



# **TOWN OF WASHINGTON, MAINE**

## **MINING ORDINANCE**

### **ADOPTED**

**23 MARCH 2002**

### **AMENDED**

**25 MARCH 2005**

**27 MARCH 2009**

**30 MARCH 2012**

**29 MARCH 2013**

**11 JUNE 2019**

This is to certify that this ordinance was adopted by majority of the secret ballot vote on Article 4 at the Annual Town Meeting held March 23, 2002 at Prescott School and amended by majority of the referendum vote on Article 7 at the Annual Town Meeting held March 25, 2005 and by majority of the referendum vote on Articles 4, 5, 6, and 7 at the Annual Town Meeting held March 27, 2009 and by majority of the referendum vote on Article 6 at the Annual Town Meeting held March 30, 2012, and by majority of the referendum vote on Articles 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, and 21, at the Annual Town Meeting held March 29, 2013 and by majority of the referendum vote on Article III § 6 and Article VIII § 1B at the General Election held June 11, 2019.

True and attested copy:

Town Clerk

*Mary Anderson*



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# TOWN OF WASHINGTON, MAINE

## MINING ORDINANCE

### **ARTICLE I – TITLE & PURPOSE**

#### **§1 Title**

This Ordinance shall be known and may be cited as *the Town of Washington, Surface and Subsurface Mineral Extraction Ordinance*, or by it's short title of *Town of Washington Mining Ordinance* and will be referred to herein as "this Ordinance."

#### **§2 Purpose**

The purpose of this Ordinance is to put into law minimum removal and reclamation standards, and municipal procedures intended to regulate the removal, processing and storage of topsoil, loam, rock, flat rock, sand, gravel, or other similar materials. These standards and procedures are intended to protect the public health, safety, and general welfare, and to minimize the adverse impact of extraction to the Town, abutting property owners, citizens of the Town, and wildlife and natural resources by:

- A. Preserving and protecting surface and groundwater quality and quantity for current and future use of the town and/or its residents.
- B. Preserving the value of property and its future ability to be an asset to the town and its residents.
- C. Limiting the volume and size of the most intensive types of extraction.

### **ARTICLE II – ACTIVITIES EXEMPT FROM THIS ORDINANCE**

#### **§1 This ordinance shall not apply to the following:**

*[NOTE: Mineral extraction activities which are exempt from this Ordinance may need Planning Board approval, as well as the provisions of Article XI of the Site Plan Review required by the Land Use Ordinance, and must comply with other rules and regulations of the Town.]*

- A. Permits are not required for mineral extraction activities not exceeding 20,000 square feet of surface area, or the removal or handling of less than 1,000 cubic yard of material, if for the owner's personal use and not sold. All sites which offer extraction for sale shall obtain an permit from the planning board.
- B. Storage or Stockpiles of winter abrasives (sand) used for the maintenance of private or public roads. This applies to the stockpile or storage area itself and not any associated mineral extraction activity or area;
- C. Removal or filling of material incidental to construction, alteration or repair of a structure , or in the landscaping incidental thereto;
- D. Construction of farm and fire ponds and normal agricultural operations;
- E. Inactive areas where previous mining had last occurred at least 12 months prior to the adoption of this ordinance;
- F. Activities presently permitted by the Town, if an annual compliance inspection is required by the permit;
- G. Removal of stone or rock walls or foundation walls;
- H. Stripping of topsoil (loam) not part of a mineral extraction operation to a depth no greater than 1 foot provided the area so stripped is reseeded in the same growing season as removal; and
- I. Excavation of material used for personal purposes.



### ARTICLE III – DEFINITIONS & REFERENCES

#### §1 Construction of Language

In general, all words and terms used in this Ordinance shall have their customary dictionary meanings. More specifically, certain words and terms shall be described below.

#### §2 Relationship to Other Town Ordinances

Where there is a conflict between the language contained in this Ordinance and any other Town ordinances, the stricter language shall apply for purposes of this Ordinance.

#### §3 References to the Town

All references in this ordinance to “Town,” “the Town,” “the Town of Washington,” and to any board, official or officer, unless clearly defined otherwise, shall be construed to be references to The Town of Washington, Maine, an incorporated municipality in the County of Knox, State of Maine and its municipal boards, officials and officers.

#### §4 References to Other Documents

All references in this ordinance to any document, chapter, handbook, or other external reference, shall be construed to be references to said documents and their successor documents, as they may be amended or replaced from time to time by other materials.

#### §5 Symbols used in this Ordinance

- A. **{A}** for All size projects;
- B. **{XL}** for eXtra Large size projects (over 30 acres);
- C. **{L}** for Large size projects (5-30 acres);
- D. **{M}** for Medium size projects (1-5 acres);
- E. **{S}** for Excavation projects (20,000 square feet – 1 acre) and extract 1,000 cubic yards within any 12 consecutive months.

#### §6 Definitions

**Abandonment:** Failure to complete the Annual Compliance Inspection; or to cease operations without completing the reclamation plan.

**Accessory Use:** Uses clearly incidental and subordinate to a principal use and located on the same lot as the principal use. Such uses must be clearly spelled out in the application and permit.

**Affected land:** The land area from which the overburden will be or is being removed or has been removed and not reclaimed; land where flat rocks are picked up from the surface or are mined; land upon which stumps, spoil, or other solid waste will be or has been deposited; and any storage area that will be or has been used in connection with the development, except a natural buffer strip.

**Annual Compliance Inspection:** An examination by the Code Enforcement Officer done on an annual basis that shall check for compliance of the operations with the conditions and requirements of the permit.

**Aquifer:** An underground bed or stratum of earth, gravel or porous stone that contains water.

**Area Actively Mined:** See *Working pit or area*, below.

**Average Daily Traffic (ADT):** The average number of vehicles per day that enter and exit a premises or travel over a specific section of road.

**Blasting:** The use of explosives to break up or otherwise aid in the extraction or removal of rock or other consolidated natural formation.

**High Velocity:** Blasting using explosive materials that are characterized by a very high rate of reaction, high pressure development, and the presence of a detonation wave.

**Low Velocity:** Blasting using explosive materials that are characterized by deflagration or a low rate of reaction and the development of low pressure.

**Blasting Plan:** A required written outline of all procedures and policies regarding blasting where such activity is proposed to be used. For operations that are **(M)** medium in size the Planning Board may require and for operations that are **(L)** large or larger in size, shall require such plan will include an environmental impact study, a hydrogeologic study, and a preblast survey of the surrounding areas to such a distance as the Planning Board shall determine, but in no case less than 2,000 feet from the site of the proposed blasting.

**Body of Water:** Shall include the following:

**Pond or Lake:** any inland impoundment, natural or man-made, which collects and stores surface water.

**Stream or River:** a free flowing drainage outlet, with a defined channel lacking terrestrial vegetation, and flowing water for more than three months during the year.

**Borrow Pit:** A development undertaken for the primary purpose of excavating sand, gravel or fill. This does not include any excavation for rock or clay.

**Buffer:** A natural, undisturbed area or belt of land that contains vegetation. A buffer area may be larger than specified in this ordinance.

**Common Scheme of Development:** Separate, but similar or coordinated, land use activities being conducted on either a single parcel of land or on multiple contiguous parcels of land that are either under common ownership or common management.

**Disposal:** The placing or storing of materials that are not going to be used in any process or production in conjunction with the extraction activity.

**Duration:** A specified length of time.

**Environmentally sensitive areas:** Wetlands, swamps, wildlife habitat areas delineated by the Dept. of Inland Fisheries and Wildlife (IF&W), prime agricultural areas, areas with steep slopes, areas with poorly drained soils, and flood plain areas (subject to a 100 year flood). Also to include Protected Natural Resources. Environmentally sensitive areas shall specifically include all areas within the Conservation District, as defined in Article VII, Section 1 of the *Town of Washington Land Use Ordinance*.

**Expansion of operation:** Excavation operations that exceed the approved area or footprint.

**Extra Large Mineral extraction operations: {XL}** Excavations that are 30 acres or more.

**Flat Rock Mining:** Extraction with the primary purpose of the removal of solid rock strata using low velocity blasting or mechanical means.

**Ground water:** The water beneath the surface of the ground, consisting largely of surface water that has seeped down; the source of water in springs and wells.

**Handling:** Any aggregate screening, mixing or storage of sand, gravel, stone, rock, clay, or topsoil; to include any mining of material.

**Inactive:** Mineral extraction that has ceased for 12 consecutive months prior to the passage of this Ordinance, in any areas where mining extraction activity had previously occurred.

**Infrastructure:** Structures, roads or utility facilities that are a necessary part of the development of an operation.

