

ORDINANCE NO. 78-1 (adopted December 12, 1978)
ROBINSON TOWNSHIP EARTH CHANGE ORDINANCE
RESTATED JANUARY 24, 2017

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ROBINSON TOWNSHIP EARTH CHANGE ORDINANCE

TABLE OF CONTENTS

	Page
ARTICLE I TITLE AND PURPOSE	1
Section 1 - Title.....	1
Section 2 - Purpose	1
ARTICLE II RULES APPLYING TO TEXT AND DEFINITIONS	1
Section 1 - Rules Applying to Text.....	1
Section 2 - Definitions	2
ARTICLE III PERMITS REQUIRED	4
Section 1 - Permits Required	4
Section 2 - Exception	4
Section 3 - Classification of Permits.....	5
Section 4 - Non-Circumvention of Ordinance	5
ARTICLE IV APPLICATIONS FOR PERMITS AND APPLICATION FEES	5
Section 1 - Application for Class A Permit	5
Section 2 - Application for Class B Permit.....	7
Section 3 - Application Fees	10
ARTICLE V PROCESSING OF APPLICATIONS FOR PERMITS	10
Section 1 - Processing of Applications for Class A Permits.....	10
Section 2 - Processing of Applications for Class B Permits	11
Section 3 - Factors in Considering Applications for Permits	12
ARTICLE VI BASIC PERMIT REQUIREMENTS AND DURATION OF PERMITS.	13
Section 1 - Basic Permit Requirements	13
Section 2 - Duration of Permits	14
ARTICLE VII GENERAL TERMS, CONDITIONS AND LIMITATIONS APPLYING TO EARTH CHANGE PERMITS.....	14
Section 1 - General Conditions Applying to All Permits	14
Section 2 - General Conditions Applying to Class B Permits	17
ARTICLE VIII SPECIAL TERMS, CONDITIONS AND LIMITATIONS APPLYING TO GROUND REMOVAL PERMITS.....	20
Section 1 - Special Conditions Applying to Permits	20
Section 2 - Special Conditions as Part of Permit	21

ARTICLE IX	VIOLATIONS, SUSPENSIONS OR REVOCATIONS OF PERMITS AND PENALTIES	21
	Section 1 - Suspension or Revocation	21
	Section 2 - Court Action	21
	Section 3 - Misdemeanor	21
	Section 4 - Multiple Remedies.....	22
ARTICLE X	MISCELLANEOUS PROVISIONS	
	Section 1 - Administration	22
	Section 2 - Transfer.....	22
	Section 3 - Administrative Liability	22
	Section 4 - Severability	22
	Section 5 - Repeal	22
	Section 6 - Effective Date	22

ORDINANCE NO. 78-1

ROBINSON TOWNSHIP EARTH CHANGE ORDINANCE

AN ORDINANCE adopted pursuant to the provisions of Act 246 of the Michigan Public Acts of 1945, as amended, to regulate the removal and dumping of ground from or onto lands located in the Township of Robinson; to provide for the study, protection, management, and reclamation of ground resources within the Township; to provide for the issuance of permits for the removal or dumping of ground; to prescribe rules, regulations, conditions and procedures governing the issuance of such permits; to prescribe powers and duties of the Township Board and/or Planning Commission; to prescribe fees and procedures for the administration and enforcement of this Ordinance; and to provide penalties for the violation of this Ordinance and/or of permits issued hereunder.

THE TOWNSHIP BOARD OF THE TOWNSHIP OF ROBINSON, OTTAWA COUNTY, MICHIGAN, ORDAINS:

ARTICLE I

TITLE AND PURPOSE

Section 1. Title. This Ordinance shall be known and may be cited as the "Robinson Township Earth Change Ordinance."

Section 2. Purpose. This Ordinance is adopted for the purpose of securing and promoting the public health, safety and general welfare of persons and property within the Township of Robinson; to regulate the use of, to preserve the natural resources within the Township; and to prevent the creation of nuisances and hazards to the public health, safety and general welfare of persons and property within the Township.

ARTICLE II

RULES APPLYING TO TEXT AND DEFINITIONS

Section 1. Rules Applying to Text. The following rules of construction shall apply to the text of this Ordinance:

- (a) The particular shall control the general.
- (b) With the exception of those cases where the heading of an article, section or subsection is defined by that article, section or subsection, the headings which title an

article, section or subsection are for convenience only and are not to be considered in any construction or interpretation of this Ordinance or as enlarging or restricting the terms and provisions of this Ordinance in any respect.

- (c) The word "shall" is always mandatory and not discretionary; and the word "may" is permissive.
- (d) Unless the context clearly indicates to the contrary: (i) words used in the present tense shall include the future tense; and (ii) words used in the singular number shall include the plural number; and (iii) words used in the plural number shall include the singular number.
- (e) Unless the context clearly indicates and requires a contrary construction, the terms "person," "owner," "operator," "applicant," and "permit holder" shall be used interchangeably; and any provisions or requirements of this Ordinance (or of any permit issued hereunder) applying or pertaining to any one such term shall equally apply and pertain to all other such terms.
- (f) Any word or term not defined herein shall be considered to be defined in accordance with its common or standard definition.

Section 2. Definitions. The following list of terms and words are defined for the purpose of their use in this Ordinance; and these definitions shall apply in the interpretation and enforcement of this Ordinance unless otherwise specifically stated or obviously indicated:

- (a) "Building Permit" shall mean a valid and duly issued building permit from the Building Inspector as may be required within the Township for the construction or alteration of any building, structure or improvement; but a building permit shall not mean a permit of the type required by this Ordinance.
- (b) "Earth change unit" shall mean a sub-unit of an Earth Change or mining project as determined in size and location by the person seeking the Earth Change permit, and as it is Subsequently approved by the Township Board; however, no earth change unit shall exceed twenty (20) acres in size.

"Earth change unit" does not include that area of Earth Change or of the mining project utilized for (1) designated road purposes, and/or (2) an area to be designated but not to exceed seven (7) acres for the purposes of the stockpiling, sorting, grading and/or storage of minerals.

