



## **Town of New Gloucester**

**Mineral Exploration, Excavation, and Removal of Lands Ordinance**

**March 1989**

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**[NOTE: Section 5.1.29 of the Zoning Ordinance of the Town of New Gloucester, Maine, as adopted March 1989 relating to excavation and mining activities is repealed and replaced by this ordinance. This ordinance shall also repeal section 4.4.8.G.2 of the said ordinance prohibiting extractive industries in the Groundwater Protection Overlay District.]**

## **Mineral Exploration, Excavation, and Removal of Lands Ordinance**

### **1. Purpose**

The performance standards contained in this section are minimum standards which are intended to regulate, in an environmentally sensitive manner, the removal, processing, and storage of topsoil, loam, rock, sand, gravel, or other similar materials and the subsequent creation of sand, fill, or gravel pits. These standards are intended to protect public health, safety and welfare by:

- a. protecting groundwater and surface water quality,
- b. preventing lowering of the groundwater table,
- c. controlling erosion and sedimentation,
- d. requiring rehabilitation of pit expansions and new pit operations and,
- e. by limiting access to sites by unauthorized persons.

These standards are not intended to apply to agricultural operations.

Rehabilitation requirements distinguish between two types of operations:

- a. Existing excavated areas whose boundaries are not expanded are not subject to rehabilitation requirements, unless a reclamation plan was required as part of the issuance of a conditional use permit by the New Gloucester Planning Board, or as part of DEP approval under the Site Location of Development law.
- b. Expansions of existing excavated areas and new pit operations shall be subject to permitting requirements and rehabilitation requirements established in this section. For pit operations existing on the effective date of this Ordinance, an expansion shall not be deemed to have occurred unless the excavated surface area in any year shall exceed two (2) acres or if the cumulative unreclaimed surface area excavated of such pit operation shall exceed fifteen (15) acres.

### **2. Definitions**

The definitions for this Ordinance are contained in the Zoning Ordinance.

### **3. Permit Requirements and Fees for Expansion of Existing Pit Operations and New Pit Operations**

- 3.1 After initial permit approval by the Planning Board, annual applications for permit renewal shall be submitted to the Code Enforcement Officer who shall inspect the operation. Authority to renew the permit is delegated to the CEO, provided that all applicable regulations and conditions are being met. Every fifth year, renewal of the permit must be approved by the Planning Board.
- 3.2 Fees for initial applications for new pit operations, for expansions of existing pit operations, and annual renewal fees shall be set by the Board of Selectmen. Fees shall be paid on or before March 1<sup>st</sup> and each March 1<sup>st</sup> thereafter, as long as the operation continues. Renewal applications not filed on time will be subject to an additional \$100 penalty charge.
- 3.3 All renewal permits shall take effect on July 1<sup>st</sup> of each year.

3.4 Unless renewed, all permits issued hereunder shall expire on June 30<sup>th</sup> of each year.

3.5 A change of operator requires an application for a new permit from the Planning Board.

3.6 Any operation shall be deemed closed 90 days after its permit expires, or when the operation itself has ceased for one year.

#### 4. Exemptions

- a. Exploratory excavation whose sole purpose is to determine the nature or extent of mineral resources by hand sampling, test boring or other methods which create minimal disturbance, or excavation to determine the depth to groundwater for the purposes of meeting the submission requirements of this ordinance;
- b. The removal of less than 10 cubic yards of material (except topsoil) from or onto any lot in any one year, provided such removal does not disturb more than one acre of land. The removal of any amount of topsoil or loam from a site is not an exempt activity unless it is undertaken as part of an approved construction project, is part of normal farm operations or the topsoil or loam is being moved to a contiguous site having the same ownership;
- c. The removal, filling, or storage of material (excluding opening of borrow pits) incidental to construction, alteration or repair of a building or in the grading and landscaping incidental thereto;
- d. The removal, filling or stage of material (excluding opening of borrow pits) incidental to construction, alteration, maintenance or repair of a public or private way;
- e. The construction of farm and fire ponds.
- f. Drilling of a well or excavation for a dug well.

#### 5. Permit Application Requirements

When applying for a permit for a pit expansion, or for a new pit operation, the following information shall be submitted to the CEO who shall make a determination regarding completeness of the application.