**Immediate Family:** The husband, wife or children of a specific individual.

**Large Mineral extraction operations: {L}** Excavations that are more than 5 acres and less than 30 acres.

**Maximum Seasonal High Groundwater Level:** The upper level at which the groundwater table normally is located during the season of the year when such levels are at their highest. In order to determine such level, a test pit reviewed by a soil analyst or groundwater data for a minimum of one year must be gathered and analyzed. Adjustments may be made by the Planning Board for extreme seasonal variations.

**Medium Mineral extraction operations: {M}** Excavations that are between 1 and 5 acres.

**Mineral extraction activity:** Any excavation or removal, handling or storage of on-site extracted sand, gravel, borrow, rock, clay, minerals, or topsoil to include, but is not limited to, sand or gravel pits, clay pits, borrow pits, quarries, mines, and topsoil mining or removal.

**Mineral Extraction Site or Area:** All of the land area disturbed or otherwise developed for the extraction, removal, processing, or storage of sand, gravel, clay, minerals, stone, rock, or topsoil; including any access roads and cleared areas adjacent to a pit or excavated area

**Net Property Area Acreage:** Remaining property size after setback and buffers are subtracted.

**Normal High Water Mark of Inland Waters:** That line of the shores and banks of nontidal water which is apparent because of the different character of the soil or the vegetation due, or to the prolonged action of the water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial (by way of illustration, aquatic vegetation includes but is not limited to the following plant and plant groups: water lily, pond lily, pickerel weed, cattail, wild rice, sedges, rushes, and marsh grasses, and terrestrial vegetation includes but is not limited to the following plants and plant groups, upland grasses, aster, lady slipper, wintergreen, partridgeberry, sarsaparilla, pines, cedars, oaks, ash, alders, elms, and maples). In places where the shore or bank is of such character the high water mark shall be estimated from places where it can be determined by the above method.

**Objectionable Noise:** Sounds occurring on a frequent or regular basis that are uncomfortable to hear due to intermittence, beat frequency, shrillness, or volume outside of the boundaries of the project.

**Operator:** Any person or entity conducting any use governed by this ordinance from any location in the Town of Washington.

**Personal purposes:** Non-commercial uses for personal or immediate family needs.

**Phasing of Operations:** A plan of completion of the operations in separate and distinct sequences that have a complete beginning and ending for predetermined areas. In the context of this ordinance, all phases must be structured so that they stand on their own, shall be inspected for completeness at the end of each phase and have reclamation of area completed at the end of each phase.

**Picked Up From The Surface:** A rock harvesting method that does not involve blasting and only utilizes hand tools and small scale mechanized equipment. It is the intent of this ordinance that this method shall be conducted with a minimum of soil disturbance and is utilized to remove rock that can be seen on the surface.

**Preblast Survey:** Documentation prior to the initiation of blasting of the condition of buildings, structures, wells or other infrastructures and of protected natural resources, historic sites and unusual natural areas.

**Processing:** Any washing, crushing, or similar processing of on-site material that does not inherently change the nature of the product.

**Production Blasting:** A blasting operation carried out on a regular basis for the purpose of production of material.

**Projections of Groundwater Quality:** An analysis of the potential changes to existing groundwater quality by examining the processes, chemical byproducts and outflow of a proposed operation.

**Protected Natural Resource:** Wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, bog, marsh, rivers, streams or brooks, as the terms are defined in applicable Town of Washington or state law.

**Reclamation:** The restoration to conditions similar to what existed prior to the operation or that will be compatible with what existed prior to the operation on the area of land affected by mining under a reclamation plan. This may include but is not limited to, grading and shaping of the land, the planting of forests, the seeding of grasses, legumes, or crops for harvest, or the enhancement of wildlife and aquatic resources.



[*NOTE: Any inactive area, may be considered for Tax assessing purposes as active, if the area has not been reclaimed according to the Standards of this ordinance. Currently, reclaimed land has a lower assessed value.*]

**Reclamation Plan:** A plan which depicts how the project area will be restored, or altered for the productive use of the land, after excavation is complete. Such a plan shall include final grading and re-vegetation plans, of any given phase.

**Road:** Public and private owned ways such as alleys, avenues, boulevards, highways, roads, streets, lanes and other rights-of-way, as well as areas on mineral extraction activity plans designated as rights-of-way.

**Rock:** A hard, nonmetallic mineral that requires cutting, blasting or similar methods of forced extraction.

**Screening:** Includes, but is not limited to, the planting of trees, placement of solid fence or creation of berm in order to prevent a direct view of an operation or a part of an operation from public ways and other properties.

**Seasonal Waterway:** A watercourse that flows for a minimum of three months during the course of an average year.

**Setback:** The horizontal distance from a lot line or referred location to the nearest part of a structure or activity.

**Setback from Water:** The horizontal distance from the normal high water mark to the nearest part of a structure or activity.

**Small Mineral extraction operations: {S}** Excavations that are less than 1 acre in size but more than 20,000 square feet; or extract more than 1,000 cubic yards within any 12 consecutive month period. [*Amended from 5,000 square feet and less than 200 cubic yards March 25, 2004*]

**Stop Work Order:** An order from Town Officials to cease a specified activity.

**Substantial Deviation:** Changes made to a specified plan that are materially at variance with the original instructions of operation so as to constitute a different plan for most intents and purposes.

**Surface Water Body:** any water flowing on the surface, either channelized or by sheet flow including, but not limited to, rivers, streams, brooks, ponds, lakes and any swamp, marsh, bog or other contiguous lowland where water is periodically ponded on the surface.

**Topsoil:** The top layer of soil that is predominantly fertile and ordinarily moved in tillage or the equivalent of such a layer in uncultivated soils.

**Water Table:** The upper surface of groundwater, or that level below which the soil is seasonally saturated with water.

**Working pit or area:** The extraction area including side slopes and adjoining areas with overburden removed, excluding roads, structures, stockpiles, etc. not part of the active mineral extraction area. For the purposes of this ordinance, reclaimed land is not included.

#### **ARTICLE IV- AUTHORITY, APPLICABILITY & ADMINISTRATION**

##### **§1 Authority**

This Ordinance is enacted pursuant to Home Rule Powers as provided for in Article VIII-A of the *Constitution of the State of Maine* and under the authority granted to the Town by the statutes of the State of Maine, Title 30-A M.R.S.A., Section 3001.

##### **§2 Administration**

The provisions of this Ordinance shall be administered by the Town of Washington Planning Board and enforced by the Town of Washington Code Enforcement Officer (CEO).

##### **§3 Effective Date**

This Ordinance shall be effective upon its adoption by vote of the eligible voters of the Town of Washington, Maine in Town Meeting.

- A. Upon adoption, this ordinance shall supersede the Planning Board's Mineral Extraction Regulations.

#### **§4 Permit Required**

- A. The provisions of this Ordinance shall apply to all mineral extraction activities within the boundaries of the Town of Washington, Maine, except as provided in Article II of this Ordinance. This applies to all extraction activities described in Article I which are
1. a resumption of extraction activities in inactive operations, or on parcels of land on which inactive operations are located, or on parcels of land that are under a common scheme of development with parcels of land on which inactive operations are located;
  2. active and unpermitted by the Town;
  3. new or proposed; and
  4. expansions of the above, and mineral extraction activities previously permitted by the town, except as provided in Article II of this Ordinance.
- B. Planning Board approval, as well as, the provisions of Article XI of the Site Plan review required by the Land Use Ordinance, if applicable, must be obtained prior to making application under this ordinance.
- C. Any application submitted to the Planning Board, for any portion of the affected area, shall be classified for size, and treated as if it included all the previously exempt unreclaimed inactive area.
- [NOTE: It is intended that the Planning Board use discretion on reclamation of old pits if they have been reclaimed by natural processes and applying reclamation standards would destabilize an area.]*
- D. Active mineral extraction without a permit issued by the Town is subject to the entire ordinance, requiring a permit; and shall be classified for size, and treated as if it included all affected areas, including contiguous land under common scheme of development with mineral extraction activity, and inactive land.
- E. The owner or operator of any active mineral extraction activity operating without a valid Town mineral extraction permit shall within 90 days from the effective date of this ordinance submit an application pursuant to this ordinance.
1. Any operation that did not obtain a Certificate of Legal operation or a permit from the Planning after March 23, 2002 Must obtain a permit from the planning board based on a review of the provisions of this ordinance and the Town of Washington land Use Ordinance as adopted and amended to date.
  2. All other unpermitted operations shall apply as required in this ordinance.
- F. Any owner or operator of an active operation that has not applied for a permit within 90 days from the effective date of this ordinance or received an extension for good cause from the Planning Board shall be in violation of this ordinance.