- (c) "Earth Change" shall mean a man-made change in the natural or existing cover or topography of any land. Earth Change shall include the moving, removing, excavating, mining or extraction of any ground on any lot, parcel or tract of land within the Township; and Earth Change shall also include the piling, stockpiling, dumping or depositing of any ground on any lot, parcel or tract of land within the Township.

Earth Change shall not apply, however, to the practice of plowing and tilling soil for the purpose of crop production or the broadcast spreading of soil conditioners, excluding waste sludge, or the harvesting of horticultural crops.

- (d) "Ground" shall mean and include soil, topsoil, subsoil, overburden, sand, gravel, earth, clay, marl, peat, rock, stone, aggregate, sludge and any other similar materials or resources.
- (e) "Horticulture" shall mean specialized production of crops including sod, nursery stock, trees, and blueberries.
- (f) "Overburden" shall mean all of the ground and other materials which lie above sand, gravel, clay and other natural mineral deposits of minable quality and shall also mean such ground and other materials disturbed from their natural state in the process of open mining.
- (g) "Permit" shall mean a valid and duly issued permit of the type (i.e., Class A Permit or Class B Permit) required by this Ordinance for an Earth Change within the Township.
- (h) "Person" shall mean an individual, partnership, firm, corporation, association or any combination thereof, and shall also mean a city, village, township, county, or other political subdivision of the state, or a state or state agency or instrumentality of the state.

And "person" shall also include: (i) any owner, lessee, licensee, or invitee of any property upon which any Earth Change occurs or is proposed to occur, and (ii) any applicant for an Earth Change permit pursuant to this Ordinance, and (iii) any operator or other person engaged in any Earth Change activity subject to regulation under this Ordinance or any permit issued pursuant hereto, and (iv) any holder or recipient of any permit issued pursuant to this Ordinance.

- (i) "Planning Commission" shall mean the Planning Commission of the Township of Robinson, Ottawa County, Michigan.
- (j) "Pond" shall mean an outdoor body of standing water, accumulated in a natural or artificially constructed basin or depression in the earth, either above or below or partly above or partly below grade, capable of holding water to a depth of greater than two (2) feet when filled to capacity.
- (k) "Project" shall mean any and all of the Earth Change activities or operations of a person on a single parcel, or on adjoining parcels which are contiguous for at least thirty (30) feet, whether in process or proposed.

- (l) "Topsoil" shall mean the "A Horizons" of the Soil Classification, A Comprehensive System, 7th Approximation; 1960; as noted in Soil Survey of Ottawa County, Michigan, 1972.
- (m) "Township" shall mean the Township of Robinson, Ottawa County, Michigan.
- (n) "Township Board" shall mean the Township Board of the Township of Robinson, Ottawa County, Michigan.
- (o) "Township Clerk" shall mean the Clerk of the Township of Robinson, Ottawa County, Michigan.

ARTICLE III

PERMITS REQUIRED

Section 1. Permits Required. From and after the effective date of this Ordinance, it shall be unlawful (except as specifically permitted and provided in Section 2 [below]) for any person to cause or allow an Earth Change within the Township without a permit from the Township Board secured pursuant to and in accordance with this Ordinance.

Section 2. Exception. Notwithstanding the provisions of Section 1 of this Article, no permit shall be required pursuant to this Ordinance when and if: (i) the Earth Change is confined to a residential building construction (i.e., a use permitted by right in a residential zoning district under the Zoning Ordinance) and is necessitated by and performed in conjunction with the immediate use or development of the land upon which the Earth Change occurs, pursuant to a residential building permit; or (ii) the Earth Change is confined to a commercial or industrial building construction (i.e., a use permitted by right in a commercial or industrial zoning district under the Zoning Ordinance) and is necessitated by and performed in conjunction with the immediate use or development of the land upon which the Earth Change occurs, pursuant to a commercial or industrial building permit; or (iii) the Earth Change does not exceed a maximum volume of 600 cubic yards and is not intended to become and does not in fact become part of a larger Earth Change project which would require a permit hereunder; or (iv) the Earth Change is for the cleaning of existing ditches; or (v) the Earth Change occurs because of a special use permit or planned unit development approval granted by the Township pursuant to the Zoning Ordinance. The first four exceptions to the requirement of securing an Earth Change permit (i through iv) shall not apply or be available, if the Earth Change results in the formation of a pond; the fifth exception (v) shall apply and be available even if the Earth Change results in the formation of a pond.

Section 3. Classification of Permits. Permits required pursuant to this Ordinance for an Earth Change within the Township shall be classified as follows.

- (a) Class A Permits. A "Class A Permit" shall, for purposes of this Ordinance, mean a permit to allow an Earth Change when the volume of the Earth Change does not exceed 5,000 cubic yards.

- (b) Class B Permits. A "Class B Permit" shall, for purposes of this Ordinance, mean a permit to allow an Earth Change when the volume of the Earth Change exceeds 5,000 cubic yards.

Section 4. Non-Circumvention of Ordinance.

- (a) No person shall circumvent or attempt to circumvent the provisions of this Ordinance by engaging in successive Earth Change activities having a maximum volume of 600 cubic yards or less; and if the Township Board shall have good cause or reason to believe that a person is circumventing or seeking to circumvent the provisions of this Ordinance by engaging in successive Earth Change activities having a maximum volume of 600 cubic yards or less, it (the Township Board) may in such case require the person to comply with the provisions of this Ordinance.
- (b) No person shall circumvent or attempt to circumvent the provisions of this Ordinance pertaining to Class B Permits by making successive application for Class A Permits under circumstances where the scope and nature of the proposed or projected Earth Change project would ultimately require a Class B Permit; and if the Township Board shall have good cause or reason to believe, either on the basis of a person's successive application for Class A Permits or any other basis, that a person seeking a Class A Permit is circumventing or seeking to circumvent the provisions of this Ordinance pertaining to Class B Permits, it (the Township Board) may in such case require the person to comply with the provisions of this Ordinance relative to such Class B Permits.