- a. Name and address of current owner of the existing parcel.
- b. Name and address of current operator.
- c. Copy of deed and lease agreement if operator is not the owner.
- d. Site plan, prepared by a registered professional engineer and/or geologist, drawn to a scale appropriate for the size of the tract, preferably of not more than 1 inch to 100 feet, showing the location and boundaries of the existing parcel. The site plan shall also include the following information:
  - 1) Boundaries of proposed or existing excavated areas, including identification of the extent of the resource in number of acres;
  - 2) Present use of entire parcel including existing excavated areas;
  - 3) Names and addresses of owner of adjacent properties, as well as present uses;
  - 4) Type and location of all existing and proposed surface waterbodies within the site or within 150 feet of the site, including drainageways;
  - 5) Location of all proposed access roads, temporary and permanent structures and parking areas;
  - 6) Depth of proposed excavation;
  - 7) Current zoning classifications and district boundaries;

- 8) Existing easements, right-of-ways, or other encumbrances on the property;
  - 9) Location of existing wells;
  - 10) Contours of the land within and extending beyond the parcel for 200 feet at 5 foot contour intervals, at intervals acceptable for a DEP permit application, or in pits under five (5) acres, at intervals determined by the Planning Board;
  - 11) Proposed hazardous materials storage areas; and
  - 12) Depth to groundwater at representative points throughout the site as determined to be the historic mean groundwater level by a certified soil scientist.
- e. Plan for controlling access to site.
  - f. Plan for screening the excavation from surrounding properties with adequate all-season buffering, including existing and proposed vegetation, fences, earthen berms, and similar materials.
  - g. Estimated longevity of operation. Any operation which is proposed to operate for a period of time in excess of five years shall be designed to operate in phases, if possible.
  - h. Hours of operation
  - i. Sedimentation and erosion control plan
  - j. Types and numbers of equipment to be used on the site
  - k. Effect on existing and foreseeable traffic patterns in the Town
  - l. A final Rehabilitation Plan including seeding, planting, final grading, shaping and surface stabilization plans showing contours at five foot intervals as proposed following completion of the operation, with such plans endorsed by the Cumberland County Soil and Water Conservation District. The plan shall provide for drainage and erosion and sedimentation control. The proposed use of the property at completion of the project shall be described. A time schedule for rehabilitation shall be included.
  - m. Required state and/or federal permits, including DEP permit, if applicable.
  - n. Proof of a surety bond, or its equivalent, covering the cost of the rehabilitation plan. Bond amounts may be determined by the time schedule for excavation and rehabilitation.

## 6. Plan Review

- a. Planning Board shall review each application for a permit according to the procedures and provisions of this section and Article 7 of this ordinance [Zoning Ordinance]. A public hearing shall be held within 30 days of the receipt of a completed application at the time of initial application.
- b. The Planning Board may impose such conditions as are necessary to safeguard the health, safety and welfare of the community. The Plan review shall take into consideration at least the following:
  - 1) Fencing, landscaped buffer strips, and other safety measures such as plans for controlling access to the site;
  - 2) Signs and lighting;
  - 3) Adequate parking, loading and unloading areas;
  - 4) Safe entrances and exits;
  - 5) Total estimated life of the pit;

- 6) Daily hours of operation;
- 7) Methods of operation;
- 8) Area and depth of site;
- 9) Provision for temporary or permanent drainage;
- 10) Disposition of stumps, brush and boulders;
- 11) Type and location of temporary and permanent structures;
- 12) Storage of materials (e.g., petroleum products, salt, hazardous materials, rubbish, creosote timbers) on the property;
- 13) Routes for transporting materials;
- 14) Provisions for temporary and permanent control of erosion and sedimentation;
- 15) Proximity of water bodies and wetlands;
- 16) General effect on the aesthetic, scenic or natural beauty of the immediate area;
- 17) Compatibility with surrounding uses and neighbors;
- 18) Setbacks;
- 19) Rehabilitation proposals; and
- 20) Conformance with site plan review standards (Article 7 of the Zoning Ordinance) and other local ordinances and regulations.

7. Excavation Performance Standards

- a. A buffer strip of 25 feet in which natural vegetation is retained shall be required at the property boundaries;
- b. Below grade excavation, except for drainageways, shall be at least 200 feet from any residence;
- c. Excavation shall be at least 150 feet from any public road unless provisions are made for the construction of the road at a different level;
- d. No excavation shall be permitted within 100 feet of any waterbody, except that drainageways may be allowed up to 50 feet from a waterbody;
- e. Below grade excavation, except for drainage, shall be at least 150 feet from all lot lines;
- f. Excavation may be no less than 25 feet from above said lot lines with written permission of the abuttor. In the case of two abutting, working gravel pits, the buffer strip may be eliminated upon the recording of a covenant by both property owners;
- g. Excavation shall not extend to within two and one-half (2 1/2) feet of the water table. No further excavation which will increase the amount of existing standing water shall occur;
- h. If available on site, sufficient topsoil shall be retained to comply with the approved rehabilitation plan;