#### **§5 Permit To Be Recorded**

No permit shall take effect or be valid unless it is recorded in the Knox County Registry of Deeds together with the site plan, the reclamation plan and all other plans such as but not limited to the spill containment plan or blasting plan, and the survey, if required, within 90 days of the granting of said permit at the expense of and by the applicant.

#### **§6 Types of Mineral Extraction Activities Prohibited**

Any proposed mineral extraction activity not specifically described in this ordinance shall be prohibited.

#### **§7 Accessory Uses Not Included**

It is the intent of this ordinance that a permit granted hereunder does not imply permission to undertake any accessory or non-extraction uses.

**ARTICLE V – MINERAL EXTRACTION APPLICATION REVIEW**

**§1 Preapplication Meeting**

The Washington Planning Board shall hold a pre-application meeting with the applicant. At that meeting, the size, scale, number of copies, and other administrative details shall be specified.

**§2 Application**

Prior to the establishment, continuation or expansion of a mineral extraction activity, an applicant shall apply for an approved mineral extraction Town permit. The application shall contain the following information, where applicable, and any other information that may be required by Article VI of this Ordinance:

- A. Name, address and telephone number of the applicant, and the name, address and telephone number of the owner of the property, if different from the applicant.
- B. Verification of the right title or interest that the applicant has in the property by means of a certification of such title to the Town of Washington by an attorney at law authorized to practice in the State of Maine. This title certification shall be made in accordance with the *Standards of Title* promulgated by the Maine Bar Association. The certification shall include copies of the applicant's deed, easement or lease, and any covenants, deed restrictions, easements, rights of way, liens, mortgages and other encumbrances affecting the property.
- C. Site Plan, prepared by and bearing the seal of a land surveyor or engineer licensed to practice in the State of Maine, showing the following:
  1. The date the plan was prepared with the name, address and telephone number of the person or company that prepared such.
  2. Scale of the drawings submitted and north arrow; all dimensions to be marked in feet or decimals of a foot.
  3. Contour lines showing elevations in relation to mean sea level at appropriate intervals to show the effect on the land of existing and proposed grades for areas proposed to be excavated or filled. Contour intervals shall be a minimum of 5 feet, however, the Washington Planning Board may require other intervals.
  4. Boundaries of the tract of land showing lot lines, abutting lots, districts within 1,000 feet as defined by the Land Use Ordinance and illustrated on the Town of Washington Tax Assessor's Maps, with total acreage of the whole parcel(s) indicated, and the Town of Washington Tax Assessor's map and lot number(s); the names of all the property owners within 1,000 feet of any line, as determined by the Washington Tax Records, shall be shown. The Planning Board shall require a survey of the extraction area by a licensed surveyor unless the area is less than 5 acres. The Planning Board may require a survey of the property by a licensed surveyor if the boundaries are in question.
  5. Location of existing, inactive areas, reclaimed areas, and proposed mineral extraction activities and structures on the property.
  6. Approximate location of residences on properties within 1,000 feet of the proposed activity.
  7. Location and identification of existing public and private streets, roadways and rights-of-way on or abutting the property.
  8. Location of proposed access road to the mineral extraction activity from public roadways.
  9. Location of all setbacks, buffers, and conservation areas, and protected natural resources.
  10. Location and arrangement of proposed parking and loading areas and their appurtenant drives and maneuvering areas.
  11. Location of existing and proposed utilities and easements, such as sanitary sewage, water supply, and electricity on the property.
  12. Location, intensity, type, size and direction of all outdoor lighting.
  13. Location and size of signs and all permanent outdoor fixtures such as fences, gates, utility poles.
  14. Location and type of existing and proposed berms, fences, hedges, and tree lines.

15. Location of existing natural drainage ways and proposed storm drainage facilities, including dimensions of culverts, pipes, etc. If any portion of the mineral extraction activity is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the plan.
  16. Location of existing wells:
    - a. all wells on the parcel itself; and
    - b. within 1,000 feet of the proposed activity, if 5 acres or more; or
    - c. within 500 feet of the proposed activity if less than 5 acres .
  17. Location of proposed hazardous material storage areas including but not limited to fuel storage and handling, and washdown areas.
- D. The name, address and telephone number of each applicant, and if the applicant is not a natural person, list of the names, titles, addresses and telephone numbers of the natural persons that will be responsible for the management of the operation. The Planning Board shall consider the performance record of the applicant and those responsible for the management of the operation. The performance record shall include any prior violation, suspension, or revocation of a permit issued under this ordinance, or similar permit issued by any other agency of government, and any other environmental enforcement history.
- E. An estimate of the average daily traffic during periods of operation projected to be generated by the activity. A traffic impact narrative, if required, as stated in Article VI of this ordinance.
- F. A narrative description of the surface and ground water impacts, including protection plans and the identification of any significant mapped aquifers.
- G. Information and a map showing Soils Conditions on the site of the proposed mineral extraction activity. For subsurface sewage disposal proposed, the information shall include evidence of soil suitability according to the standards established in Article VI of this Ordinance. The Site Plan shall show the location of soil test areas.
- H. A soil erosion and sedimentation control plan, prepared in accordance with the standards contained in the latest revision Best Management Practices (BMP's) as established by the State.
- I. A "Preservation of Natural and Historic Features" map as required by Article VI of this Ordinance.
- J. A reclamation plan showing the final grades and re-vegetation plan, and any phasing of the plan.
- K. A narrative description of the impact on the wildlife habitat, and the location of any deer yard or other significant wildlife habitat designated by Maine Dept. of Inland Fisheries and Wildlife, including any proposed mitigation plan.
- L. A narrative description of the present use of the parcel and property within 500 feet of the activity.
- M. Estimated longevity of the operation, including phasing.
- N. Proposed hours and days of operation.
- O. Types and amounts of equipment to be used in the operation.
- P. Proof of financial capacity, and/or capacity to obtain a Performance Guarantee as specified in Article VII, payable to the Town of Washington, in an amount determined by the Planning Board as sufficient to cover the cost of any proposed reclamation, erosion control or other activities required by the Planning Board.
- Q. A Spill Prevention, Control & Containment (SPCC) Plan. (See Article VI §2-C).
- R. Blasting Plan, if required.
- S. Plan for screening the excavation activity from abutters and any public roads.
- T. All submissions made to any federal or state agency concerning the property.
- U. Proof of technical ability to complete the project as reasonably related to size and intensity of project.
- V. Type of mining planned.



- W. Other information the Planning Board may require to meet standards in Article VI.
- X. A Reclamation Plan which includes enough detail to address the provisions of Article VI, §2 Performance Standards, B and compliance with Maine Erosion and Sediment Control BMPs, Section I, 1.
- Y. Erosion control plan for all portions of the proposed operation which are not internally drained.

**§3 Alternate Submissions**

Activities that already have a valid DEP permit or a complete pending DEP application may submit the DEP application to the Planning Board subject to the Planning Board request for additional information on submissions above, not covered by the DEP application.

**§4 Exemptions from submissions**

**(S)** Small mineral extraction activities shall be exempt from the requirements of Article V, §2-C items 3, 8, 10, and 11.

**§5 Application Procedures**

- A. Submission of Application for newly proposed, and for expansions of existing mineral extraction activities.
  - 1. Applications for mineral extraction activity permits shall be submitted to the Town Clerk or Chairman of the Planning Board who shall issue to the applicant a dated receipt.
    - a. Within 45 days from the date of receipt, the Planning Board shall notify the applicant in writing either that the application is complete or, if the application is incomplete, the specific additional material needed to make a complete application. Determination by the Planning Board that the application is complete in no way commits or binds the Planning Board as to the adequacy of the application to meet the criteria of this Ordinance. The Planning Board shall make a determination as to the completeness of the application. The applicant assumes all responsibility as to its completeness.
    - b. The Planning Board shall provide application forms and all applications shall conform to Planning Board requirements.
  - 2. The application shall be accompanied by a fee in accordance with a fee schedule determined by the Board of Selectmen for each type of activity.

[NOTE: See Article III, § 5 for explanation of the size symbols.]