ARTICLE IV

APPLICATIONS FOR PERMITS AND APPLICATION FEES

Section 1. Application for Class A Permit. A person seeking a Class A Permit, as defined in Article III Section 3 (a) of this Ordinance, shall make written application for the same, in triplicate (i.e., an original and two [2] photocopies), to the Township Clerk or his designee. At least the original of such application shall be sworn to (i.e., notarized) before a person lawfully authorized to administer oaths. Such application shall contain or be accompanied by the following information:

- (a) Full identification of the owner(s) of the parcel(s) upon which the Earth Change is proposed; and, if other than or in addition to the owner(s), full identification of the applicant and of all other persons to be involved in the operation or management of the Earth Change if a permit is granted.
- (b) The residence and business addresses of the applicant(s), and of the owner(s) if different, and of the operator(s).

- (c) The legal description (including street address where applicable) of the property upon which the Earth Change is proposed to be done. Said legal description shall be by a registered civil engineer or land surveyor.
- (d) The specific nature and extent of the proposed Earth Change project and activity; the type of ground involved in the proposed Earth Change; and a fair and reasonable estimate of the number of cubic yards of ground involved in the proposed Earth Change. This estimate shall, if deemed necessary by the Township Board, be made by a registered civil engineer or land surveyor.
- (e) A detailed description by maps, diagrams or otherwise, of the contour and condition of the lands before commencement of the proposed Earth Change and as the person proposes to leave such lands upon completion of the Earth Change project or operations. Such description shall include:
 - (1) A topographic map drawn with contour intervals of five (5) feet for the project area and ten (10) feet for the area having a radius extending three hundred (300) feet beyond the perimeter or exterior boundaries of the proposed Earth Change site, depicting the contours of the land in its existing condition (i.e., before commencement of the proposed Earth Change).
 - (2) A topographic map drawn with contour intervals of two (2) feet for the project area and ten (10) feet for the area having a radius extending three hundred (300) feet beyond the perimeter or exterior boundaries of the proposed Earth Change site, projecting the contours of the land upon completion of the Earth Change project or operations.
 - (3) A statement of any landscaping to be done or other ground stabilization controls to be employed to insure that the lands are left in a stable, safe and usable condition, and to prevent ground erosion, ground blowing, dust or unsightly conditions.
 - (4) A drainage plan to indicate the anticipated drainage system which would be utilized if the project is implemented.
 - (5) Detailed information concerning the ground water table in the proposed project area, as well as detailed information concerning the project's proposed use of the ground water and its possible effect thereon, if the project is implemented.
- (f) A statement of the manner in which the Earth Change project is to be performed, operated and carried on, including a statement of the slope of the sides and the level of the floor, the finished grade and condition of the property following the completion of the project, and the kind and amount of equipment proposed to be employed.

- (g) The proposed route which the person intends to use or cause to be used in transporting the ground over the public roads and over any private property.
- (h) The person's previous experience in matters to which the permit appertains, and the name, address and previous experience in such matters of any other person(s) to perform or be in charge of the proposed Earth Change operations.
- (i) Whether or not the person has ever had an Earth Change application or permit and was it denied, revoked or suspended, and, if so, the circumstances of such denial, revocation or suspension.
- (j) The time within which the Earth Change project or operation will be commenced after a permit is granted, and the time within which the Earth Change project or operation will be completed.
- (k) A description of the measures to be taken by the person to control noise, vibration, ground blowing, dust and traffic.
- (l) Any measures which the person proposes to take to insure public safety, the exclusion of children from the premises, and the lateral support of adjoining and surrounding lands and structures.
- (m) Any and all such further or additional information as the Township Board may reasonably require to determine whether or not a permit should be issued.

Section 2. Application for Class B Permit. A person seeking a Class B Permit, as defined in Article III, Section 3(b) of this Ordinance, shall make written application for the same and file an original and fifteen (15) photocopies with the Township Clerk or the Township Clerk's designee. At least the original of such application shall be sworn to (i.e., notarized) before a person lawfully authorized to administer oaths. Such application shall contain or be accompanied by the following information:

- (a) All information required pursuant to Section 1 of this Article with respect to Class A Permits.
- (b) A comprehensive Environmental Impact Statement on the site of the proposed Earth Change project or activity, following guidelines prescribed by the Township Board by resolution, but including, at a minimum, the following:
 - (1) An aerial photograph of all lands within 1,320 feet of the perimeter or external boundaries of the proposed Earth Change site showing (indicating) the location of the various existing uses of such lands, the location and type of existing vegetation, existing soils and any other significant features. Appropriate overlays at the scale of the aerial photograph can be used to

depict topography, slope, hazards, soils, vegetation, wildlife habitat and any other significant features.

- (2) A list of the various major ground vegetation found within the proposed Earth Change area, together with an indication of the presence of rare and endangered species.
 - (3) The impact of the proposed Earth Change project or operations on flora, fauna, or wildlife habitats in and around the project site.
 - (4) A detailed description of any known, anticipated or, possible adverse or detrimental effects upon any aspect or element of the environment, both with respect to the project site and with respect to surrounding areas.
 - (5) The effects of the Earth Change project and activity on groundwater supply and flow.
 - (6) The effects of the Earth Change project and activity on adjacent surface resources.
 - (7) An illustrated landscape plan which presents the visual appearance of the proposed project area if the Earth Change operations are implemented.
 - (8) A descriptive analysis of the grading plan to illustrate the appearance of the project as various operational stages are completed.
 - (9) The economic impact of the Earth Change project and activity on the surrounding area.
 - (10) The compatibility of the proposed Earth Change project or operations with adjacent existing land uses and with the Robinson Township Land Use Plan.
 - (11) A description of any traffic control devices, public facilities, or public services which will be required by the proposed operations, and a statement of how, and by whom, the person proposes that the costs thereof be paid.
 - (12) Alternatives, if any, to the proposed Earth Change and the reasons for the choice of the proposed Earth Change site over those alternatives.
- (c) A progressive Earth Change and Reclamation Plan for the proposed Earth Change project or activity, for both the total project and for each earth change unit, including, at a minimum, the following:
- (1) The method and direction of Earth Change.

