

**MINERAL EXTRACTION ORDINANCE**

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*Fee schedule*

## **ARTICLE I - TITLE & PURPOSE**

### **Sect. 1 Title**

This Ordinance shall be known and may be cited as the Mineral Extraction Ordinance of the Town of Winthrop, Maine and will be referred to herein as "this Ordinance."

### **Sect. 2 Purpose**

The purpose of this Ordinance is to establish 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, other than metallic minerals. 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;
- B. Preserving the value of property;
- C. Assuring that mineral exploration or extraction activities are compatible with permitted uses in that particular zone;
- D. Assuring protection of wildlife and wildlife habitat; and
- E. Protecting the scenic quality of Winthrop, its environment and its residents.

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

### **Sect. 1 Authority**

This Ordinance is enacted pursuant to Home Rule Powers as provided for in Article 8, Part 2 of the Maine Constitution 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 and 3105(2), and Title 38 M.R.S.A. Sections 490-DD and 490-I.

### **Sect. 2 Administration**

The provisions of this Ordinance shall be administered by the Town of Winthrop's Planning Board and enforced by the Town of Winthrop's CEO and Town Council, who will establish, after notice and hearing, and, from time to time, revise a fee schedule for the various applications and fees required by this Ordinance.

### **Sect. 3 Effective Date**

This Ordinance shall be effective upon its adoption by vote of Town Council of the Town of Winthrop, Maine after Public Hearing.

### **Sect. 4 Applicability**

- A. The provisions of this Ordinance shall apply to all mineral extraction operations (MEOs), except metallic minerals, within the Town of Winthrop, Maine, as described in Article I, and as listed below, unless exempted in Article III.
  - 1. Existing operations.
  - 2. Expansion of existing operations.
  - 3. New operations.

- B. This ordinance does not apply to “inactive” mineral extraction operations, defined as (1) mineral extraction that has ceased for twelve (12) consecutive months prior to the adoption of this Ordinance, and (2) a mineral extraction operation that was not registered, pursuant to Article IV.1.A, within one hundred and eighty (180) days after the adoption of this Ordinance. No inactive mineral extraction operation shall be resumed until the owner or operator obtains a new approval pursuant to Article IV.3, for the entire affected area, except those portions previously reclaimed.
- C. Mineral extraction operations (MEOs) less than one (1) acre are allowed as a permitted use with Planning Board approval in the following zones: Commercial, Industrial, and Rural Undeveloped.

Mineral extraction operations (MEOs) less than five (5) acres in size are allowed as a Permitted use with Planning Board approval in the Rural Undeveloped Zone.

Mineral extraction operations (MEOs) over one (1) acre or that include processing are allowed as a permitted use with Planning Board approval in the Industrial zone.

Mineral extraction operations (MEOs) are prohibited in the following zones: Resource Protection, Shoreland Residential, Shoreland Development, Stream Protection, Rural Residential and Mobile Home. Operations are also prohibited at any historic site as well as any environmentally sensitive areas as defined by this or any other Town of Winthrop Ordinance.

All zoning classifications are as defined in the Winthrop Zoning Ordinance and permitted MEO's are listed in its Schedule of Uses.

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### ARTICLE III - EXEMPTIONS

**This Ordinance shall not apply to the following:**

- A. Mineral exploration whose sole purpose is the determination of the nature and/or extent of mineral resources, accompanied by hand-sampling, test boring, or other methods which create minimal disturbance. Test holes shall be filled in immediately after use;
- B. Mineral extraction operations that affect less than five thousand (5,000) square feet of surface area, or the removal or handling of less than two hundred (200) cubic yards of material in less than twelve (12) months;
- C. 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;
- D. Removal or filling of material incidental to construction, alteration or repair of a structure, or in the landscaping incidental thereto;

- E. Construction of farm and fire ponds; and water management berms; and
- F. Inactive areas where previous mining had last occurred at least 12 months prior to the adoption of this Ordinance. [NOTE: Mineral extraction operations, which are exempt from this Ordinance, may need a permit under provisions of the Zoning Ordinance of the Town of Winthrop, and must comply with other rules and regulations of the Town.]

## **ARTICLE IV - APPLICATION**

### **Sect. 1 Existing Operations**

- A. Within one hundred and eighty (180) days of the approval of this Ordinance, all MEOs existing as of that date, shall be registered with the Planning Board, and submit the following:
  - 1. Registration fee.
  - 2. Names and addresses of the current owner of the MEO and the operator, and a copy of the deed or lease, if the operator is not the property owner.
  - 3. Evidence that the MEO qualifies as an existing operation, boundaries of the tract of land showing lot lines, total acreage of entire parcel, existing and proposed excavation areas, depth and height of final excavation, structures on property, area used for storage of topsoil and other overburden, location of hazardous material storage areas, location of existing public and private streets, roadways, rights of way, and access roads, the amount of earth material annually extracted, whether processing of materials is done on the site, the nature and amount of that processing, the average daily number of trucks taking material in or out of the site, and the number of employees.
  - 4. For existing operations larger than the five (5) acres or more surface area at the time of passage of this Ordinance, the reclamation plan as required by the Maine Department of Environmental Protection (MDEP) must be submitted.
- B. Any operation not registered, or which fails to qualify to be registered, pursuant to this section, shall be deemed closed, and may not, after such 180 day period, continue or resume operation, and be subject to the civil penalties allowed in 30-A M.R.S.A., Section 4452 assessed for each day after the 180-day period.

### **Sect. 2 Expansion of Existing Operations**

#### **A. Requirements**

In the Industrial Zone no MEO existing at the time of passage of this Ordinance may expand without first obtaining an Expansion of Existing Mining approval from the Planning Board. For operations less than five (5) acres in surface area as of the effective date, expansion is defined as an additional fifty percent (50%) or more in surface area. For operations larger than five (5) acres, expansion is defined as an increase of fifty percent (50%) or more surface area or four (4) additional acres, whichever is less. In Rural Zone, once mineral extraction operation has reached five (5) acres in size, no expansion is allowed until 4/5 of the existing excavated area has been reclaimed in accordance with Article V, Section 13 of this Ordinance and a new application has been approved by the Planning Board.

## B. Application Requirements

The applicant shall submit the following to the Planning Board:

1. Ten (10??) paper copies of the Application including one (1) digital copy in pdf format.
2. Application fee and technical review fee.
3. Names and addresses of current owners of the property and the current or proposed operator.
4. A copy of the deeds or lease agreements, if the operator is not the owner, with copies of all covenants, deed restrictions, easements, rights of way, or other encumbrances, including, but not limited to liens and mortgages currently affecting the property.
5. A site plan, prepared by a licensed surveyor, showing the following:
  - a. Date plan prepared, scale of drawings, with north arrow (indicate true or magnetic).
  - b. Boundaries of land showing lot lines, total acreage, existing and proposed excavation areas, structures on property, anticipated depth and height of final excavation, areas to be used for storage of topsoil and other overburden, location of existing or proposed hazardous material storage areas, location of public and private streets, parking areas, roadways and rights of way, location of existing or proposed access roads, security gates, fencing, exposed ground water on site, all temporary and permanent structures located on property, and depth of ground water at representative points throughout site including at the site of the existing or proposed excavation, as determined by test borings and other geotechnical methods. Contours of the mineral extraction area and surrounding area for two hundred (200) feet at five (5) foot contour intervals. GPS coordinates of the proposed active extraction site or area.
6. Reclamation Plan: In the same scale as the site plan, prepared by a registered civil engineer, registered landscape architect or licensed land surveyor requiring, at a minimum, the following:
  - i. Final contours of site after reclamation at two (2) feet or less contour intervals.
  - ii. Areas which will be back-filled and restored with topsoil and other overburden, and depth of same.
  - iii. Areas which will contain water with measures to be taken to avoid stagnation and erosion
  - iv. Phasing program of reclamation and timing.
  - v. Landscape plan, indicating location and type of proposed landscape features including plant list.
  - vi. Location of driveways, roads, fences, and gates to be part of restoration program.
  - vii. Description of proposed final care of site, and a statement of how this relates to Winthrop's Comprehensive Plan and Zoning Ordinance's zoning classification.
7. The following submissions and narratives shall be provided with the application:
  - a. Present uses of the entire property, including existing excavated area, and