    - a. **{S}** mineral extraction activity of 20,000 sq. ft. to 1 acre ;
    - b. **{M}** mineral extraction activity 1 to 5 acres;
    - c. **{L}** mineral extraction activity larger than 5 acres to 30 acres; or
    - d. **{XL}** mineral extraction activity larger than 30 acres.
    - e. All checks, shall be made payable to the *Town of Washington, Maine*. If a public hearing is deemed necessary by the Planning Board, an additional fee shall be required to cover the costs of advertising, postal notification and dissemination of information. Additional fees may be required by the Washington Planning Board to cover the cost of reviewing the application as specified in Article V §5-G and Article V §2-C(4)
    - f. CEO shall advise the Planning Board regarding the classification of the proposed pit and application fee to be paid.
- B. Public Hearing
  - 1. All mineral extraction activity larger than 1 acre shall require a hearing.
  - 2. A public hearing on the proposed mineral extraction activity shall be conducted in accordance with the procedures in Title 30-A, M.R.S.A., Section 2691(3)A-F or as amended.
  - 3. Notice of the public hearing shall be advertised by the Planning Board at least 10 days in advance in a local newspaper and posted in other places used for public notices, at the expense of the applicant. The notice shall contain a clear and concise statement of the matter to be

addressed. At least 10 days before the public hearing, the Planning Board shall notify by mail the owners of properties within 1,000 feet of any boundary of the property for which application is being made. Upon request, the applicant at their expense must supply a copy of the permit application to any of the owners of properties so mentioned. The owners of properties shall be considered to be persons listed on Town tax maps and lists. The list of abutters shall be verified by the Code Enforcement Officer.

C. Planning Board Decision on the Mineral Extraction Activity Application

1. The Planning Board shall, within sixty days of the completion of the public hearing process, or within sixty days of having received a complete application, if no hearing is held, or within such other time limit as may be mutually agreed to by said Planning Board and applicant, issue a decision denying or granting approval of the proposed mineral extraction activity or granting approval on such terms or conditions as it may deem advisable to satisfy the criteria contained in this Ordinance. In all instances, the burden of proof shall be upon the applicant. The Planning Board shall make a written finding regarding the applicant's Financial and Technical ability to satisfy the criteria contained in this ordinance and conditions of any permit.
2. Upon approval of the mineral extraction activity a majority of the Board shall sign all copies of the final site plan. The original shall be recorded by the applicant with the Knox County Registry of Deeds. One copy shall be retained by the applicant, one copy shall be retained by the Planning Board, one copy shall be filed with the Tax Assessor, and one copy shall be filed with the Code Enforcement Officer. The Planning Board shall maintain a permanent record of their action on the mineral extraction activity. **Any plan not recorded within 90 days after approval, with the Knox County Registry of Deeds shall be null and void.**
3. Approval by the Planning Board of a mineral extraction activity plan shall not be deemed to constitute or be evidence of any legal acceptance by the Town of Washington, Maine of any road, easement, or other open space shown on such plan.

D. Operation Conditions and Limitations

Before any mineral extraction activity begins, and as a condition of the permit, the applicant shall apply for and receive all applicable permits as may be required by Town, state or federal regulations, laws or ordinances regulating such developments, including Planning Board approval, as well as, the provisions of the Site Plan review required by the Land Use Ordinance. Any violation of other permits necessary for operation and noted in the permit shall be considered a violation of this ordinance.

E. Expiration of Approval

Mineral Extraction Activity permits shall expire three years from the date of issuance unless the mineral extraction activity is started.

F. Plan Revisions after Approval

Plan revisions after approval shall be made as further provided for in Article VIII §4 of this Ordinance.

G. Expert Witnesses and Opinions

In the event that the Planning Board requires expert opinions, advice or testimony during the course of reviewing the application, it will use due diligence to obtain and utilize free services from governmental or non-profit sources. Should the Planning Board be unable to obtain and utilize such services, it shall require the applicant to pay for such services, after giving notice to the applicant of the name of the expert, the area of qualification of the expert, and the purpose for which the expert is required, and the approximate cost of the expert. The applicant shall be provided with an opportunity to meet with the Planning Board to arrange a schedule for payment of the costs.

The applicant shall have the right to request a public hearing before the Appeals Board to determine if the experts, as noticed by the Planning Board, are necessary to a determination of any issue properly before the Planning Board, and if the approximate costs of the expert are reasonable. It will be the applicant's burden to prove that the requested expert is unnecessary, or that the cost is excessive. The

applicant shall request the hearing within 10 days of the meeting, or such time as is agreed to by the Planning Board and the applicant.

**H. Transfer of Mineral Extraction Activity Permit.**

Within thirty (30) days of the date of the transfer, by sale or otherwise, of land upon which a mineral extraction operation is situated, the new owner or owners shall file with the Town notice of the transfer and a statement of agreement and capacity to comply with the Town Mineral Extraction Permit.

1. Failure to comply with this requirement shall be a violation of this Ordinance and may subject the violator to any penalty, or combination of penalties, that may be imposed under the Ordinance.
2. The transferee shall provide the Planning Board the information as required in Article V §2-A, B, and D of this Ordinance.
3. Proposed changes to the terms of the permit, including financial responsibility requirements, shall be considered a request for permit modification and processed accordingly.
4. The Planning Board shall hold a public hearing and provide an opportunity for public comment on any changes in the terms of the permit. Notice of that hearing shall be as specified in Article V §5-B.

**§6 Appeals and Variances – Superseded by TOWN OF WASHINGTON, MAINE, BOARD OF APPEALS ORDINANCE adopted by referendum question March 29, 2013.**

**A. Administrative Appeals**

- ~~1. Any person aggrieved by an action of the Planning Board or Code Enforcement Officer pursuant to this Ordinance may file a request for appeal in writing within 30 days of the granting or denial of approval from the Planning Board or Code Enforcement Officer. The request of appeal shall state with specificity the exact portions of the decision that are being appealed, and the legal grounds for appeal. The appellant shall file this request for appeal with the Chairman of the Board of Appeals, who shall issue a dated receipt and who shall, within 7 days of the date of receipt, notify the applicant in writing that either the request for appeal is complete or, if the request for appeal is incomplete, the specific additional material needed to make a complete request for appeal.~~
- ~~2. The fee to accompany request for appeal shall be in accordance with a fee schedule determined by the Board of Selectmen in cash, checks, money orders or bank drafts which shall be made payable to the Town of Washington, Maine. The applicant shall be required to cover the costs of advertising, postal notification and dissemination of information for the appeals hearing.~~
- ~~3. The Board of Appeals shall, upon determination that the Request for Appeal by an aggrieved party is complete and after public notice, hear appeals from determinations of the Planning Board in the administration of this Ordinance within 30 days of such request. The Appeals Board shall cause notice of the date, time and place of said hearing, the location of the proposed mineral extraction activity and the issues raised in the appeal, to be given in writing to the appellant, permit holder and/or applicant and published in a newspaper of general circulation in the Town of Washington, Maine at least two times. The date of the first such publication shall be at least 10 days prior to the hearing. The Board of Appeals shall also cause written notice by mail or hand delivery of the hearing be given to the appellant, permit holder and/or applicant, the Selectmen, the Planning Board, the Code Enforcement Officer, and all property owners within 1,000 feet of the boundaries of the proposed mineral extraction activity at least 14 days prior to the date of the hearing. Notice shall be posted in such public places as a notice of a Town Meeting. Upon request, the applicant at their expense must supply a copy of the request for appeal to any of the owners of properties so mentioned.~~
- ~~4. If such appeal is not made within the stated time, the decision of the Planning Board shall be final.~~

- ~~— 5. Following such hearing, the Board of Appeals shall have the power to interpret this ordinance and may affirm, modify, vacate or remand the decision of the Planning Board.~~
- ~~— a. The Board of Appeals shall review the Planning Board's conclusions of law, including findings of fact, for support by competent evidence in the record, and other legal issues relevant to the appeal.~~
- ~~— b. The appeal shall not be a de novo hearing, except in the case of an appeal from a Stop Work Order or other action by the Code Enforcement Officer.~~
- ~~— c. The Board of Appeals shall render a decision in writing to the appellant and/or applicant, Planning Board Chairman, Code Enforcement Officer, and the Selectmen within 30 days of the appeal hearing.~~
- ~~— d. The Appeals Board decision shall be registered at the Knox County Registry of Deeds at the applicants expense within 30 days of the date the decision becomes final.~~