- (2) Surface overburden and stripping plans.
 - (3) The depth of grade level over the entire site on which the Earth Change will take place.
 - (4) Provisions for grading, revegetation, and stabilization that will minimize ground erosion, sedimentation, and public safety problems.
 - (5) The location of buildings, equipment, stockpiles, roads, or other features necessary to the Earth Change activity and provisions for their removal and restoration of the area at the project's termination.
 - (6) Provisions for buffer areas, landscaping and screening.
 - (7) The interim use or uses of reclaimed earth change units before the cessation of the entire Earth Change operation or project.
 - (8) Provisions for ingress and egress, including proposed routes for all truck and other vehicular travel in connection with the Earth Change operations.
 - (9) Maps and other supporting documents required by the Township Board.
- (d) A Fifteen (15) Year Earth Change Plan including, at a minimum, the following:
- (1) The location and acreage of ground deposit areas presently subject to an Earth Change, if any.
 - (2) The location and acreage of ground deposit areas not presently subject to an Earth Change, but planned for that purpose, and the amount of ground planned to become subject to an Earth Change.
 - (3) A schedule indicating when the Earth Change activity will begin in each ground deposit area and the probable termination date of Earth Change activities in each area.
 - (4) Additional information requested by the Township Board.
- (e) Any and all such further or additional information as the Planning Commission or Township Board may reasonably require to determine whether or not a permit should be issued.
- (f) The Township Board may, at its discretion, request a review of the Earth Change application and solicit comments from various agencies such as the Soil Conservation District in Ottawa County, the Ottawa County Drain Commission and the West Michigan Regional Shoreline Development Commission.

Section 3. Application Fees. All applications filed with the Township Clerk for Class A or Class B Permits shall be accompanied by application fees in such amounts (for Class A Permits and Class B Permits respectively) as may be determined by the Township Board by resolution from time to time. Such application fees shall be for the purpose of offsetting and defraying the cost or expense to the Township of investigating, reviewing and processing such applications.

ARTICLE V

PROCESSING OF APPLICATIONS FOR PERMITS

Section 1. Processing of Applications for Class A Permits.

- (a) Upon receipt by the Township Clerk of the original and two (2) photocopies of an application for a Class A Permit and of the person's Class A Permit application fee, the Township Board shall review the same to determine if each of the application requirements found in Article IV have been addressed. If the Township Board deems that the application does not address all requirements, it shall so advise the person, in writing, specifying the deficiencies; provided, however, that the Township Board's preliminary determination of completeness, or its failure to specify deficiencies, shall not preclude the Township Board from later identifying or asserting any such deficiencies or from requesting such further or additional information as the Township Board may reasonably require to determine whether or not a permit should be issued.
- (b) When the Township Board preliminarily determines that an application and fee for a Class A Permit are complete with the requirements of Article IV, the Township Board shall accept the application for its consideration, review and decision. The Township Board may, in its discretion, schedule one or more public hearings on the question of issuing a Class A Permit to the person. In the event any such public hearing is scheduled, notice thereof shall be mailed to the person and shall be published in a newspaper of general circulation in the Township, both at least ten (10) days prior to the public hearing. In addition, or in the alternative, the Township Board may in its discretion refer the application to the Planning Commission for its recommendation. In the event of such referral, the Planning Commission shall consider, review and make its recommendation to the Township Board on the application. The Planning Commission may, in its discretion, or shall, at the request of the Township Board, schedule one or more public hearings on the question of issuing a Class A Permit to the person. Any such hearing before the Planning Commission shall be subject to the same notice requirements as herein above provided (in this subsection) with respect to such hearings before the Township Board.
- (c) Following the Township Board's consideration of the application, and following receipt of the Planning Commission's recommendation if the application was referred

to the Planning Commission, the Township Board shall determine whether or not a Class A Permit should be issued to the person; provided, however, that if it reasonably appears to the Township Board that the amount of ground to be subject to an Earth Change exceeds 2500 [NOW 5000] cubic yards, or that the person is otherwise ineligible for a Class A Permit, then and in such event the Township Board shall deny issuance of a Class A Permit and shall, if the case so requires, direct the person to seek a Class B Permit.

- (d) All Class A Permits issued by the Township Board shall be subject to and shall be in accordance with the terms, provisions and requirements of this Ordinance pertaining to Class A Permits, as hereinafter set forth.

Section 2. Processing of Applications for Class B Permits.

- (a) Upon receipt by the Township Clerk of the original and six (6) photocopies of an application for a Class B Permit and of the person's Class B Permit application fee, the Township Board shall review the same to determine if each of the application requirements found in Article IV have been addressed. If the Township Board deems that the application does not address all requirements, it shall so advise the person, in writing, specifying the deficiencies; provided, however, that the Township Board's preliminary determination of completeness, or its failure to specify deficiencies, shall not preclude the Township Board or Planning Commission from later identifying or asserting any such deficiencies or from requesting such further or additional information as the Planning Commission or Township Board may reasonably require to determine whether or not a Class B Permit should be issued.
- (b) When the Township Board preliminarily determines that an application and fee for a Class B Permit are complete with the requirements of Article IV, the Township Board shall submit the application to the Planning Commission for its consideration, review and recommendation. The Planning Commission shall schedule one or more public hearings on the question of issuing a Class B Permit to the person. Notice of any such public hearing shall be mailed to the person and to the owners of any property within 1,320 feet of any portion of the parcel or tract of land within which the proposed Earth Change project would occur (as such owners appear according to the Township's last tax assessment rolls), and shall be published in a newspaper of general circulation in the Township, both at least ten (10) days prior to the public hearing. Such notices shall contain a statement of the date, time and place of the public hearing, the name of the applicant, a general description of the parcel or tract of land within which the proposed Earth Change project would occur, and a general statement of the size and nature of the proposed Earth Change project.
- (c) Following the Planning Commission's public hearing(s) on the application, the Planning Commission shall prepare and submit its written recommendation to the Township Board on the question of issuing a Class B Permit to the person; and if such recommendation favors issuance of a Class B Permit, then and in such event the

Planning Commission's recommendation shall contain suggested terms and conditions to which the permit should be subject and upon which the permit should be issued. In the course of its consideration and investigation of an application for a Class B Permit, the Planning Commission may consider all factors it deems relevant to the question of issuing a Class B Permit to the person; and the Planning Commission may require such further investigations and/or make such further inquiries as it deems necessary or advisable in making its written recommendations to the Township Board.