- present use of adjacent property.
- b. The approximate date of commencement of excavation, and estimated time schedule of future excavation, reclamation and closure including proposed phasing of operation, if applicable.
  - c. Proposed hours and days of operation.
  - d. A plan showing how security at the site will be controlled.
  - e. Location of residences and wells within 1,000 feet of property boundaries with names of property owners shown.
  - f. Names and addresses of all property owners within 1,000 feet of the property.
  - g. Plan for screening the operation from abutters and public roads.
  - h. Estimated volume of the excavation.
  - i. Method of extracting and processing, if applicable.
  - j. Blasting plan, if applicable.
  - k. Disposition of topsoil or overburden, equipment proposed to be used in operation, and operational practices to be used to prevent surface or groundwater pollution, and minimize noise, dust, air contaminants and vibration.
  - l. Whether processing of materials will be brought on site from another location.
  - m. A plan showing, in addition to location of hazardous materials, provisions for safe storage of such material. No hazardous materials shall be located or stored such that they will enter the ground or surface water.
  - n. A Spill Prevention, Control & Containment Plan (SPCC).
  - o. An erosion and sedimentation control plan, prepared with standards contained in the Maine Erosion and Sediment Control Handbook for Construction, Best Management Practices, dated October 2016 or latest edition.
  - p. Identification of all required state and/or federal permits, including, if applicable, a Department of Environmental Protection permit ID number and copies of DEP inspection reports. Any letters of warning, notices of violation issued to the applicant and/or their agent within the last ten (10) years.
  - q. Letter from Maine Historic Preservation Commission documenting historic buildings and sites.
  - r. A narrative description of the impact on the significant wildlife habitat, designated by the Maine Department of Inland Fisheries & Wildlife.
  - s. Pre-development ambient hourly sound levels for protected locations.
  - t. Proof of financial capacity and technical ability to complete the project as reasonably related to size and intensity of project.
  - u. A performance guarantee in the form of a bond, letter of credit, or such other financial instrument as deemed satisfactory by the Town Council, covering the cost of the reclamation plan or next phase when reclamation plan is divided into distinct sections.
  - v. Before commencing removal of any earth materials, the owner or operator of the extraction site shall present evidence to the Planning Board of adequate insurance to indemnify the Town of Winthrop against liability arising from the proposed extraction operations, and such insurance shall be maintained throughout the period of operation.
  - w. A hydrogeological evaluation, prepared by a qualified professional, which

shows the quality and depth of ground water throughout the site and establishes that the MEO will not cause any pollution to ground water and/or surface water. If in the Aquifer Protection Overlay Zone, a Ground Water Impact Analysis per the Zoning Ordinance, Section \_\_\_\_\_ shall be submitted.

- x. A traffic study pursuant to Article V, Sect. 2, 10. Traffic and a Town of Winthrop Driveway Permit if entrance is on a Town Road or Maine DOT Entrance/Access Permit.
- y. Any other pertinent information the Planning Board may require.

### **Sect. 3 New Mineral Extraction Operation Applications**

#### **A. Application Requirements**

No new MEO or pre-existing operation which failed to meet registration requirements of Article IV, Section 1, may commence operation, without first applying to the Planning Board for approval of a new Mineral Extraction Operation application.

- B. All application requirements identified in Article IV - Sect. 2 B. shall be submitted.

### **Sect. 4 Waiver of Submission**

The Planning Board, upon the written request of an applicant stating the reasons therefore, with written findings of fact that there are special circumstances in an MEO that affects an area less than one (1) acre and over five thousand (5,000) square feet, may waive any of the application requirements set forth in Article IV, Sect. 2 B. and Sect. 3 A. and B., providing the public health, safety and welfare are protected, and the waivers do not have the effect of nullifying the intent and purpose of the Comprehensive Plan, Zoning Ordinance, or this Ordinance.

Notwithstanding the waiver of a submission requirement, the Planning Board may, at any later point in the review process, rescind such waiver if it appears that the submission previously waived is necessary for an adequate review. A request for a submission previously waived shall not affect the pending status of an application.

### **Sect. 5 Application Procedures**

- A. Application forms for MEOs shall be provided by the Town of Winthrop, and submitted to the CEO, who will submit them to the Planning Board within seven days.

- 1. Ten (10??) paper copies and one (1) digital copy in pdf format of the application shall be accompanied by an Application Fee and a Technical Review Fee as the same may be established from time to time by the Town Council, after notice and hearing (see current Fee Schedule).

The fees shall be paid to the Town of Winthrop and the purpose of the fees shall be clearly indicated on the receipts for same.

If the balance of the unexpended funds in the Technical Review Fee are drawn down by fifty percent (50%) or more, the applicant shall be notified and required to pay an additional amount as the same may be established from time to time by the Town



Council, after notice and hearing. The applicant shall continue to be notified and required to pay the appropriate additional amounts as necessary whenever the balance of the funds is drawn down by 50% of the original amount. Failure to pay the required amount within 30 days shall also be a violation of this Ordinance and be cause to stop the review process.

Any balance remaining in the Technical Review Fee, after approval of the Mineral Extraction Operation, shall be returned to the applicant.  
See Article VI - Performance Guarantees, Sect. 2 Professional Review.

2. The Planning Board shall schedule an on-site inspection.
3. Within thirty (30) days of receiving an application, the Planning Board shall notify the applicant whether the application is complete, or if incomplete, the additional material needed for completion. Determination of completeness by the Planning Board in no way binds the Board as to the adequacy of the application to meet the criteria of this Ordinance.

B. Public Hearing

All Mineral extraction applications require a Public Hearing. At the expense of the applicant the Planning Board shall:

1. Advertise a Public Hearing seven (7) days in advance in a local newspaper, and post notices in appropriate places.
2. Notify by mail at least ten (10) days in advance of Public Hearing, all owners of property, listed on town tax maps, within a minimum of 1,000 feet of the boundary of the property for which application is being made at the discretion of the Planning Board.

C. Planning Board Decision on the MEO Activity Application

1. Within thirty (30) days of a Public Hearing, or within sixty (60) days of having received a complete application, the Planning Board shall issue a written finding of fact and decision whether the General Requirements and Performance Standards in Article V have been met, granting or denying approval of the proposed MEO activity, or approving, with conditions on such terms as it may deem advisable, to satisfy this Ordinance. In all instances, the burden of proof shall be upon the applicant.
2. Upon approval of the MEO application, the Board shall sign all five (5) copies of the final site plan. The site plan copies shall be distributed to: a) the applicant, b) the Planning Board, c) the tax assessor, d) the CEO, and e) the Town. See Article XII - for Final Plan Approval signature block and details.
3. Approval, by the Planning Board, of an MEO, does not show evidence of acceptance, by the Town of Winthrop, of any road, easement, or open space on such plan.