**B. ~~Variances~~**

- ~~— 1. The Board of Appeals may, upon written application and hearing as outlined in Article V §5 B of this Ordinance grant a variance from the strict application of the dimensional requirements of this Ordinance, including lot sizes, setbacks, site distances, lot coverage by structures, sign requirements, and parking requirements only if the requirement of this Ordinance would result in undue hardship to the applicant, as defined in Article V §6 B(2), below, of this Ordinance.~~
- ~~— 2. In order to find an undue hardship the Board of Appeals must find all of the following to grant a variance:~~
  - ~~— a. That the land in question cannot yield a reasonable return unless a variance is granted; and~~
  - ~~— b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and~~
  - ~~— c. That the granting of the variance will not alter the essential character of the locality; and~~
  - ~~— d. That the hardship is not the result of action taken by the applicant or a prior owner.~~
- ~~— 3. Following the public hearing, as outlined in Article V §5 B(2) and (3) of this ordinance, the Board of Appeals shall render a decision to grant or deny a variance in writing to the applicant, the Planning Board, and selectmen, within 30 days of the appeal hearing.~~
- ~~— 4. Variances for pre-existing conditions. Whenever there are existing conditions that do not meet the provisions of this ordinance that cannot be brought into compliance the owner/operator must obtain a variance from the Board of Appeals in order for this provision to be waived.~~

**C. ~~Appeal to Superior Court~~**

~~Any aggrieved party having proper standing may appeal any decision of the Appeals Board under this Ordinance to the Superior Court of Knox County, within 45 days of a written decision in accordance with Maine State Law.~~

**ARTICLE VI – MINIMUM DESIGN & PERFORMANCE STANDARDS**

**§1 General Requirements — All Operations**

- A. Mineral extraction activities shall conform to all applicable State laws and local ordinances or regulations. Where the provisions of this section conflict with specific provisions of the Land Use Ordinance, the more restrictive standards shall prevail. It is anticipated that the application will be reviewed concurrently with this Ordinance and the requirements of the Land Use Ordinance.
- B. This Article details the specific application requirements for the submissions required in Article V.
- C. The owner and/or permit holder of a mineral extraction activity shall be responsible, both jointly and severally, for ensuring the maintenance of all infrastructure, structures and their sites.
- D. The Planning Board shall consider the financial capacity, technical ability, and prior performance of the applicant to complete all proposed activities .



- E. The Planning Board may approve the application only if the applicant or agent is in compliance with all other Town of Washington or State of Maine permits for Mineral Extraction Activity.
- G. In all cases, the applicant shall have the burden of proof that all requirements, standards, and conditions of this Ordinance and subsequent approval are met.
- H. A copy of the permit must be displayed on site at all times.

## **§2 Performance Standards — All Operations**

*[NOTE: See Article III, § 5 for explanation of the size symbols.]*

### **A. Erosion, Sedimentation Control & Stormwater Management.**

- 1. **{A}** All projects.
  - a. Sediment may not leave the parcel or enter a Protected Natural Resource.
  - b. Topsoil stockpile must be stabilized and inspected as specified in Article VI§2-B(1), below.
- 2. Internally Drained projects.
  - a. **{A}** Land shall be restored and stabilized according to the Reclamation Plan.
  - b. **{L}{XL}** For Large and Extra Large projects, a volume calculation shall be provide demonstrating that the area(s) will safely hold a volume of precipitation at least equal to that which may be expected in the area from the 25 year, 24 hour storm event for the region, U.S.D.A. Natural Resources Conservation Service.
- 3. Externally Drained Projects.
  - a. **{A}** If surface water flows out of and away from the proposed site during and after the site is excavated, the following should be provided to assure proper erosion control and prevent siltation of downstream waters. Temporary erosion control measures shall be included in the project design, such as hay bale barriers, silt fencing, and riprap. Plans shall show the location and installation details and include a description of the timing of installation, inspection and maintenance of erosion control measures.
  - b. **{M}{L}{XL}** For Medium through Extra Large Projects, additional information including:
    - i. A plan and narrative detailing specific erosion control measures; and
    - ii. A site plan showing the pre-construction and post-construction contours, and if applicable, phased contours. The plan must show on and off site watershed boundaries and hydrologic surface water flow lines.
  - c. **{A}** Sedimentation pond location and design, if any, shall be designed to the 25 year storm event and based on the U.S.D.A. Natural Resources Conservation Service methodology. The location and construction details of the pond shall be shown on the site plans.

### **B. Reclamation Plan**

The affected land must be restored to a physical state that is similar to that which existed prior to any development, or encourages the productive use of the land. A reclamation plan is required to be submitted with **ALL {A}** permit applications according to the following specifications:

- 1. **{A}** Topsoil Stockpiling  
Topsoil which is stripped or removed must be stockpiled in sufficient quantity for use in reclaiming disturbed land, unless it is demonstrated to the Planning Board that it is not needed for reclamation purposes. Topsoil stockpiles must be seeded, mulched, or otherwise stabilized. At least 4 inches of topsoil will be used for final cover.
- 2. **{A}** Regrading  
Upon completion of the excavation, the side slopes must be regraded to a slope no steeper than 2.5 horizontal to 1 vertical.
- 3. **{A}** Vegetative cover  
Vegetative cover must be established on all affected land. Topsoil must be placed, seeded, and mulched within 30 days of final grading if it is within a current growing season or within 30 days of the start of the next growing season.

- a. Vegetative material used in reclamation must consist of grasses, legumes, herbaceous, or woody plants or a mixture thereof. Plant material must be planted during the first growing season following the reclamation phase. Selection and use of vegetative cover must take into account soil and site characteristics such as drainage, pH, nutrient availability, and climate to ensure permanent growth.
  - b. The vegetative cover is acceptable if within one growing season of seeding
    - i. the planting of trees and shrubs results in a permanent stand, or regeneration and succession rate, sufficient to assure a 75% survival rate; and
    - ii. the planting results in 90% ground coverage.
  - 4. **{A}** Structures and roads  
All structures and access, haul, or other support roads must be reclaimed once no longer used, unless reserved for future productive use of the land, as described in the reclamation plan.
  - 5. Phased Reclamation  
Except for **{S}** small sized projects, the site must be reclaimed in phases so that:
    - a. **{L}{XL}** For Large and Extra Large projects, the working pit does not exceed 10 acres at one time and the area being actively mined does not exceed 5 acres at any time.
    - b. **{M}** For Medium projects, the working pit does not exceed 3 acres at any time.
    - c. For guidance in planning and implementation of reclamation, see the most recent edition of *Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices* (Cumberland Cty. SWCD; 3/1991) for Pit Reclamation.
  - 6. **{A}** Time Line  
A time line for reclamation shall be included with the reclamation plan. All reclamation shall begin within 6 months of completion of phasing, or the completion of the project or abandonment. The site shall be inspected when the regrading and planting is completed and again at one year to ensure compliance with the reclamation plan.
    - a. A *Certification of Completion of Reclamation* shall be issued by the Code Enforcement Officer only after the final inspection is made and is passed as stated immediately above.
- C. Petroleum Usage {A}**
- 1. Spill prevention, control, and countermeasures plan shall be required for all size projects.
  - 2. Petroleum Products Storage
    - a. If any petroleum products or other materials with potential to contaminate groundwater are to be stored on the site, a Spill Prevention Control, and Countermeasures (SPCC) Plan shall be submitted. A SPCC Plan shall be developed in accordance with DEP regulations, *Section 5A of Chapter 378 Performance Standards for the Storage of Petroleum Products (CMR 378)*, and shall be submitted with the application and kept with the permit in the Town's records.
    - b. Any petroleum products, highly flammable or explosive liquids, solids or gasses to be stored on site, shall be located in bulk, above ground, anchored tanks or containers, having a roofed, secondary containment system, adequate to contain 110% of the full contents of such container, for control of spills and leaks, and must be located at least 75 feet from any lot line, Town road or interior road.
    - c. The use of underground tanks is strictly prohibited.
  - 3. Machinery Maintenance
    - a. Crankcase oil, hydraulic fluids, and similar products shall not be changed, stored or disposed of within the excavation area, unless specifically covered in the SPCC Plan.
    - b. Routine maintenance operations, such as refueling or oil changes, may be allowed for fixed equipment such as screeners, crushers and wash facilities, if allowed in the district the operation will be located in, provided that a secondary containment system in accordance

with the SPCC Plan, adequate to contain 110% of the full contents of said equipment is installed.

4. Any discharge or leak of petroleum product over a gallon shall be immediately reported to the Code Enforcement Officer and a report kept with the permit in the Town's records. All discharges or leaks of any size shall be cleaned up promptly according to the spill containment and cleanup provisions of *CMR 378, Section 5H*.
5. A copy of the Spill Prevention Control, and Countermeasures Plan shall be kept available on site at all times.
6. The applicant shall demonstrate to the Planning Board's satisfaction the applicant's ability to implement the SPCC plan.