- (d) Upon receipt of the Planning Commission's written recommendations, the Township Board may, in its discretion, schedule one or more public hearings on the question of issuing a Class B Permit to the person. Notice of any such public hearing shall be in accordance with the requirements of Article V, Section 2(b), hereof.
- (e) Following the Township Board's consideration of the application, the Township Board shall determine whether or not a Class B Permit should be issued to the person.
- (f) All Class B Permits issued by the Township Board shall be subject to and shall be in accordance with the terms, provisions and requirements of this Ordinance pertaining to Class B Permits, as hereinafter set forth.

Section 3. Factors in Considering Applications for Permits.

- (a) The Township Board (and the Planning Commission where applicable), in considering applications for Class A Permits and Class B Permits under this Ordinance, shall take into consideration, by way of illustration and not of limitation, the following factors: the recommendation of the Planning Commission, where applicable; the zoning of the proposed site; its proposed reclamation in a manner consistent with the Robinson Township Land Use Plan; the character of the person in respect to the person's honesty, integrity and financial responsibility; the person's ability to comply with this Ordinance and the probable terms and conditions of a permit, if issued; the size, nature, and character of the proposed Earth Change activity; the scope and duration of the proposed Earth Change activity; the proximity and effect of the proposed Earth Change activity with respect to adjoining properties and the surrounding neighborhood; the relative need or necessity of the proposed Earth Change activity in relation to other possible uses of the property; the impact of the proposed Earth Change activity on the environment; all pertinent things concerning the health, safety and general welfare, and the preservation of natural and environmental resources and the prevention of nuisances and hazards; and shall exercise a reasonable and sound discretion in the premises.
- (b) No permit shall be granted if it appears from the investigation thereof that the project would remove the lateral and sublateral support of the adjacent land or result in a dangerous topographic condition, or result in seepage or slides or create an attractive

nuisance dangerous to public safety, or that it otherwise would in any manner endanger the public health or safety and prevent the preservation of natural resources, or be detrimental to the general public welfare.

- (c) The Board shall deny a permit if, upon review of the environmental impact statement, it determines that the proposed Earth Change operation or operations would have an irreparable harmful effect on the environment.
- (d) In granting or denying a permit, the Township Board shall provide written reasons therefor.

ARTICLE VI

BASIC PERMIT REQUIREMENTS AND DURATION OF PERMITS

Section 1. Basic Permit Requirements. All Earth Change permits, whether Class A or Class B, shall be in writing and shall contain or be subject to at least the following basic provisions:

- (a) The name and address of the person or persons to whom the permit is granted and who are therefore permitted to engage in the authorized Earth Change.
- (b) A description of the lot, parcel or tract of land to which the permit applies; and a description of the site or portion of such lot, parcel or tract upon which the Earth Change is permitted.
- (c) All Earth Change permits shall be subject to the general terms, conditions and limitations applying to such permits, as such general terms, conditions and limitations are set forth in Article VII of this Ordinance, whether or not such general terms, conditions and limitations are specified in any such permit.
- (d) All Earth Change permits shall also be subject to such special terms, conditions and limitations as may be prescribed by the Township Board and contained in such permit. In specifying any such special terms, conditions and limitations in any such permit, the Township Board may set forth such special terms, conditions and limitations in the permit itself and/or may incorporate such special terms, conditions and limitations therein by reference to any other written, identifiable and available document or documents; and any special terms, conditions and limitations so incorporated by reference shall be deemed a part of the permit to the same extent as if such incorporated terms and provisions were fully set forth in the permit.
- (e) The date the permit is issued.
- (f) The expiration date of the permit; provided, however, that if no such expiration date is set forth in the permit, such permit shall expire as provided in Section 2 below.

Section 2. Duration of Permits.

- (a) Class A Permits: Class A Permits shall be valid for such period of time as may be specified in the permit, but in no event for any period longer than one hundred eighty (180) days. Upon expiration of the permit, one hundred eighty (180) days following its issuance or within such shorter period as may be specified in the permit, no further Earth Change shall take place without first obtaining a new permit therefor.
- (b) Class B Permits: Class B Permits shall be valid for such period of time as may be specified in the permit, but in no event for any period longer than three (3) years. Upon expiration of the permit, three (3) years following its issuance or within such shorter period as may be specified in the permit, no further Earth Change shall take place without first obtaining a new or renewed permit therefore.

ARTICLE VII

GENERAL TERMS, CONDITIONS AND LIMITATIONS
APPLYING TO EARTH CHANGE PERMITS

Section 1. General Conditions Applying to All Permits. The following general conditions and provisions shall apply to both Class A and Class B permits:

- (a) Trees and other vegetation or ground cover shall not be stripped off any ground landform so as to unnecessarily expose areas of ground that are prone to wind or water erosion that will cause ground or dust to be carried by wind or water onto adjoining or surrounding properties, or onto public or private roads, or to create a nuisance thereby.
- (b) All vehicles used for the transporting of ground from or to any Earth Change project shall follow established truck routes within the Township or shall travel only directly over such route as may be determined by the Township Board to be least dangerous to the public health, safety and general welfare, to cause the least interference with general traffic, and to cause the least damage to the public roads.
- (c) Any ground that may be spilled or deposited on any public road or other public place within 1500 feet of any point of ingress or egress to the project site from any vehicle transporting such ground from or to any project site shall be immediately removed in a manner satisfactory to the Township Board at the expense of the person to whom the Earth Change permit is issued.
- (d) The permit holder shall take such appropriate action to insure the satisfactory compliance of subparagraphs (b) and (c) above by any person engaged in any activity described in said subparagraphs (b) and (c). The permit holder's failure to do the same may constitute grounds for the suspension and/or revocation of said permit.