## **Sect. 6 Inspections**

### **A. Annual Inspections**

The CEO, or his/her designee, shall conduct an annual compliance inspection prior to the anniversary date of the original approval, to determine whether the approved MEO applicant/operator has complied with, or deviated from, the approved plan. An annual compliance fee is required. Reports shall be provided to the Planning Board, Town Council, and MEO applicant/operator. In case of non-compliance, the CEO shall issue a STOP WORK ORDER, EXCEPT FOR REMEDIAL ACTION, until such time as compliance is achieved.

## **Sect. 7 Conditions and Limitations**

### **A. General**

Before any mineral extraction activity begins, the applicant shall obtain all applicable permits required by town, state, or federal regulations, laws, or ordinances regulating such developments. Violation of other permits necessary for operation shall be considered a violation of this Ordinance.

Before a Final Plan has been approved, the following is not permitted:

1. No material from any MEO may be sold.
2. Development of the infrastructure of the MEO is not permitted, including buildings, roads, removal of vegetation, land clearing, timber harvesting and utility installations.

### **B. Expiration**

Mineral Extraction approvals shall expire one (1) year from the date of issuance, unless the mineral extraction activity has commenced.

### **C.**

### **D. Plan Revisions**

Plan revisions, after approval, shall be made as provided for in Article VII, Section 2 of this Ordinance.

### **E. Expert Consultant**

In the event the CEO and/or the Planning Board require expert consultation, the charges for same shall be the responsibility of the applicant/operator.

### **F. Transfer of Mineral Extraction Operation When an MEO ownership is transferred:**

1. the transferor shall notify the Planning Board of the transfer,
2. the transferee shall file a Notice of Intent to Comply similar to that required by the MDEP - 38 M.R.S.A. §490-C (borrow pits) and §490-R (quarries), and
3. the transferee must provide a new performance guarantee acceptable to the Winthrop Town Council.

## **ARTICLE V - PERFORMANCE STANDARDS**

### **Sect. 1 General Requirements**

- A. Mineral extraction operations shall conform to all applicable State laws and local ordinances or regulations. Where the provisions of this article conflict with specific provisions of State laws or other town ordinances, the stricter provisions shall prevail.
- B. The owner and/or operator of a mineral extraction activity shall be responsible, both jointly and severally, for ensuring the maintenance of all infrastructure, structures and their sites.
- C. 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.
- D. Where the Code Enforcement Officer and/or Planning Board determine there is a need for testing or measurements of standards, all reasonable testing shall be at the operator's expense.
- E. The Planning Board shall consider the financial capacity, technical ability, and performance record of the applicant to conduct all proposed and approved activities in accordance with these performance standards.

### **Sect. 2 Performance Standards**

- A. Unless otherwise noted, and not required in the application requirements, these standards apply to all mineral extraction operations over 5,000 square feet.
- B. Existing mineral extraction operations, after registering with the Town, may continue to operate at their present size and not be regulated by the standards that apply to expansions and new operations.
- C. The Planning Board in reviewing projects requiring Mineral Extraction Operation Approval under this Ordinance shall make positive written findings that the applicant has submitted clear and convincing evidence that all of the following Performance Standards have been met. Projects that don't meet these standards shall not be approved.

**1. Significant wildlife habitat and other protected areas.** Affected land may not be located in a significant wildlife habitat as defined in Title 38 M.R.S.A. Section 480-B or in an area listed pursuant to the Natural Areas Program, Title 12, Section 544.

**2. Solid waste and sewage disposal.** Solid waste, including stumps, wood waste and land-clearing debris generated on the affected land must be stored or disposed of in accordance with Maine Department of Environmental Protection (MDEP) Regulations, Chapter 400.

- a. The storage, collection and disposal of refuse at the extraction site shall not create health hazards, rodent or insect breeding areas, accident or fire hazards, air pollution, or surface or ground water pollution.
- b. All sewage shall be disposed of by sewage systems meeting the requirements of the State of Maine Plumbing Code

3. **Groundwater protection.** To provide an adequate buffer for ground water and allow for filtration of impurities from surface water, excavation shall not occur within 5 feet of the seasonal high water table. One or more test pits or wells sufficient to verify the location of the seasonal high water table must be established.
- a. The Planning Board shall require monitoring of groundwater levels twice per year and may require monitoring of groundwater quality to assure there are no adverse impacts to any water supplies or wells within 500 feet of the site, and that at least one test pit or monitoring well must be established on each 5 acres of unreclaimed land.
  - b. A hydrogeologic evaluation performed by a qualified professional, which shows the depth of ground water throughout the site and establishes that the MEO will not cause any pollution to ground water and/or surface water is required.

If in the Aquifer Protection Overlay Zone a Ground Water Impact Analysis per the Zoning Ordinance, Section \_\_\_\_\_ shall be submitted.

If over 5,000 gallons per day is to be withdrawn to be used for operational purposes, dust control, etc. a hydrogeologic evaluation should identify the location of any proposed extraction well and any potential adverse effects to the water supplies.

- c. Separations between excavations and private water sources existing at the time of application shall be 300 feet. Separations between excavations and public water sources shall conform to MDEP standards contained in 38 M.R.S.A. 490-D, Performance Standards for Excavations.
- d. 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. The Plan should be developed in accordance with MDEP regulations as referenced in paragraph f., below, and must be posted at the site.
- e. Petroleum products, highly flammable or explosive liquids, solids or gases shall be located in bulk, above ground, anchored tanks or containers, having a secondary containment system for control of spills and leaks, located at least 75 feet from any lot line, Town road or interior road. The use of underground tanks is strictly prohibited.
- f. Refueling operations, oil changes, other maintenance activities requiring the handling of fuels, petroleum products and hydraulic fluids and other on-site activity involving storage or use of products that, if spilled, may contaminate groundwater, must be conducted in accordance with the SPCC Plan and follow Performance Standards for the Storage of Petroleum Products as outlined and included in MDEP's Chapter 378 and 40 CFR 112.
- g. Routine maintenance operations are allowed for fixed equipment such as screeners, crushers and wash facilities provided that precautionary measures such as portable drip pans or vacuum devices are used.
- h. Crankcase oil, hydraulic fluids, or similar products shall not be changed, stored, or disposed of within any work site within the Aquifer Protection Overlay Zone unless specifically covered in an SPCC Plan developed in accordance with MDEP regulations.

- 4. Natural buffer strip.** Existing vegetation within a natural buffer strip may not be removed. If vegetation within the natural buffer strip has been removed or disturbed by the excavation or activities related to the mineral extraction operation prior to submission, that vegetation must be reestablished as soon as practicable.
- 5. Protected natural resources.** A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, coastal wetland or freshwater wetland as defined in Title 38 M.R.S.A., Section 48O-B. The width requirements for natural buffer strips are as follows:
- a. A natural buffer strip at least 100 feet wide must be maintained between the mineral extraction operation and the normal high water line of any permanent surface water body or wetland.
  - b. A natural buffer strip at least 75 feet wide must be maintained between the mineral extraction operation and the normal high water line of a seasonal waterbody or wetland.
- 6. Public and private roads.** A natural buffer strip at least 150 feet wide must be maintained between the working edge of an excavation and any public road right of way and a strip at least 50 feet wide must be maintained from the edge of any off-site private road or right of way. No below grade excavation or mining shall be allowed within 200 feet of any public road right of way.

