by Marriner's Inc. Town Map 11, Lot number 14-A-1 did not exist prior to the enactment of the Town's Commercial and Industrial Moratorium Ordinance and, therefore, this extraction activity was subject to the Moratorium Ordinance and to any ordinances enacted by the Town during the period of the moratorium that regulated ledge mining.

**AMENDMENT 4:**

TO CHANGE THE FOLLOWING TYPOGRAPHICAL ERRORS.

**III Definitions:**

(F) TO CHANGE FROM: (3000) TO: (5000)

(G) TO CHANGE FROM: (3000) TO: (5000)

ENACTED: March 30, 2002

CERTIFIED BY: Judith Mohr  
Judith Mohr  
Town Clerk

ART 38 . To see if the Town will vote to amend the Earth Extraction Ordinance as follows:

A. Amend Section III Definitions, in paragraph (F), to read as follows:

(F) Small, small scale: Small and small scale means earth extraction, movement, and uses involving less than five thousand (5,000) cubic yards of earth and involving a total surface alteration or disturbance of less than five (5) acres within twelve (12) months. When applied to ledge mining, small scale means one thousand (1,000) cubic yards of ledge within twelve (12) months.

B. Amend Section III, Definitions, in paragraph (G) to read as follows:

(G) Large, large scale: Large and large scale means earth extraction, movement, and uses involving more than five thousand (5,000) cubic yards of earth and involving a total surface alteration or disturbance of more than five (5) acres within twelve (12) months. When applied to ledge mining, large scale means more than one thousand (1,000) cubic yards of ledge within twelve (12) months.

C. Amend Section XII, Application for Permit, by repealing paragraphs (A), (B), (C)(1), (C)(3), (C)(5)(a) – (f), (C)(7), (D), (E) and (G), and replace them with the following paragraph (A):

(A) The application and review procedures of the Site Plan Review Ordinance shall apply.

D. Amend Section XII, Application for Permit by amending paragraph (c)(6)[a] to read as follows:

[a] ~~One hundred dollars~~ Two-hundred-fifty dollars (\$250.00) in U.S. funds if the total area used or affected is less than or equal to five (5) acres.

E. Amend Section XIII, Permit for Standards by amending paragraph [B] to read as follows:

[B] No part of any extraction or movement operation shall occur within a buffer strip that is two hundred (200) feet out next to a right-of-way line for any public road, ~~and no part shall occur within fifty (50) feet of any property line, or legally existing private right-of-way.~~ Natural vegetation in these strips shall be left and maintained on the undisturbed land. Commercially valuable trees, shrubs, and herbs may be removed, by exception, provided that this vegetation is replaced by replanting and/or fencing or other screening sufficient to the screen the site from neighbors and from the public view. The Planning Board shall require the applicant to plant vegetation or place fencing or screening within the buffer strip areas, whether or not the strip area has been altered, if necessary to screen the site from neighbors and from public view.

F. Amend Section XIII Permit Standards, by repealing paragraph (L), and addition paragraph (R) to read as follows:

(R) All standards of the Site Plan review Ordinance shall be met.

G. Amend Section XIV Appeals by repealing and replacing it to read as follows:

XIV Appeals

Appeals shall be as provided under the Site Plan Review Ordinance.

H. Amend Section XV Violations and Enforcement and Section XVI Penalties by repealing and replacing them to read as follows:

XV Violations, Enforcement and Penalties

Violations, Enforcement, and Penalties shall be as provided in the Site Plan Review Ordinance.