**D. Buffers and Setbacks {A}**

Buffers and setbacks shall be shown on the site plans as follows:

1. Property Boundaries.

To minimize visual impacts and provide for wildlife, a 100 foot buffer shall be maintained from property boundaries. This buffer may be reduced to 25 feet with written permission of an abutting landowner; or may be eliminated between abutting properties provided:

- a. written permission is obtained, and
- b. erosion & stormwater control standards on both properties are met.

2. Existing Structures.

**{A}** A 300 foot buffer from the closest edge of an existing residence or business, cemetery, or farm building used for livestock shall be maintained with all projects. This buffer may be reduced with written permission of the owner of the structure.

3. Protected Natural Resources **{A}**

The following shall apply:

- a. A natural buffer of 250 feet, horizontal distance, from the normal high water mark of Washington Pond, Crystal Pond, Iron Pond, Spring Pond, Muddy Pond, Lily Pond, Medomak River, Little Medomak River, Davis Stream, Jackson Stream, the stream between Crystal and Washington Ponds, Burns Brook, Calderwood Brook, Jones Brook, Washington Brook, Hope Brook, Vanner Brook, and Pitcher Brook, and all freshwater wetlands identified as shaded areas on the "*Town of Washington Tax Map*."
- b. A 100 foot horizontal distance undisturbed natural buffer shall be maintained from the Normal High Water of all other permanent surface water body or wetland. A minimum 25 foot undisturbed natural buffer shall be maintained from any Normal High Water of an seasonal waterbody or wetland.
  - i. Where the slope is greater than 15%, a natural buffer of 75 feet plus 4 times the average slope percent in horizontal width shall be maintained between the affected land and the protected resource, e.g. if the slope is 15%, then the calculation would be  $75 + (4 \times 15) = 135$  feet for the buffer.

4. Public Roads.

**{A}** A 150 foot natural buffer from the closest edge of the shoulder of a public road shall be maintained with all projects. A 50 feet wide undisturbed natural vegetated area, closest to any private road or right of way, shall be maintained, except for any access road entrance. Reduction of the 50 foot buffer from a private road or right of way is allowed with written permission of adjacent property owners.

5. Screening.

The Planning Board may at its discretion request the applicant to take specific actions to insure the effectiveness of any buffer required under Article VI, Section 2 (D), Buffers and Setbacks, including, but not limited to, the planting of trees, placement of solid fence or creation of berm.

**E. Road Design, Circulation and Traffic {A}**

1. The intersection of any road within the development area and an existing public road shall meet the following standards:
  - a. The desired angle of intersection shall be 60 degrees to 90 degrees.
  - b. The maximum permissible grade within 75 feet of the intersection shall be 3%.
  - c. A minimum sight distance of 10 feet for every mile per hour of posted speed limit on the existing road shall be provided. Sight distances shall be measured from the driver's seat of a vehicle that is 10 feet behind the curb or edge of shoulder line with the height of the eye 3 1/2 feet above the pavement and the height of object 4 1/4 feet.
  - d. The center line of any road within the project intersecting an existing public road shall be no less than 125 feet from the center line of any other road intersecting that public road.
  - e. Turning lanes, traffic directional islands, frontage roads, and traffic controls shall be provided on public roads at the developer's expense, where necessary, in the opinion of the Planning Board, to safeguard against hazards to traffic or pedestrians, and/or to avoid traffic congestion.
  - f. All access/egress roads leading to or from the extraction site to public ways shall be treated with suitable materials to reduce dust and mud; and paved or otherwise hard surfaced for a distance of at least 200 feet from the public road.
2. Traffic impacts to be considered:
  - a. Where mineral extraction activity traffic will use town maintained roads, the proposed traffic volume and type must be suitable and appropriate to the type and condition of the existing road as determined by E(2)(b)(v), below. In determining this standard, the road condition survey must show not only the current capacity of the existing road but also the type, size and volume of existing traffic and compare this to the proposed traffic volume and type.
  - b. The road giving access to the Mineral Extraction Activity and neighboring roads which can be expected to carry traffic to and from the Mineral Extraction Activity
    - i. shall have traffic carrying capacity; and
    - ii. the surface shall, if a Town road, be suitably improved if necessary at the applicant's expense, and with the permission of the Selectmen and the Road Commissioner, to accommodate the amount and types of traffic generated by the proposed mineral extraction activity; and
    - iii. shall not increase the volume to capacity of any town road above 80%; nor reduce the town road's Level of Service to MDOT rating "D" or below; and
    - iv. shall have minimum travel surface width of 16 feet with 2 foot shoulders; and
    - v. shall require a road condition survey of the town road or, on operations larger than 5 acres, the Planning Board shall require an engineering impact study, at the expense of the applicant; and
    - vi. may require mitigation for adverse impacts on Town roads, by decision of the Planning Board.
  - c. Projects that don't meet these standards shall not be approved.
3. Routing.

Where necessary to safeguard against hazards to pedestrians and to avoid traffic congestion, or adverse impacts to Town roads, alternative routing may be required.

#### F. Ground Water Impacts

The following requirements apply to **{A}** all projects unless otherwise noted.

##### 1. Assessment Submitted.

The Planning Board must find that the Mineral Extraction Activity will not cause an adverse impact to ground water quality and quantity before approving any application. The assessment shall be submitted to the Washington Planning Board and kept in the applicant's file.



2. Groundwater buffer.

To provide an adequate buffer for ground water and allow for filtration of impurities from surface water, extraction shall not be any closer than 5 feet above the maximum seasonal high water level. The applicant shall provide documentation of the groundwater table. The Planning Board may require monitoring of groundwater levels and quality to ensure there are no adverse impacts to any water supplies or wells within 500 feet of the site.

3. Water Supply buffer.

A 300 foot separation must be maintained between the limit of excavation and any pre existing private drinking water supply. A 1,000 foot separation must be maintained between the limit of excavation and any well or spring which qualifies as a public drinking water supply. The Planning Board shall require larger buffers from water supplies, if they find that a hazard is shown to exist due to the Mineral Extraction Activity.

4. Water Use.

- a. A mineral extraction activity must not withdraw more than 5,000 gallons of ground water per day, unless a hydrogeologic study is submitted by a hydrogeologist that determines this will not represent an environmental hazard or threaten drinking water supplies.
- b. Any water that is discharged from the site shall be monitored for sediment, pH and other contaminants to ensure the discharge shall not adversely affect surface water quality.

5. Standards for Acceptable Ground Water Impacts

- a. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
- b. No mineral extraction activity shall increase any contaminant concentration in the ground water to more than one half of the Primary Drinking Water Standards. No mineral extraction activity shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.
- c. If pre-existing ground water contains contaminants in excess of the primary standards, and the mineral extraction activity is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated, if necessary.

G. Preservation of Natural and Historic Features; **{A}**

The scenic, historic or environmentally sensitive areas identified in the Comprehensive Plan as rare and irreplaceable areas or areas specially designated by the Town or areas identified by the Maine Natural Areas Program shall be preserved.

H. Sanitary Standards **{A}**

1. Sewage Disposal

All water carried sewage shall be disposed of by sewage systems meeting the requirements of the *State of Maine Plumbing Code (CMR 238)*.

2. Solid Waste Disposal

No solid waste, including stumps and grubblings, shall be placed stored or disposed of in the mineral extraction site unless it meets the requirements of the rules and regulations of the Maine Department of Environmental Protection. The storage, collection and disposal of refuse in the mineral extraction site shall not create health hazards, rodent or insect breeding areas, accident or fire hazards, air pollution, or surface or ground water pollution. No off site solid waste material shall be brought in for disposal.

I. Signs **{A}**

Any signs must comply with the standards of the Land Use Ordinance.

J. Noise **{A}**

Normal operation times shall be specified, so as not to constitute a nuisance to residents in the neighborhood, including but not limited to daily starting and ending times.

1. Noise shall be required to be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness, or volume outside of the boundaries of the project.

2. The maximum permissible sound pressure level of any continuous, regular or frequent source of sound shall be established by the time period and type of land use district as listed in Subsection 3, below. Sound pressures shall be measured per Subsection 5, below, at any lot line of the project site, at a height of at least four feet above the ground surface. Both dB(A) and dB(C) scales shall be used, and a violation of either standard shall be deemed to constitute a violation of this Ordinance.