**7. Property setbacks, boundaries, buffers and screening.**

- a. A setback of at least **300 feet** wide shall be maintained between all mineral extraction excavations and protected locations.
- b. To minimize visual impacts and provide for wildlife, a natural buffer strip at least 100 feet wide (quarries) and 50 feet wide (borrow pits) shall be maintained between an excavation and any property boundary.

With the abutter's written permission, the above setbacks and natural buffer strips can be reduced to 10 feet, except the distance may not be reduced to less than 25 feet from the boundary of a cemetery or burial ground. The written permission indicating the registry book and page reference to the subject property(s) shall be recorded at the Kennebec County Registry of Deeds and a copy on file in the Winthrop Town Office.

- c. The natural buffer strip between excavations owned by abutting owners may be eliminated with the abutter's written permission, provided the elimination of this buffer strip does not increase the runoff from either excavation across the boundaries of adjacent property owners. The written permission indicating the registry book and page reference to the subject property(s) shall be recorded at the Kennebec County Registry of Deeds and a copy on file in the Winthrop Town Office.
- d. To protect neighboring uses from dust, noise and unsightly appearance, the Planning Board shall require the applicant to provide screening to shield all operations from surrounding property where there is inadequate natural buffer including, but not limited to, the planting of trees, placement of solid fence or creation of berm, but no closer than twenty-five (25) feet

of the property boundary. Screening may take place within the buffer at the discretion of the Board or may be outside the buffer depending on the site conditions. For additional screening information, refer to the Zoning Ordinance.

**8. Erosion and sedimentation control.** All reclaimed and unreclaimed areas, except for access roads, must be naturally internally drained unless an approved engineering plan is provided.

- a. All erosion and sedimentation plans must conform to standards outlined in the Maine Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers, October 2016 or latest edition.
- b. Stockpiles consisting of topsoil to be used for reclamation and berms must be seeded, mulched or otherwise temporarily stabilized.
- c. Sediment may not leave the parcel or enter a protected natural resource.
- d. Grubbed areas not internally drained must be stabilized.
- e. Erosion and sedimentation control for access roads must be conducted in accordance with DOT best management practices for erosion and sedimentation control.
- f. Land shall be restored and stabilized according to the Reclamation Plan.
- g. For projects exceeding 1 acre, a volume calculation shall be provided 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.

**9. Surface water protection and storm water management.** Surface water discharges from areas not required to be naturally internally drained may not be increased as a result of storm water runoff from storms up to a level of a 25-year, 24-hour storm. Accumulated water from precipitation must be put into sheet flow and the discharge point must be directed to an undisturbed natural buffer strip. The discharge point must be at least 250 feet away from a protected natural resource. The slope of the discharge area may not exceed 5%.

- a. Grading or other construction activity on the site may not alter natural drainages so that the drainage, other than that which occurred before development, adversely affects an adjacent parcel of land or so that the drainages flowing from an adjacent parcel of land to the parcel are impeded.
- b. Structures such as detention ponds, retention ponds and undersized culverts may not be used to meet the standards in this subsection.

**10. Traffic.** The following provisions govern traffic.

- a. Access Standards
  - i. Entrances and exits of the mineral extraction operation onto a public way must be located, posted and constructed in accordance with standards for roadways adopted by the Town

of Winthrop’s Ordinances and the Maine DOT. Adequate distances for entering, exiting and stopping must be maintained in accordance with these standards.

- ii. The intersection of any road within the mineral extraction operation and an existing public road shall meet all standards for roads adopted by the Winthrop Subdivision Ordinance.

The following design standards apply:

DESCRIPTION	DIMENSION
Minimum Traveled Way	18'
Shoulder Width	2'
Maximum Grade	8%
Roadway Crown	¼'' /ft.
Angle of all Road Intersections	90 degrees
Maximum Grade within 75' of Intersections	3%
Minimum Curb Radii at Intersections	25'
Minimum r/o/w Radii at Intersections	10'

- iii. Sight Distances. Access shall be designed in line and grade to provide the required sight distance in each direction, as outlined below:

VEHICLE TYPE EXPECTED TO ENTER OR CROSS HIGHWAY	SIGHT DISTANCE (GIVEN IN FEET PER EACH 10 MPH OF POSTED SPEED)
Single-unit truck	130
Multi-unit truck	170

Sight distance shall be measured at a distance of 15 feet back from the edge of the travel way and at a height of 3.5 feet above the proposed access road grade to an object 4.25 feet above the pavement. Each direction of traffic shall be considered separately.

- iv. Pavement. All driveways within the road right of way shall be paved with bituminous concrete pavement. All access points, regardless of access volume, shall provide a paved apron extending a minimum 30 feet beyond the right of way.
- v. Number of entrances. Unless approved by the Planning Board, no mineral extraction operation shall have more than two entrances on any one road nor shall entrances be spaced any closer than 120' away from other entrances as measured from the closest adjacent edge of each driveway excluding radii, whether these be located on the subject property, or adjacent properties. Adjacent Properties under the same ownership shall be considered as a single property for application of entrance spacing.
- vi. Alignment of access drives. Access drives shall be either lined up with access drives located across roads or offset by a minimum distance of 100 feet. The Planning Board shall have the option of waiving this provision on individual lots after a review of the

volume of traffic to be generated by a specific proposed use.

- vii. Distance from intersections. Access drives shall be located so as to allow the maximum clearance distance from road intersections as practical, based on site constraints. No access drive shall be located closer than 150 feet from any intersection measured from the closest adjacent edge of pavement excluding radii. Driveways to corner lots shall gain access from the road of lower classification when a corner lot is bounded by roads of two different classifications.

b. Traffic impact study requirement if the access is onto a Town Road.

The operator shall provide a traffic impact study at his or her own expense. This study is subject to review by another consultant of the Town's choosing at the operator's expense.

The safety and congestion mitigation measures recommended in the traffic study shall be followed by the operator.

i. Traffic Impact Study Requirements

a) Study Area

The study area must include the first major intersection to either side of the mineral extraction entrance. The study area must be expanded beyond the first major intersection to either side of the entrance to include those links and intersections for which, during any one-hour peak period, truck traffic to and from the mineral extraction operation equals or exceeds the following:

- 1) 25 vehicles in a left-turn lane;
- 2) 35 vehicles in a through lane, right-turn lane or a combined through and right-turn lane; or
- 3) 35 vehicles (multiplying the left-turn lane volume by 1.5) in a combined left-turn, through and right-turn lane.

A map showing the parcel boundaries, town roadways, access road, and other driveways and rights of way within 200 feet of the access road, shall be submitted to the Planning Board indicating the roads and intersections to be studied.

The study area identifying the roads and intersections to be studied shall be approved by the Planning Board prior to undertaking the analysis.

b) Scenarios

The traffic study shall consider the following scenarios:

- Existing
- Existing + Project

The existing + project scenario shall include traffic attributable to the proposed mineral extraction operation as well as other projects that are proposed or approved.

c) Data Collection

Traffic counts shall be collected at each of the study intersections and/or study



roadway segments. Traffic data shall identify truck counts. Existing traffic count data may be used if data is less than 5 years old and no significant project development has occurred in the surrounding area, and no other changes have occurred to limit the usefulness of the data.