- (e) The floor of any Earth Change project shall not be made lower than the level specified in the permit; provided, however, that if no floor level is specified in the permit, the floor shall not be made lower than the level specified in the application for the permit.
- (f) No Earth Change permit, nor any provisions thereof, shall authorize or permit any violation of the Township Zoning Ordinance or any other applicable ordinance, law, or regulation, either federal, state, county or local, in force and effect within the Township; and all Earth Change permits shall be subject to any such applicable, ordinances, laws or regulations.
- (g) All topsoil shall remain on the project site. Sufficient subsoil and/or overburden shall be stockpiled on the project site for reclamation purposes. The applicant shall state in the reclamation plan the methods and specifications by which the topsoil and subsoil and/or overburden shall be redistributed over the site. The reclamation plan shall specify the combination of topsoil and/or overburden which shall be conducive to the establishment of a suitable ground cover and/or the growth of vegetation. In the event, however, that Earth Change operations within an earth change unit continue for a period longer than thirty (30) days, the person shall, to the extent possible and practical, reclaim the completed Earth Change areas as the operation progresses.
- (h) During any period in which an Earth Change project is being carried on or operated, no person shall cause or allow stagnant bodies of water to form, and persons owning or operating an Earth Change project or site shall spray, as necessary, any bodies of water which may exist in conjunction with such operations to keep the same from becoming breeding places for mosquitoes or otherwise creating any unhealthy condition.
- (i) Where project operations result in a body of water, the person shall place appropriate "Keep Out - Danger" signs around the body of water, not more than two hundred (200) feet apart. Such signs shall be maintained at least until all Earthy Change activity is completed and the slopes of any banks comply with the provisions of subsection (k) below.
- (j) The project site shall be landscaped or stabilized as the replacement of topsoil occurs at least to the extent necessary to eliminate any ground erosion by wind or water.
- (k) The final slopes of the banks of any Earth Change project involving any excavation shall in no event exceed a minimum of three (3) feet to one (1) foot (3 feet horizontal to 1 foot vertical); and where ponded water results from the project or operations, this slope shall be maintained and extended into the water to a depth of five (5) feet.
- (l) No Earth Change shall occur closer than fifty (50) feet from the nearest street or highway right-of-way nor closer than fifty (50) feet from 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; and provided further that the Township Board may, in its discretion, prescribe less strict requirements upon written consent of the adjoining property owner. (Under no circumstances, however, shall the Township Board permit a minimum less than that contained in such written consent.)

- (m) If, in the opinion of the Township Board, any such project will present a dangerous condition if left open, such project shall be enclosed by a chain link or wire mesh fence completely surrounding the portion of the site where the project extends, said fence to be not less than five (5) feet in height complete with gates, which gates shall be kept locked when operations are not being carried on. Barbed wire shall not be used.
- (n) No permit shall be issued unless the Township Board finds: (i) that the restored elevation, upon completion of the project, will be compatible with the surrounding areas and suitable for subsequent development for uses compatible with the district; and (ii) that the reclamation plan submitted under Section 1(g) has been approved by the Township Board; and (iii) that adequate safeguards are provided to insure compliance with subsections (a) through (m) above and to protect adjacent property from blowing or otherwise eroding ground; and (iv) that the property in question will be restored as provided in subsections (a), (j) and (k) above and that it will be stabilized and maintained by appropriate plantings indigenous to the area in its natural and undisturbed state.

Section 2. General Conditions Applying to Class B Permits. In addition to the general conditions prescribed in Section 1 above, the following general conditions and provisions shall apply to Class B permits:

- (a) All roads, public or private, used by trucks (whether full or empty) for the purpose of hauling equipment, materials or ground to and/or from the project site shall be kept dust-free by hard topping with concrete, bituminous substance, chemical treatment, or other means approved by the Township Board if: (i) they are located within 330 feet of an occupied residence, or (ii) the dust would be detrimental to the public health, safety or welfare. The cost of such dust control shall be borne by the person or persons to whom the Earth Change permit is granted.
- (b) No part of any ground processing equipment (such as crushers, mixers, separators, etc.), excluding transporting equipment, shall be operated closer than five hundred (500) feet from the nearest adjacent parcel not owned by the person, or closer than three hundred (300) feet from any adjacent road right-of-way or adjacent property line; provided, however, that the Township Board may, in its discretion, prescribe less strict requirements upon written consent of the adjoining property owner. (Under no circumstances, however, shall the Township Board permit a minimum less than that contained in such written consent.)

- (c) The permit shall state any conditions, limitations, or other restrictions determined by the Township Board.
- (d) No Class B Permit shall be issued except on an earth change unit basis; no Class B Permit shall be issued for a project which contains less than six (6) earth change units; and no earth change unit shall exceed twenty (20) acres.
- (e) A permit issued by the Township Board shall be valid for not more than three (3) years or such shorter period as may be specified in the permit. Prior to the expiration of said permit, if the person holding such a permit wishes to renew the same, he shall request the same, in writing, to the Township Clerk. Said request for renewal shall be accompanied by a sworn affidavit that such person has substantially complied and presently complies with all of the conditions of said permit and all other applicable ordinances, laws, rules, and regulations if the Township Board, after the recommendation of the Planning Commission, finds the representations in said request for renewal to be true, and further that such renewal would not be adverse to the health, safety and welfare of the Township, it may proceed with the issuance of a renewed permit without further hearings. In the event the Township Board finds to the contrary, then no further Earth Change shall take place without first obtaining a new (renewed) permit therefor upon application in accordance with this Ordinance. In considering such applications for renewed permits, the procedures prescribed in this Ordinance shall be followed, unless a specific waiver is granted in writing by the Township Board, and the Township Board shall, in addition to those things to be considered under this Ordinance, also consider the person's performance under the prior Earth Change permit with respect to the person's compliance or non-compliance with this Ordinance and with the general special conditions of the prior permit.
- (f) Surveillance Fee; Annual Report of Person; Surveillance Report of Board; For purposes of surveillance, monitoring, administration, and enforcement of this Ordinance, a person shall be assessed a fee of not more than one and one-half cent (1 and 1/2) per ton of ground removed from a project site for the calendar year reported as described in subsection (i) below of this section.
 - (i) The number of tons of ground removed from the project site(s).
 - (ii) The location of the Earth Change area.
 - (iii) Such other information as the Township Board may by resolution require from time to time.
 - (iv) Verification, under oath (i.e., notarized) that the information and representations contained in the annual report are true and correct to the best of the person's knowledge and belief.