3. The Sound Pressure Limits Measured in Decibels are as follows:

	6 am to 6 pm	
	dB(A)	dB(C)
Rural-Commercial District	60	72
All Other Districts	55	67

4. Sound from production blasting shall be limited as follows, provided a blasting plan has been approved by the Planning Board as a part of the permit:

	11 am to 3 pm	
	dB(A)	dB(C)
Rural-Commercial District	120	129
All Other Districts	110	126

5. Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI S1.4-1961) "American Standard Specification for General Purpose Sound Level Meters." The instrument shall be set to the appropriate weight response scales and the meter to the slow response. Measurements shall be conducted in accordance with ANSI S1.2-1962 "American Standard Method for the Physical Measurement of Sound."
6. The following uses and activities shall be exempt from the noise level regulations:
- Noises emanating from building construction and occasional site maintenance activities between 6:00 a.m. and 6:00 p.m. This shall be waived in emergency situations by a special permit from the Code Enforcement Officer.
  - The noises of safety signals, warning devices, and emergency pressure relief valves and other emergency activity.
  - Traffic noise on existing public ways.
7. The Planning Board, as a term of condition of approval, may establish any reasonable requirement to ensure that the impact of noise shall not exceed that of any other activity in the district the project may be located in. Such conditions may include, but are not limited to, enclosing equipment or operations, imposing limits on hours of operation, or requiring the employment of specific design technologies, site design, modes of operation, or traffic patterns.
8. The sound level limits prescribed in these standards shall not preclude the Planning Board from requiring lower sound level limits so as to ensure the operation will not unreasonably disturb wildlife or adversely affect wildlife populations. **(M) (L) (XL)** Any medium or larger project proposed to be located in a potential wildlife area must submit a study of the wildlife community existing on and adjacent to the site, citing potential disturbances to that population, at the applicant's expense.

**K. Mitigation of Effects on Neighboring Community {A}**

- The project shall not operate on Sundays or the following holidays: New Year's, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.
- Operations shall only be conducted between the hours of 6 a.m. and 6 p.m. Blasting is limited to the hours between 11 a.m. and 3 p.m.
- No permit shall be granted for any operations for more than 7 years in duration.
  - Except that a project to be completed in up to three distinct and complete phases, which includes reclamation, may be granted for no more than 7 years duration per phase. No

subsequent phase may be started under the existing permit until the prior phase is complete and inspected and approved by the CEO.

- b. A new permit may be applied for at any time.

**L. Additional Review Criteria {A}**

In addition to the standards contained in this section, the Planning Board shall review the project for compliance with all the review criteria contained in M.R.S.A. title 38, Chapter 3, Subchapter 1, Article 7 Performance Standards for Excavations for Borrow, Clay, Topsoil, or Silt and Article 8-A Performance Standards for Quarries. Whenever the provisions of M.R.S.A. title 38 come into conflict with other review criteria of this ordinance, the more restrictive shall apply.

**§3 Performance Standards — Rock Mining Operations**

Because of the intensity of the type of operation, in addition to the performance standards listed in Section 2 of this Article, Rock Mining operations shall conform to the following:

- A. Maximum limit of material that may be extracted per year is 5,000 Cubic Yards.
  - 1. If an applicant chooses to adopt a Forestry Management Plan for wooded lots prepared by a licensed Maine Forester that provides the following minimum standards, then there is no limit on volume of flat rock or area if the rocks are harvested by being picked up from the surface,
    - a. Over the life of the permit, no more than 40% of the trees greater than 4" in diameter at 5' above ground are removed, distributed evenly over the affected area.
    - b. The Forestry Management Plan shall be complied with.
  - 2. An applicant may apply for this wood lot choice, as defined in § 3 (A)(1), above, in addition to other types of operations.
  - 3. The wooded lot choice, as defined in § 3 (A)(1), above, shall be considered a small or medium size operation for fees and application only.
  - 4. In a multiple operation, as defined in § 3 (A)(2), above, the largest size operation shall be used for fees and application purposes.
- B. A surveyed profile of the material on site to be excavated must be calculated and submitted with the permit application and the amount extracted per year confirmed by the annual inspection of the CEO.
- C. Maximum of two acres of open operation at any time, regardless of the size of the project.
  - 1. Area must be reclaimed before next two acres can be started.
  - 2. Excavation may be done in 1 acre or other increments to ensure continuity of operation.
- D. Maximum size of project area is the lesser of 15 acres or 40% of net property acreage over the life of the permit, unless exempted by §3(A)(1) above.
- E. Excavation shall be no deeper than 6' below grade. It shall be necessary to establish the benchmark grade level prior to the granting of the permit. Rock Mining Operations shall be exempt from the Maximum Seasonal High Water Level required by Article VI, §2(F)(2).
- F. High velocity blasting requires blast mats or similar measures to attenuate noise, dust, and debris.

**ARTICLE VII – PERFORMANCE GUARANTEES**

[NOTE: See Article III, § 5 for explanation of the size symbols.]

The following applies to {A} all sized projects unless otherwise noted.

**§1 Types of Guarantees**

With submittal of the application for mineral extraction Town permit, the applicant shall provide one of the following performance guarantees for an amount adequate to cover the total costs of all required reclamation, taking into account the time-span of the phasing, or reclamation schedule and the inflation rate for costs:

- A. Either a certified check payable to the Town or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account; or

- B. A performance bond payable to the Town issued by a surety company, approved by the Selectmen; or
- C. An irrevocable letter of credit from a financial institution establishing funding for the construction or reclamation of the mineral extraction activity, from which the Town may draw if reclamation or construction is inadequate, approved by the Selectmen; or
- D. ~~{S}~~~~{M}~~ Small or Medium projects may propose alternatives to the above.

The conditions and amount of the performance guarantee shall be determined by the Planning Board with the advice of one or more of the following: a certified Civil Engineer, Town Road Commissioner, Town Selectmen, and/or Town Attorney, expenses paid for by the applicant.

## **§2 Contents of Guarantee**

The performance guarantee shall contain a reclamation schedule, cost estimates for each major phase of reclamation taking into account inflation, provisions for inspections of each phase of reclamation, provisions for the release of part or all of the performance guarantee to the permit holder, and a date after which the permit holder will be in default and the Town shall have access to the funds to finish reclamation.

## **§3 Escrow Account**

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the permit holder, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the developer unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the developer and the amount withdrawn to complete the required improvements.

## **§4 Performance Bond**

A performance bond shall detail the conditions of the bond, the method for release of the entire bond or portions of the bond to the Town, and the procedures for collection by the municipality. The bond documents shall specifically reference the mineral extraction activity for which approval is sought.

## **§5 Letter of Credit**

An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the reclamation of the mineral extraction activity and may not be used for any other project or loan.

## **§6 Phasing of Development**

The Board may approve phased performance guarantees, when a mineral extraction activity is approved in separate and distinct phases.

## **§7 Performance Guarantee Review**

Any performance bond or proof of financial capacity shall be reviewed no later than 30 days before the expiration of the guarantee, and adjusted if necessary. The applicant may also request adjustments in the guarantee.

## **§8 Release of guarantee**

Prior to the release of any part of the performance guarantee, the Planning Board shall determine to its satisfaction, that the reclamation meets or exceeds the design requirements for the portion of the reclamation for which the release is requested. The Planning Board's determination shall in part be based upon a certification of compliance, provided by the permit holder, issued by a licensed Civil Engineer and/or adequate assurances that compliance has been achieved from whatever governmental agencies and departments other than the Town that may be involved.

## **§9 Default**

If upon inspection, CEO or other inspecting official finds that any of the required reclamation has not been performed in accordance with the approved plans and specifications, he shall so report in writing to the Municipal Officers, the Board, and the permit holder and guarantor. The permit holder shall have 30 days



unless otherwise specified by the CEO, to remedy any insufficiency noted. Thereafter, Municipal Officers shall take any steps necessary to enforce the guarantee and remedy the insufficiencies.

**§10 Improvement Guarantees**

Performance guarantees may be required for all off site improvements required by this Ordinance, when the Planning Board finds that the scale of the improvements warrants.

**ARTICLE VIII – ENFORCEMENT AND INSPECTIONS.**

**§1 Annual Compliance Inspection**

- A. The annual compliance inspection fee, payable to the Town of Washington, shall be in accordance with a fee schedule determined by the Board of Selectmen for each type.