Pedestrian and bicyclist counts may be required by the Planning Board.

d) Trip Generation and Distribution

The number of daily and peak-hour trips attributable to the proposed mineral extraction operation shall be identified based on project-specific information and comparison to similar facilities. Distribution of project traffic shall be based on substantial evidence.

A calculation of traffic attributable to other projects that are proposed or approved shall be identified based on project-specific information, project-specific traffic studies, and/or rates based on the Institute of Transportation Engineers' Trip Generation Manual.

A map shall be provided indicating the distribution of project traffic and traffic attributable to other projects.

e) Capacity Analysis

The level of service (LOS) shall be analyzed for all study area roadways and intersections. LOS analysis shall be consistent with procedures defined in the latest version of the Highway Capacity Manual published by the Transportation Research Board. LOS analysis shall address weekday A.M. and P.M. peak hours and Saturday peak hours.

f) Access Design

The proposed project access road shall be evaluated for safety of ingress and egress and for conformity to Town design standards identified in Section 10.b.ii.

g) Safety

The traffic study shall identify any potential traffic safety impacts caused by additional project traffic, design features or incompatible land uses. The analysis shall address safety impacts to pedestrians and bicyclists.

h) Design and Mitigation

The traffic study shall determine and document safe and efficient operational design needs based on site and study area data. Operational concerns and mitigation measures to ensure safe and efficient operation shall be identified. The study shall identify any mitigation measures needed to ensure LOS standards identified in Section 10.b.ii are maintained. Where necessary to safeguard against hazards to pedestrians and to avoid traffic congestion, or adverse impacts to Town roads, alternative routing may be required.

ii. Traffic Impact Criteria

Traffic from the mineral extraction operation shall not:

- a) increase the volume to capacity of any town road above 80%,
- b) decrease the LOS of a Town road intersection by more than one level, or
- c) reduce a Town road intersection LOS to “D” or below.

Evaluation of intersection LOS shall be based on the following definition provided by the Highway Capacity Model published by the Transportation Research Board:

LEVEL OF SERVICE	UNSIGNALIZED AVERAGE DELAY PER VEHICLE (SEC.)	SIGNALIZED AVERAGE DELAY PER VEHICLE (SEC.)
A	≤10	≤10
B	>10 – ≤20	>10 – ≤20
C	>20 – ≤30	>20 – ≤35
D	>30 – ≤40	>35 – ≤55
E	>40 – ≤50	>55 – ≤80
F	>50	>80

iii. Road Condition

Where mineral extraction activity traffic will use town maintained roads, the condition of the existing roads shall be suitable for the proposed traffic volume and type. The Road Commissioner shall provide a preliminary determination of the suitability of the existing roads. Based upon the Road Commissioner’s evaluation, the Planning Board may require an engineering impact study, at the expense of the applicant, and may require mitigation for adverse impacts on Town roads.

**11. Noise.**

The sound level limits contained in this regulation apply to areas that are defined as protected locations, and to property lines of the proposed mineral extraction operation or contiguous property owned by the operator, whichever are farther from the proposed operation’s regulated sound sources.

The sound level limits contained in this regulation do not apply to noise within the mineral extraction operation boundary.

a. Sound Level Limits

b.

Except as allowed for production blasting, the hourly sound levels resulting from the mineral extraction operation shall not exceed the following limits:

- i. At any property line of the mineral extraction operation or contiguous property owned by the operator, whichever is farther from the proposed mineral extraction operation’s regulated sound sources: 75 dBA between 6 a.m. and 7 p.m. in the Industrial Zone; and 65 dBA between 7 a.m. and 6 p.m. in all other zones.

- ii. At any protected location: 50 dBA between 6 a.m. and 7 a.m., and 60 dBA between 7:00 a.m. and 7 p.m. in the Industrial Zone; and 60 dBA between 7:00 a.m. and 6:00 p.m. in all other zones.
- iii. When a proposed mineral extraction operation is to be located in an area where the daytime pre-development ambient hourly sound level at a protected location is equal to or less than 45 dBA and/or the nighttime pre-development ambient hourly sound level at a protected location is equal to or less than 35 dBA, the hourly sound levels resulting from routine operation of the mineral extraction operation shall not exceed: 45 dBA between 6 a.m. and 7 a.m., and 55 dBA between 7 a.m. and 7 p.m. in the Industrial Zone; and 55 dBA between 7:00 a.m. and 6:00 p.m. in all other zones.

To determine pre-development ambient hourly sound levels, measurements shall be made at representative protected locations for periods of time sufficient to adequately characterize the ambient sound. At a minimum, measurements shall be made on three different weekdays (Monday through Friday) during all hours that the development will operate. Measurement periods with particularly high ambient sounds, such as during holiday or seasonal traffic activity, should generally be avoided.

Measurement of sound levels will be measured in accordance with regulations pursuant to MDEP's Site Location of Development Law, Chapter 375.10. Control of Noise.

- c. Exemptions. Sound associated with the following shall be exempt from regulations by the Planning Board:
  - i. Warning signals and alarms.
  - ii. Safety and protective devices installed in accordance with code requirements.
  - iii. Test operations of emergency equipment occurring in the daytime and no more frequently than once per week.
- d. The Planning Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the mineral extraction operator has made adequate provision for the control of noise from the operation, and to reduce the impact of noise on protected locations. 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.
- e. The sound level limits prescribed in this regulation shall not preclude the Planning Board from requiring a mineral extraction operator to demonstrate that sound levels from a mineral extraction operation will not unreasonably disturb wildlife or adversely affect wildlife populations.

In addition, the sound level limits shall not preclude the Board, as a term or condition of approval, from requiring that lower sound level limits be met to ensure that the operator has made adequate provision for the protection of wildlife and impact on protected locations.

- 12. Dust and Air Pollution.** Air pollution in the form of dust and dirt shall be kept to a minimum by the use of modern equipment and methods of operation designed to avoid excessive dust,

dirt or other air pollution injurious or substantially annoying to adjoining property owners. Emission of dust and dirt at any point beyond lot lines shall be prohibited.

- a. All air pollution control shall comply with minimum State requirements and all applicable equipment must have a current MDEP Air Emissions License.
- b. Dust generated by activities at a mineral extraction operation must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions so that the particulate standards set forth in 38 M.R.S.A. 584-A are not exceeded.
- c. All access/egress roads leading to/from the extraction site to public ways shall be treated to reduce dust and mud.
- d. Loaded vehicles shall comply with all State Laws and Regulations and be suitably covered to prevent dust and contents from spilling or blowing from the vehicle. Spillage of extracted materials on public roads shall be the responsibility of the operator.