- i. All entrances or exits from the project site shall be located to provide a sight distance that meets accepted minimum safety standards;
- j. No access roads shall be located closer than 50 feet to an adjacent property line except that where frontage is less than 100 feet, the access road shall be located an equal distance from both abutting properties;
- k. Access roads shall be maintained to minimize dust by the use of accepted treatment methods. Such access ways shall be paved for at least 3 truck lengths from the public roadway;
- l. All disturbed areas of the project shall be stabilized according to the Sediment and Erosion Controls Plan to prevent erosion;
- m. Interim erosion and sedimentation control facilities shall be maintained until stabilization is completed;
- n. Upon completion of stabilization, all unnecessary or unusable erosion control facilities shall be removed and the areas graded and stabilized as per the Reclamation Plan;
- o. Hours of operation shall be limited to 7 a.m. to 8 p.m. Wider range of operating hours may be permitted by the Planning Board upon a finding that the operation will not negatively impact neighboring residential properties. Burden of proof shall lay with the applicant in providing sufficient evidence of negative impact to the Board such as, but not limited to, noise and vibration studies and traffic impact studies;
- p. Loaded vehicles shall be suitably covered to prevent dust and contents from spilling or blowing from the load, and all trucking routes and methods shall be subject to approval by the Planning Board to keep trucking off residential streets whenever possible. Vehicles must abide by weight load limits on streets and ways. Liability for violations deemed a nuisance shall be assigned to those truck operators and owners responsible and carry fines as set forth in Section 6.2.3 of this Ordinance [Zoning Ordinance];
- q. Spillage of extracted materials on public streets shall be removed by the licensee or his/her agent and /or the trucking operations(s) having any liability for such spillage;
- r. All vehicles when parked, loading, or unloading shall be located outside the public right-of-way;
- s. Lighting on the premises shall be shielded in such a manner as to prevent glare from extending beyond the lot lines;
- t. Signs shall conform to the Zoning Ordinance standards;
- u. Noise levels shall conform to the standard for the applicable zoning district as contained in Section 5 [Zoning Ordinance];
- v. Emission of dust, dirt, fly ash, or fumes at any point beyond the lot lines shall be prohibited;
- w. No highly flammable or explosive liquids, solids, or gases shall be located in bulk above ground, unless they are located in anchored tanks at least 75 feet from any lot line, town way, or interior roadway and unless a secondary containment system is available for control of spills and leaks. The use of underground tanks is strictly prohibited; and
- x. Applicant will preserve any areas of artifacts of possible archeological significance and notify the State Historical Preservation Commission for their investigation.

## 8. Rehabilitation Plans

Any operation shall be deemed closed 90 days after its permit expires or the operations cease for one year. The site shall then be rehabilitated in accordance with this section. The rehabilitation plan shall be completed within one year of closing. Rehabilitation of continuing operation shall be conducted in phases. The following minimum requirements shall be met:

- a. Specific plans shall be established to avoid hazards from excessive slopes. Remaining embankments shall be graded at a slope not steeper than one foot vertical to two feet horizontal;
- b. Seeding, planting and loaming, as approved in the Rehabilitation Plan, shall be accomplished so that exposed areas are stabilized and erosion is minimized. These areas shall be guaranteed for 18 months during which time the surety bond shall remain in full force and effect;
- c. Trees may be required for a visual and acoustical buffer between the property and adjacent properties if a natural buffer does not exist;
- d. Strippings shall be redistributed over the pit area or removed from the parcel. Tree stumps and grubblings from the site may be used to stabilize the banks, provided that the practice also complies with DEP regulations regarding stump disposal. The areas of pits with solid or broken ledge rock shall be trimmed of loose rock and the bottom of the pit graded to be compatible with the surroundings;
- e. The pit shall be contoured so that sediment is not directed into streams or drainageways;
- f. Grading and restoration shall be completed in such a manner that will ensure natural drainage, prevent standing water and minimize erosion and sedimentation. Storm drainage and water courses shall leave the location at the original natural drainage points and in a manner such that the amount of drainage at any point is not significantly increased;
- g. A yearly report shall be filed with the Planning Board indicating the site conditions until the planting or seeding is completed;
- h. The extent and type of fill shall be appropriate to the use intended. For example, if the reclaimed pit site is to be used as a building site, special measures will have to be taken to ensure support of the proposed structure. The applicant shall specify the type and amount of fill to be used;
- i. A planting plan, which shall meet the requirements established by the "Environmental Quality Handbook", as revised, shall be submitted as part of the rehabilitation plan.

## 9. Surety Bond Requirements

A surety bond issued by a commercial surety company authorized to do business within the State of Maine, or an interest bearing trust account made payable to the Town of New Gloucester, or an irrevocable letter of credit, cash, or a certified check payable to the Town of New Gloucester shall be posted by the owners or operators in an amount recommended by the Town Manager or his/her authorized agent, with the advice of the Cumberland County Soil and Water Conservations District, as sufficient to guarantee conformity with the provisions of the permit approval for the rehabilitation of expansions of existing pits and new pit operations.