*[NOTE: See Article III, §5 for explanation of the size symbols.]*

1. **{S}** small mineral extraction activity less than 1 acre;
  2. **{M}** medium mineral extraction activity 1-5 acres;
  3. **{L}** large mineral extraction activity larger than 5 to 30 acres;
  4. **{XL}** extra large mineral extraction activity larger than 30 acres.
- B. ~~The Annual Compliance Inspection (ACI) shall be conducted by the CEO prior yearly during the months of June thru October.~~
- ~~1. The CEO shall provide the selectmen, site owner, and site operator with a report outlining any violations of this ordinance and remediation required.~~
1. Each Calendar year, the Operator of any mineral extraction use must seek an Annual Compliance Inspection (“ACI”) from the Code Enforcement Officer.
  2. Annual Compliance Inspections may only occur between June 1 and October 1 of each year.
  3. Prior to performing the ACI, the Operator must pay the Annual Compliance Inspection Fee.
  4. The Operator shall provide an updated sketch plan of the pit showing active extractions that are ongoing or planned for the next twelve months and all reclaimed land.
  5. Every five years, the Operator shall submit an updated site plan incorporating the current configuration of the pit and all reclaimed land as shown in prior sketch plans and a copy of any Notice to Comply filed with the State of Maine.
  6. The Operator shall demonstrate that they are in compliance with the Mining Ordinance or with the State standards if they have utilized State Permitting for their project.
  7. The CEO shall provide to the Selectmen, Operator, and Site Owner a report within 30 days of the ACI outlining violations of this Ordinance.
  8. Failure to obtain an ACI prior to October 1 of the calendar year in which the pit was operated may result in a stop work order and notice of violation.
  9. Operating a pit after a notice of violation shall be a daily violation. Each daily violation shall be subject to all of the remedies described 30-A MRSA §4452.
- C. It is the responsibility of the permit holder to see that the inspection is done conducted as required by this section and to ensure payment of the annual mineral extraction inspection fee as established by the Board of Selectmen. Failure to pay the annual inspection fee may result in a “Stop Work Order” being issued. .
- D. In addition, the CEO shall inspect the gravel extraction or rock mining operation for compliance with all standards contained in M.R.S.A. title 38, Chapter 3, Subchapter 1, Article 7 Performance Standards for Excavations for Borrow, Clay, Topsoil, or Silt and Article 8-A Performance Standards for Quarries. Whenever the provisions of M.R.S.A. title 38 come into conflict with other inspection requirements of this ordinance, the more restrictive shall apply.

## **§2 Reclamation Certification**

- A. ~~{L}~~~~{XL}~~ Upon completion of reclamation or a reclamation phase for large and extra large operations, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the Chairman of the Planning Board at the expense of the applicant, certifying that the reclamation is in compliance with the approved plans.

## **§3 Violations**

- A. No mineral extraction activity plan shall be recorded in the Knox County Registry of Deeds until a Final Plan has been approved and signed by the Planning Board in accordance with this Ordinance.
- B. No person, corporation or other legal entity may sell or offer to sell any materials in a mineral extraction activity site which has not been approved by the Planning Board and recorded in the Knox County Registry of Deeds.
- C. The Code Enforcement officer shall issue a "Notice of Violation" outlining any violations and if the order is not complied with, the Code Enforcement officer shall refer the violation(s) to the Board of Selectmen for legal action.
- D. Any operation that is in violation of other approvals (such as DEP *Intent to Comply for Pits* or for *Quarries* or DEP permits) covering the same operation shall be deemed in violation of approvals granted under this ordinance, in that all other approvals are necessary for approvals under this ordinance to be valid.

## **§4 Mineral Extraction Plan Amendments After Approval**

No changes, erasures, or modifications shall be made in a Final Plan after approval has been given by the Planning Board unless the plan is first resubmitted and the Planning Board approves any modifications. The applicant is not required to go through the complete review process of an amendment to an existing mineral extraction activity, unless, in the judgment of the Planning Board the amendment substantially alters the character of the original mineral extraction activity, or unless the change constitutes a new mineral extraction activity. If an amended Final Plan is recorded without complying with this requirement, it shall be null and void. The Planning Board shall record a revocation of a previous recorded document in the Knox County Registry of Deeds.

## **§5 Enforcement**

- A. The Code Enforcement Officer of the Town of Washington, Maine, shall enforce this Ordinance and the Selectmen of the Town of Washington, Maine are authorized to institute legal proceedings to enjoin violations of this Ordinance.
- B. If the Code Enforcement Officer finds violation of any provision of this ordinance or failure to comply with any order, permit, approval, condition or other final decision or action of the Planning Board that constitutes a substantial and immediate danger to the health, safety or welfare of any person(s), or property or environment of the Town of Washington, Maine, said Town may initiate immediate injunction proceedings to abate or correct such violations. Violations are subject to inspection as per §1 of this Article.
- C. In any action to enforce any provision of this ordinance where the Town of Washington, Maine prevails, said Town shall be awarded reasonable attorney fees, expert witness fees, and costs unless the court finds that special circumstances make the award of these fees and costs unjust. If the defendant is the prevailing party, the defendant may be awarded reasonable attorney fees, expert witness fees, and costs provided by court rule.

## **§6 Penalties**

- A. Any person, firm or corporation, being the owner or having control or use of any mineral extraction activity in violation of any of the provisions of this Ordinance or terms or conditions of any order, permit or approval or final decision of the Planning Board shall be subject to a civil penalty due and payable to the Town of Washington, Maine of not less than one hundred dollars (\$100.00) for each day said violation exists and not more than twenty-five hundred dollars (\$2,500.00) for each day said

violation exists or twice the economic benefit resulting from the violation, whichever is greater, not to exceed \$25,000 per day. If the same person has been convicted of a violation of this ordinance within the previous two years, the maximum penalty is twenty five thousand dollars (\$25,000.00) for each day said violation exists.

- B. In setting the penalties, the Court shall consider but is not limited to the following:
  - 1. Prior violations by the same person;
  - 2. The degree of environmental damage that can not be abated or corrected;
  - 3. The extent to which the violation continued following an order to stop;
  - 4. The extent to which the Town of Washington, Maine contributed to the violation by providing incorrect information or failing to take timely action; and
  - 5. Whether penalties have been imposed by another governmental agency for the same incident(s).
- C. Payment of any penalty shall be made within thirty (30) days in cash or by certified check drawn on a recognized financial institution, made payable to the Town of Washington, Maine in an amount equal to the full amount of the penalty.
- D. If the maximum penalty amount of Article VIII §6-A of this ordinance is held void or invalid it is the intent of the Town of Washington, Maine that provisions of Title 30-A, M.R.S.A. Section 4452 be given full force and effect and that the maximum penalty amounts authorized by such provision apply to violations of any order, permit, approval or final decision of the Planning Board, or any provision of this ordinance.

#### **ARTICLE IX – SEVERABILITY & CONFLICT**

##### **§1 Severability**

Should any section of this Ordinance be declared by the courts of the State of Maine or by the courts of the United States to be invalid, such decisions shall not invalidate any other section or provision of this Ordinance.

##### **§2 Conflict with other Ordinances**

This Ordinance shall in no way impair or remove the necessity of compliance with any other rule, regulation, bylaw, permit or provision of law. Where this Ordinance imposes a greater restriction upon the use of the land, buildings or structures, than any other rule, regulation, bylaw, permit or provision of law, the provisions of this Ordinance shall prevail.

#### **ARTICLE X – AMENDMENT OF THIS ORDINANCE**

##### **§1 Review of Ordinance**

- A. A Mineral Extraction Review Committee shall be appointed by the Selectmen.
- B. Five or more members shall be appointed for staggered three year terms.
- C. The Committee shall elect its chair from among its members.
- D. The Mineral Extraction Review Committee shall meet at least semi-annually to publicly review this ordinance and receive comments and suggestions from the public on possible amendments to this ordinance. The Committee shall present their recommendations to the Board of Selectmen.

##### **§2 Initiation of Amendment**

An amendment to this Ordinance may be initiated by:

- A. The Selectmen provided that a majority of the Board has so voted; or
- B. Written petition to the Selectmen bearing signatures of registered voters of the Town of Washington, Maine numbering at least ten percent (10%) of the number who voted in the last gubernatorial election.

**§3 Adoption of Amendment**

All proposed amendments to this Ordinance shall be voted on by the voters of the Town of Washington, Maine at a Town Meeting, a majority vote being required for adoption.

**ARTICLE XI – OTHER PROVISIONS**

**§1 Public Access to Information**

Except as expressly made confidential by law, the Board shall make all documents and records available to the public in accordance with the Maine Freedom of Access Law (1 MRSA § 401 et seq.). The Board shall also keep confidential those documents which may remain confidential pursuant to the Maine Freedom of Access Law. The Board shall make determinations on confidentiality and any person aggrieved by such determination may appeal to a court in accordance with State Law. The Board shall withhold disclosure of such information pending a final judicial determination on any claim of confidentiality. A policy for inspecting and copying documents may be established by the Board, including, but not limited to, a reasonable charge for copying costs.

**§2 [Repealed]**

**§3 Right of Entry On to Land**

The CEO shall have the right of entry onto any mineral extraction activity site at reasonable times and with reasonable notice.