**13. Reclamation.** The affected land must be restored to a condition that is similar to or compatible with the conditions that existed before excavation. Reclamation shall be conducted in accordance with the MDEP's best management practices for erosion and sedimentation control and must include the following:

- a. Highwalls, or quarry faces, must be treated in such a manner as to leave them in a condition that minimizes the possibility of rock falls, slope failures and collapse. A highwall that is loose must be controlled by the use of blasting or scaling, the use of safety benches, the use of flatter slopes or reduced face heights or the use of benching near the top of the face or rounding the edge of the face.
- b. Side slopes of gravel pits must be regraded to a slope no steeper than two and a half (2 1/2) feet horizontal to one (1) foot vertical.
- c. Within six months of the completion of extraction operations, ground levels and grades shall be established in accordance with the reclamation plan; within 30 days of final grading, topsoil must be placed, seeded and mulched; all dependent upon seasonal weather conditions. Vegetative cover must be established on all affected land, except for quarry walls and flooded areas. This requirement may be waived if the CEO determines that the slope(s) exhibit substantial vegetation and are stable.
- d. Vegetative cover is acceptable if within one year of seeding:
  - i. The planting of trees and shrubs results in a permanent stand or a stand capable of regeneration and succession sufficient to ensure a 75% survival rate; and
  - ii. The planting of all material results in permanent 90% ground cover.
  - iii. Vegetative cover used in reclamation must consist of grasses, legumes, herbaceous or woody plants, shrubs, trees or a mixture of these.

- e. All access roads, haul roads and other support roads must be reclaimed, unless reserved for future productive use of the land, as described in the reclamation plan.
- f. All structures or temporary shelters and equipment used in active extraction operation shall be removed within 30 days following completion of active extraction operations.
- g. All affected lands must be reclaimed within 2 years after final grading.
- h. Topsoil that is stripped or removed must be stockpiled for use in reclaiming disturbed land areas unless the applicant demonstrates that the soil is not needed for reclamation purposes. Stockpiles must be seeded, mulched or otherwise stabilized. Whenever practical, at least 4 inches of topsoil should be used for final cover.
- i. The site must be reclaimed in phases so that the active extraction area does not exceed 5 acres at any time. This refers to the area of extraction and does not include roads, structures, stockpiles, etc. not part of the active mineral extraction operation.
- j. Upon completion of the reclamation, or the reclamation phase, a written reclamation certificate, signed by a registered professional engineer, shall be provided to the Town Council and Planning Boards.

**14. Blasting.** The applicant must ensure that the blasting is conducted in accordance with regulations issued pursuant to M.R.S.A. Title 25, Chapter 318 and conform, at a minimum, to MDEP, Article 8-A, Performance Standards for Quarries, 38 M.R.S.A. §490-Z(14).

- a. The blasting will be conducted in a manner which will cause no damage nor unreasonable disturbances to surrounding properties. The owner or operator shall use sufficient stemming, matting or natural protective cover to prevent flyrock from leaving property owned or under control of the owner or operator or from entering protected natural resources or natural buffer strips. Crushed rock or other suitable material must be used for stemming when available; native gravel, drill cuttings or other material may be used for stemming only if no other suitable material is available.

Sound from Production Blasting. Sound exceeding the limits in Sect. 2.11. Noise and resulting from production blasting at a mine or quarry shall be limited as follows:

Sound from blasting shall not exceed the following limits at any protected location: Number of Blasts Per Day                      Sound Level Limit

1	129 dBL
2	126 dBL
3	124 dBL
4	123 dBL

Blast sound shall be measured in peak linear sound level (dBL) with a linear response down to 5 Hz.

Refer to Bureau of Mines Report of Investigations 8485 for information on airblast sound levels and pertinent scaled distances.

- b. The maximum allowable airblast at any building not owned or controlled by the developer may not exceed 129 decibels peak when measured by an instrument having a flat response (+ or -3 decibels) over the range of 5 to 200 hertz.
- c. If necessary to prevent damage, the Planning Board may specify lower maximum allowable airblast levels than those in paragraph b. of this section for use in the vicinity of a specific blasting operation.
- d. Pre-blast surveys shall be conducted in accordance with MDEP Regulations outlined in the above-referenced Article 8-A.
- e. Blasting may not occur in the period between 4:00 p.m. and 9:00 a.m. the following day. Routine production blasting is not allowed on Saturday, Sunday, and holidays as specified in subsection 15. Hours of Operation. Detonation of misfires may occur outside of these times but must be reported to the Town Office within 5 business days of the misfire detonation.
- f. Blasting may not occur more frequently than 4 times per day.
- g. Under no circumstances shall the Planning Board approve any production blasting within one hundred fifty (150) feet of an adjoining property line.
- h. The maximum peak particle velocity at inhabitable structures not owned or controlled by the operator may not exceed the levels established in MDEP Article 8-A, Performance Standards for Quarries 38 M.R.S.A. § 490-Z.14.K. (Blasting), including Table 1 and the graph published by the U.S. Dept. of the Interior in "Bureau of Mines Report of Investigations 8507," Appendix B, Figure B-1.

Either of the above referenced guidelines must be used to evaluate ground vibration effects for those blasts for which a preblast survey is required and/or when blasting is to be monitored by seismic instrumentation.

- i. The maximum allowable ground vibration may be reduced by the Planning Board beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.
- j. A record of each blast must be compiled in accordance with the specifications in the above mentioned Article 8-A. In addition, pre-blast, blast, and post blast linear-peak sound levels in decibels should be included for each airblast.
- k. The records for each blast, including all monitoring records, shall be filed with the Town no more than ten (10) days after each blast.
- l. Blasting Schedule. A blasting schedule shall be prepared by the blaster and be published in a newspaper of general circulation in the locality, at least 10 days, but not more than 30 days, before beginning a blasting program. Copies of the schedule shall be distributed to the Town, public utilities, and to all abutters and residences within one-half mile of the proposed blasting site described in the schedule and, as outlined in 30 CFR 816.64, shall contain, at a minimum:

- 1) Name, address, and telephone number of operator;
- 2) Identification of the specific areas in which blasting will take place;
- 3) Dates and times when explosives are to be detonated;
- 4) Methods to be used to control access to the blasting area; and
- 5) Type and patterns of audible warning and all-clear signals to be used before and after blasting.

**15. Hours of Operation.**

The following shall apply to specific applications of the operation.

Blasting	9 am - 4 pm	Monday-Friday
Drilling	8 am - 5 pm	Monday-Friday
Crushing & Processing Industrial Zone only	6 am - 7 pm	Monday-Friday
Loading & Trucking Industrial Zone	6 am - 7 pm	Monday-Saturday
Commercial and Rural Undeveloped Zones	7 am - 6 pm	Monday-Friday

- a. No operations are allowed at night, on Sunday or on the following holidays: Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas.
- b. In the case of emergency requests for sand or gravel from public safety officials, the above hours may be waived.
- c. The Planning Board may impose more restrictive operating hours at its discretion if warranted by site conditions, or if the operation unreasonably interferes with existing adjacent land uses.

**16. Fencing and Security.** Fencing around dangerous excavations, pits, and pond areas shall be required at the Planning Board’s discretion, to maintain public safety. Access to the mineral extraction operation shall be strictly controlled with locking gates at the entrance of access roads. When the pit is not being operated, all vehicular entrances shall be made impassable.

**17. Signs and Lighting.** Signs and lighting must comply with the standards of the Winthrop Zoning Ordinance and other applicable town ordinances. Lighting on the premises shall be shielded in such a manner as to prevent glare from extending beyond the lot lines.

**18. Preservation of Natural and Historic Features.** The scenic, historic or environmentally sensitive areas or any areas identified in the Comprehensive Plan or by the Maine Natural Areas Program as rare and irreplaceable areas shall be preserved.