- (g) Performance Bond. No Earth Change shall be initiated, commenced or continued pursuant to a permit issued hereunder until the person shall have first filed with the Township Clerk a corporate performance bond, in favor of the Township and in form and substance acceptable to the Township, executed by a reputable insurance company authorized to do business in the State of Michigan. Such performance bond shall be for the following purposes and shall conform to the following provisions and requirements:
- (1) The bond shall be secured, furnished and maintained at the person's sole expense, and without expense to the Township.
 - (2) The bond shall be conditioned upon the faithful performance of the person and upon the further condition that in the event the person fails to comply with any one or more of the provisions of a permit or of this Ordinance, there shall be recoverable by the Township, jointly and severally from the principal and surety of such bond, any damages or losses suffered by the Township and any costs or expenses incurred by the Township as a result thereof, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond.
 - (3) The bond shall also be conditioned upon the person's full and faithful performance of all reclamation requirements of this Ordinance and of any permit issued hereunder.
 - (4) The bond shall be renewable annually, shall insure strict compliance with any regulations contained herein or required as a condition of the issuance of a permit hereunder, and shall at all times after issuance of a permit be maintained in full force and effect for the term of the permit or any renewal thereof; and liability under the bond shall continue, even after expiration, revocation or suspension of the permit, until the person has liquidated all obligations with the Township that may have arisen from the granting of a permit or its renewal or from the person's exercise of any privilege or right granted under this Ordinance or under any permit; and liability under the bond shall further be maintained as long as reclamation is not completed in full compliance with the reclamation requirements of this Ordinance and of the permit.
 - (5) The bond shall provide that at least thirty (30) days' prior written notice of intention not to renew, cancellation, or material change, be given to the Township in writing filed with the Township Clerk.
 - (6) The bond shall be in such form and in an amount determined by the Township Board to be reasonably necessary to insure compliance hereunder. In fixing the amount of such bond, the Township Board shall take into account the size and scope of the proposed Earth Change project, the

probable cost of reclaiming and rehabilitating the premises upon default of the person, the estimated expenses to compel the person to comply by court decree, and such other factors and conditions as might be relevant in determining the sum reasonable in light of all facts and circumstances surrounding each application and permit. Notwithstanding the foregoing provisions of this subsection, however, such bond shall in no event be in an amount less than \$10,000.00 per earth change unit or \$1,000.00 per each acre in the earth change units (whichever is greater).

- (7) The bond shall be filed and maintained for at least the earth change units contained within a permit within which the person is authorized to engage in Earth Change activity at any given time; and such bond shall be transferable to other earth change units contained within a permit upon full and faithful conformance with the reclamation requirements of this Ordinance and of the permit.

(h) Earth Change Unit Limitations; Reclamation; and Earth Change Unit Progression:

- (1) No Earth Change activity shall be permitted or shall occur (or be left uncompleted) in more than three (3) earth change units contained within a permit (and covered by the required bond) at any given time, (i.e., while a Class B Permit may contain more than three (3) earth change units, it shall not apply to more than three (3) earth change units at any given time), and no Earth Change activity shall progress from any one earth change unit within a permit to any other earth change unit within a permit until and unless: (i) the person makes written request therefor to the Township Clerk, and (ii) the Township Board has accepted in writing the reclamation activity for the completed earth change unit, and (iii) the Township Board has approved in writing the person's progression of Earth Change activity to a new earth change unit within the permit, and (iv) the required bond has been transferred or extended to the new earth change unit within the permit.
- (2) Reclamation activity shall not be deemed to have been completed with respect to any earth change unit contained within a permit until the person has notified the Township Clerk in writing that such reclamation activity has been completed with respect to a specific earth change unit and the Township Board has thereafter accepted in writing the completed reclamation activity for the specific earth change unit. In notifying the Township Clerk of completed reclamation activity with respect, to any earth change unit and/or requesting permission to extend Earth Change activity into a new earth change unit, the person shall submit to the Township Clerk, together with such notification and/or request, the written certification of (1) a registered civil engineer and (2) a professional ecologist to the effect that reclamation activity in the earth change unit or units involved has been completed in accordance and full compliance with the reclamation requirements of this

Ordinance and of the permit. Such certification shall be accompanied by such supporting documents as the Township Board may reasonably require.

ARTICLE VIII

SPECIAL TERMS, CONDITIONS AND LIMITATIONS APPLYING TO GROUND REMOVAL PERMITS

Section 1. Special Conditions Applying to Permits. In addition to the general conditions and provisions applying to both Class A and Class B Permits pursuant to Article VII, Section 1, of this Ordinance, and in addition to the general conditions and provisions applying to Class B Permits pursuant to Article VII, Section 2, of this Ordinance, the Township Board may in its discretion impose such additional or special terms, conditions and limitations on the issuance of any Class A or Class B Permit as the Township Board deems reasonably necessary or advisable under the facts and circumstances of a particular application and permit. In determining such additional or special terms, conditions and limitations, the Township Board shall consider the following standards: (1) the size, nature and character of the proposed Earth Change activity; (2) the scope and duration of the proposed Earth Change activity; (3) the proximity of the proposed Earth Change activity to adjoining properties; (4) any traffic congestion or hazard which will be occasioned by the proposed Earth Change activity; (5) the relative need or necessity of the proposed Earth Change activity in relation to other possible uses of the property; (6) the effect of the proposed Earth Change activity on adjoining properties and the surrounding neighborhood; (7) the compatibility of the proposed Earth Change with the Robinson Township Land Use Plan; (8) the nature, character and extent of reclamation required to restore the property to a useful and suitable condition following the Earth Change activity; (9) the impact of the proposed Earth Change activity on the environment, including the potential impact of the proposed Earth Change activity on the ground water table, the potential creation of hazards, erosion problems, ground blows, stagnant bodies of water, or any type or kind of injurious areas or conditions and (10) the effect of the proposed Earth Change activity on the health, safety and general welfare of the Township's inhabitants.