**19. Property Values.**

Adequate provision has been made to prevent any undue adverse effect upon the property values of adjacent or nearby properties.

**20. Financial Capacity, Technical Ability and Performance Record.**

The performance record to be reviewed must include any prior violation, suspension, or revocation of an approval issued under this ordinance, or similar approval or permit issued by any other agency of government, and any other environmental enforcement history. Any condition of approval related to an unsatisfactory performance record must be specifically intended to mitigate performance concerns.

**ARTICLE VI - PERFORMANCE GUARANTEES**

**Sect. 1 Types and Contents of Guarantees**

Accompanying application for Final Plan of new or expansion of existing MEOs, one of the following performance guarantees must be submitted for an amount adequate to cover the total cost of all required reclamation. It should contain the reclamation schedule, with date after which the approved operator/owner will be in default, with estimates for each plan of reclamation, including inspection costs. The amount shall be determined by the Town Council after consultation with the Planning Board, Road Commissioner, Town Attorney, and/or other appropriate consultants.

**A. Escrow Account**

A certified check, savings account, or CD, for which the municipality must be named as sole owner, and who may withdraw funds only when the reclamation does not follow the agreed-upon plan. In addition, the principal and any earned interest shall be returned to the operator when the reclamation is completed, unless the municipality has found it necessary to draw on the account. In the latter case, the residual from the account, if any, and its earned interest, will be returned to the developer proportionately.

**B. Performance Bond**

A bond, payable to the Town, issued by a surety company approved by the Town Council, with details of its condition, and with methods of release for the specific project clearly delineated.

**C. Letter of Credit**

A letter of credit from a financial institution approved by the Town Council. This credit must be irrevocable, and be sufficient to handle reclamation of the specific project, and from which the Town may draw if reclamation does not follow the agreed-upon plan.

**Sect. 2 Phased Guarantees**

The Board may approve Phased Performance Guarantees when an MEO is approved in separate distinct phases.

**Sect. 3 Release of Guarantees**

Prior to release of any part of the Performance Guarantee, the Town Council shall determine, after consultation with a certified engineer or other consultant(s), that the reclamation meets the requirements of that portion of the project requested.

**Sect. 4 Default**

If, upon inspection by the CEO, or his/her designee, it is determined that the reclamation has not followed the previously approved plan, he/she shall so report to the Town Council, Planning



Board, and approved operator/owner. The approved operator/owner shall have thirty (30) days, unless otherwise notified, to remedy any deficiencies.

## **ARTICLE VII - MISCELLANEOUS**

### **Sect. 1 Costs**

The applicant shall be required to bear full costs of all inspection, consultants, and all enforcement.

### **Sect. 2 Professional Review**

#### **A. Additional Studies**

The Planning Board may require the applicant to undertake any additional studies which it deems reasonable and necessary to ensure that the requirements of the Ordinance are met. The cost of all such studies shall be borne by the applicant.

#### **B. Independent Technical Review**

The Planning Board may require that an independent consultant(s) review one (1) or more submissions of an application. The independent consultant(s) shall report to the Planning Board as to the project's compliance or noncompliance with the applicable provisions of this Ordinance and recommend, if appropriate, those actions which will result in compliance. Such consultants shall be fully qualified to provide the required information, and may include but are not limited to:

1. An Attorney;
2. A Community Planner;
3. A Registered Professional Engineer;
4. A Registered Architect;
5. A Registered Landscape Architect;
6. A Registered Geologist;
7. A Licensed Soil Scientist;
8. A Registered Land Surveyor;
9. A Certified General Real Property Appraiser; or
10. Any other Registered/Licensed Professional or independent Expert Witness deemed fully qualified and mutually acceptable to the Town and the applicant. The consultant(s) selected shall estimate the cost of such review and the applicant shall deposit with the Town the full estimated cost in accordance with Article IV, Sect. 5, A.1. Technical Review Fee.

### **Sect. 3 Amendment after Approval**

No modifications shall be made in an approved Final Plan unless they have been resubmitted to and approved by the Planning Board. The intensity of the review will be determined by the Board, and depends upon the complexity of the proposed alteration.

### **Sect. 4 Enforcement**

A. Enforcement procedures and legal action will be in conformity with those of the Winthrop Winthrop Zoning Ordinance, Sections \_\_\_\_\_.

B. If, at any time, it is ascertained that a violation of this Ordinance constitutes a danger to the health, safety, or welfare of any person, property or environment of the Town of Winthrop, the town may initiate immediate proceedings to abate or correct such violation.

**Sect. 5 Right of Entry on to Land**

The CEO shall have the right of entry onto any mineral extraction activity site at reasonable times and after reasonable notice. If the operator, or its employee or agent, interferes with an inspection by the CEO, it shall be a violation of the Ordinance and the CEO may seek an administrative search warrant pursuant to court rule 80E, and the operator shall pay the town a civil penalty in an amount determined by the Town Council plus any legal fees incurred in obtaining that warrant.

**Sect. 6 Penalties**

Any person, firm, corporation, or other entity being the owner, or having control or responsibility for any MEO, who violates the terms or conditions of any MEO approval, approved by the Planning Board, or who proceeds without approval, shall be deemed a nuisance, and shall be subject to a civil penalty, expert witness fees, costs of court, and legal fees due and payable to the Town of Winthrop, in an amount determined by the court in accordance with the penalty provisions of 30-A M.R.S.A. Section 4452.

**Sect. 7 Appeals and Variances**

- A. Administrative Appeals and Variances  
Variances from the requirements of this Mineral Extraction Ordinance may only be granted by the Winthrop Board of Appeals. All administrative appeals and variances shall follow the procedure outlined in section \_\_\_\_\_ of the Zoning Ordinance.
- B. 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 Kennebec County, within 45 days of a written decision in accordance with Maine State Law.

**ARTICLE VIII - SEVERABILITY AND CONFLICT**

**Sect. 1 Severability**

Should any section of this Ordinance be declared, by court of competent jurisdiction, to be invalid for any reason, such decision shall not invalidate any other section or provision of this Ordinance.

**Sect. 2 Conflict with other Ordinances**

Whenever the requirements of this Ordinance are in conflict with the requirements of any other lawfully adopted rule, regulation or ordinance, that imposing the most restrictive or higher standard shall govern.

**ARTICLE IX - AMENDMENT OF THIS ORDINANCE**

**Sect. 1 Initiation of Amendment**

A proposal to amend this Ordinance may be initiated by:

- A. The Planning Board, by majority vote;
- B. The Town Council, through a request to the Planning Board; or
- C. The public, through a written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10. When an amendment to this Ordinance is proposed by other than the municipal officers or Planning Board, a fee as the same may be established from time to time by the Town Council after notice and hearing, shall accompany the proposal to cover the cost of review, hearings, and advertisements. This fee is non-refundable.

## **Sect. 2 Process of Adoption**

The process to be followed in adopting an amendment to this Ordinance is as follows:

- A. Proposed amendments must first be submitted to the Planning Board for consideration;
- B. The Planning Board shall, within thirty (30) days of receiving a proposed amendment, set a date to hold a public hearing on the proposed amendment;
- C. Notice of the public hearing shall be given as required by State Law;
- D. The Planning Board shall make its official report at a Town Council meeting occurring within sixty (60) days after the public hearing.
- E. If the Planning Board votes and reports to the Town Council that the amendment ought not to pass, because in the Board's opinion (i) the amendment is contrary to the Town's Comprehensive Plan, or (ii) it will not act to protect the public health, safety, and general welfare of the citizens of Winthrop, its environment, or its wildlife, enactment of that proposed amendment shall require a two-thirds (2/3) vote of the voters present at the town meeting; and
- F. Enactment of a proposed amendment having the approval of the Planning Board shall require only a majority of the voters to enact that amendment.

## **ARTICLE X - OTHER PROVISIONS**

### **Sect. 1 Public Access to Information**

Except as made confidential by law, the Board will make all documents and records available to the public in accordance with the Maine Freedom of Access Law. (Title 1 M.R.S.A. Section 401 et. seq.)

### **Sect. 2 Adjoining Mineral Extraction Activity Under Common Scheme of Development**

Adjoining mineral extraction activity under common scheme of development separated by less than 500 feet of unaffected land shall be required to fulfill all the requirements as established in this Ordinance for the total size of the extraction area, including the adjoining site.

## **ARTICLE XI - DEFINITIONS**

**Active Extraction 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 operation.

**Affected Land:** The land area from which the overburden will be or has been removed; 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.

**Ambient Sound:** The existing sounds at a given location coming from all sources, both near and far.

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

**Average Daily Traffic (ADT):** The average number of vehicles per day that enter and exit the 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 a rock or other consolidated natural formation.

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

- A. Pond or Lake - any inland impoundment, natural or man-made, which collects and stores surface water.
- B. 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 an excavation for rock or clay.

**Environmentally Sensitive Areas:** Wetlands, swamps, wild life 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.

**Expansion of Existing Operation:** Excavation operations that exceed the approved area or footprint. For operations less than five (5) acres in surface area as of the effective date of this Ordinance, expansion is defined as an additional 50% or more in surface area. For operations larger than five (5) acres, expansion is defined as an increase of 50% or more surface area or four (4) additional acres, whichever is less.

**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.

**Level of Service:** (LOS) is a quantitative or qualitative measure of traffic flow for roadways and intersections. The levels range in six grades: A, B, C, D, E and F. LOS "A" indicates free flow with low traffic density and minimal delays. LOS "F" indicates traffic volumes that exceed capacity with very long delays.

**Mineral Extraction Operation (MEO):** Any excavation or removal, handling or storage of sand, gravel, borrow, rock, clay, minerals, or topsoil including but 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, handling, removal, processing, hauling 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.

**Natural Buffer Strip:** An undisturbed area or belt of land that is covered with trees or other vegetation.

**Normal High-Water Line:** That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers and great ponds, the normal high-water line is the upland edge of the wetland, and not the edge of the open water.

**Performance Record:** The performance record to be reviewed must include any prior violation,

suspension, or revocation of an approval issued under this ordinance, or similar approval or permit issued by any other agency of government, and any other environmental enforcement history.

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

**Private Water Supply:** A surface water supply, a dug well, a spring or a hole drilled, driven or bored into the earth that is used to extract drinking water for human consumption and that is not part of a public water supply.

**Processing:** Any washing, screening, crushing, mixing of sand, gravel, stone, rock, clay, or topsoil.

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

**Protected Locations:** Any location, accessible by foot, on a parcel of land containing a residence or planned residence or approved residential subdivision, house of worship, academic school, college, library, duly licensed hospital, or nursing home near the development site at the time an application is submitted. For complete definition see: MDEP Chapter 375.10.G.16.

Note: Complete definition spells out what constitutes a "planned" residence: When the owner of the parcel of land has received all applicable building and land use permits and the time under such permits has not expired, same for subdivisions.

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

**Public Water Supply:** Any publicly or privately-owned system of pipes or other constructed conveyances, structures and facilities through which water is obtained for or sold, furnished or distributed to the public for human consumption, if such system has at least 15 service connections or serves at least 25 individuals daily at least 60 days out of the year or bottles water for sale.

**Quarry:** A place where rock is extracted.

**Reclamation:** The restoration or continued maintenance of 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 creation of lakes or ponds, the planting of forests, the seeding of grasses, legumes, or crops for harvest, or the enhancement of wildlife and aquatic resources.

**Reclamation Plan:** A plan, as defined in Article V, Section 2.13., which depicts how the project will be restored, or maintained, after excavation is complete. Such a plan usually includes final grading and revegetation 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.

**Seasonal High-Water Table:** That part of the year when the water table is at its highest level.

**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.

**Significant Wildlife Habitat:** Defined under Maine's Natural Resources Protection Act (NRPA), which is administered by the Maine Department of Environmental Protection (DEP).

**Structure:** Anything built for the support, shelter or enclosure of persons, animals, goods, or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located, such as decks, raised walkways, handicapped access ramps, and satellite dishes.

**Surface Water:** 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.

**Technical Ability:** The ability to design, construct, operate, and maintain the proposed mineral extraction operation in a manner consistent with the Mineral Extraction Ordinance.

**Waiver:** A relaxation of the terms of the Ordinance where such a waiver would not be contrary to the public interest, where owing to existing conditions or operations, a literal enforcement of this Ordinance would result in an unnecessary or undue hardship, and where the intent of the Ordinance or item being waived can be met in some other appropriate manner, as determined by the Planning Board.

**Water Supply:** See Private Water Supply and Public Water Supply.

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

## ARTICLE XII - FINAL PLAN APPROVAL

### Winthrop Planning Board - Final Plan Approval

The Winthrop Planning Board has reviewed and approved this MEO (*or MEO expansion*) under the Town of Winthrop's Mineral Extraction Ordinance including the performance standards approved on \_\_\_\_\_ and the performance guarantee for reclamation approved by the Winthrop Town Council on.

(If conditions add: Following are conditions of approval.)

Dated: \_\_\_\_\_

Adjust wording to apply to approval, i.e., whether an expansion; if there are conditions, list them before signature lines (Following are conditions of approval:).

Note: 1 polyester film (mylar) and 4 paper copies of the final plan should be presented for signing. Also one (1) digital copy in pdf format for the Town.

MEO, Article IV, Sect. 5 C.2: "...the Board shall sign all five (5) copies of the final site plan. The site plan copies shall be distributed to: a) the applicant, b) the Planning Board, the tax assessor, d) the CEO, and e) the Town (mylar for the vault).

**NOTE:** The following fee schedule is established by the Winthrop Town Council, after notice and hearing.

**Mineral Extraction Ordinance Current Fee Schedule, effective \_\_\_\_\_**

<b>Mineral Extraction Fees</b>		
Renewal Fees	\$100	Less than 1 acre
	\$200	1-5 acres
	\$300	Over 5-30 acres
	\$600	Over 30 acres
Application Fees	\$100	Less than 1 acre
	\$250	1-5 acres
	\$500	Over 5-30 Acres
	\$1000	Over 30 acres
Expansion Fees	\$300	Under 5 acres
	\$500	Over 5 acres
Technical Review Fee	\$1000	<i>Effective</i>

Also, from Article IV, Sect. 5 Application Procedures:

At the expense of the applicant the Planning Board shall:

1. Advertise a Public Hearing seven (7) days in advance in a local newspaper, and post notices in appropriate places.
2. Notify by mail at least ten (10) days in advance of Public Hearing, all owners of property, listed on town tax maps, within a minimum of 1,000 feet of the boundary of the property for which application is being made at the discretion of the Planning Board.