Section 2. Special Conditions as Part of Permit.

- (a) If the Township Board imposes any additional or special terms, conditions or limitations with respect to the issuance of any Class A or Class B Permit, pursuant to Section 1 of this Article, such additional or special terms, conditions or limitations shall either be expressly set forth in the permit itself or otherwise incorporated therein and made a part thereof by reference.
- (b) To the extent any such additional or special terms, conditions or limitations are expressly set forth in a permit or are by reference therein incorporated in and made a part of a permit, such additional or special terms, conditions or limitations shall be deemed as much a part of the permit as if such additional or special terms, conditions or limitations were fully set forth in this Ordinance; and any violation of or non-compliance with such additional or special terms, conditions or limitations shall be

deemed a violation of this Ordinance to the same extent as if such additional or special terms, conditions or limitations were fully set forth herein.

ARTICLE IX

VIOLATIONS, SUSPENSIONS OR REVOCATIONS OF PERMITS AND PENALTIES

Section 1. Suspension or Revocation. If the Township Board finds, after a public hearing (notice of which shall be given to the person and at which the person shall have an opportunity to be heard), that a person is not in compliance with this Ordinance, the rules promulgated under this Ordinance, or a provision of a permit, the Township Board may suspend or revoke the permit.

Section 2. Court Action. At the request of the Township Board, the Township attorney may institute an action in the Circuit Court for a restraining order and/or injunction or other appropriate remedy to prevent or preclude a violation of a permit, this Ordinance, or the rules promulgated under this Ordinance. This remedy shall be in addition to any other right or remedy the Township may have, whether provided under this Ordinance or otherwise provided by law.

Section 3. Misdemeanor. A person who violates this Ordinance or a permit issued under this Ordinance is guilty of a misdemeanor, for each and every day of such violation, punishable by a fine of not more than \$500.00 or imprisonment of not more than 90 days, or both such fine and imprisonment.

Section 4. Multiple Remedies. The remedies prescribed pursuant to Sections through 3 of this Article are cumulative; and the Township's pursuit of any such remedy shall not preclude its simultaneous or subsequent pursuit of any other remedy, whether prescribed in this Ordinance or otherwise.

ARTICLE X

MISCELLANEOUS PROVISIONS

Section 1. Administration. Except with respect to the findings, determinations, and considerations herein reserved to the Township Board and/or the Planning Commission and decisions (including the issuance of permits) herein reserved unto the Township Board, the provisions of this Ordinance shall be administered, monitored and enforced by the Township Building Inspector (or Zoning Administrator) or by such other Township official as may be authorized and directed by the Township Board to perform such duties.

Section 2. Transfer. No Earth Change permit (nor any rights or privileges thereunder) issued pursuant to this Ordinance shall be transferred to any person other than the person to whom it was issued, (whether such transfer be by forced or voluntary sale, lease, mortgage, assignment, encumbrance or any other form of disposition), without prior written notice to and approval by the Township Board, which approval shall not be unreasonably withheld; and in the event of any such

transfer, all of the terms, provisions, requirements and obligations of this Ordinance and of the permit and of the person transferring such permit shall be binding upon the transferee.

Section 3. Administrative Liability. No officer, agent, employee, or member of the Township or Township Board or Planning Commission shall render himself or herself personally liable for any damage, loss or injury that may accrue to any person as the result of any act, decision or other consequence or occurrence arising out of the discharge of his or her duties and responsibilities pursuant to this Ordinance.

Section 4. Severability. This Ordinance and the various parts, sections, subsections, paragraphs, sentences, phrases and clauses thereof are hereby declared to be severable. If any part, section, subsection, paragraph, sentence, phrase or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of this Ordinance shall not be affected thereby.

Section 5. Repeal. All resolutions, ordinance, orders or parts thereof in conflict in whole or in part with any of the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 6. Effective Date. This Ordinance shall take effect on February 13, 1979, upon publication in the Grand Haven Tribune.

The foregoing Ordinance was introduced and read on the 14th day of November, 1978; was approved and adopted by the Township Board of Robinson Township, Ottawa County, Michigan, on the 19th day of December, 1978, was given effect upon publication on February 13, 1979, the Township Clerk was instructed to publish the same in the Grand Haven Tribune on January 12, 1979, a newspaper of general circulation in said Township, as required by Act 191 of the Public Acts of 1939, as amended, and to further deposit an attested copy of the same with the Ottawa County Clerk, as required by Act 191 of the Public Acts of 1939, as amended.

Dated: December 20, 1978.

Township Supervisor

Township Clerk

Robinson 554 Robinson Township Earth Change Ordinance - Restatement 01242017

CERTIFICATE

I, Kenneth Martinie, Clerk of Robinson Township, do hereby certify that the above Ordinance was duly adopted by the Township Board on the 12th day of December, 1978, that the names of the members voting and the manner in which they cast their vote is set forth as follows:

Ayes: Mac Tavish, Reed, Martinie and Ten Brink
 Abstention: Armon_____.

Nays: None_____.

and that the said Ordinance was posted on the 15th day of January, 1979 and was published in the Grand Haven Tribune on the 12th day of January, 1979 and that a true copy was filed with the Ottawa County Clerk on the 16th day of January, 1979.

Dated: January 16, 1979.

Township Clerk