

Draft: 12/13/23 – NOTE: This is a complete draft with initial suggestions by the Town attorney and preliminary review by the board. Items in colored type have been suggested but not yet discussed by the board. The board will continue discussion of this draft at the Dec. 19, 2023 meeting. The board welcomes written comments at any time. There will be a public meeting with opportunity for public comment before any adoption of an ordinance. Once a final draft is created, the ordinance will be presented to the voters at either a town meeting or in a referendum vote.

ALNA MINING AND BLASTING ORDINANCE

Effective March __, 2024

SECTION 1: Purpose

The purpose of this Alna Mining and Blasting Ordinance (this “Ordinance”) is to adopt and implement blasting, removal and reclamation standards and municipal procedures for regulating blasting operations, bedrock quarrying, and mining operations in the Town of Alna (the “Town”) in order to protect public health, safety and general welfare; to limit the type, size and manner of mining operations and the volume of material removed; and to minimize the adverse impacts of extraction to the Town, abutting property owners, citizens and residents of the Town, and wildlife and natural resources.

This Ordinance is declared a necessary public purpose:

- A. To preserve public health, safety, convenience and general welfare, and to prevent public nuisances;
- B. To protect property values and ensure a fiscal base for public services;
- C. To ensure efficient public services;
- D. To prevent and control environmental pollution;
- E. To protect historic resources;
- F. To protect plant and animal species and wildlife habitat;
- G. To protect the quantity and quality of the Town’s groundwater and the waters in the Sheepscot River and its tributaries; and
- H. To preserve the natural beauty of the Town.

SECTION 2: Authority and Administration; Review Fee; Effective Date; Date of Applicability

- A. **Authority.** This Ordinance is adopted pursuant to and consistent with Article VIII, Part Second, of the Maine Constitution; 30-A M.R.S.A § 3001 *et seq.*; 38 M.R.S.A. § 490-NN(3); and any other enabling statutes. This Ordinance constitutes and may be known and cited as the “Alna Mining and Blasting Ordinance.”
- B. **Administration.** The Planning Board (the “Board”) and the Code Enforcement Officer (“CEO”) of the Town are responsible for administering this Ordinance. The Board has the duty and authority to review and approve, conditionally approve, or deny any application for blasting, bedrock quarrying, mining operations or expansion of any existing mining operations.

C. Review Fee. If the Board determines that an application filed pursuant to this Ordinance, by virtue of its size, uniqueness, complexity, or other factors, is likely to require a disproportionate share of Town resources to review, the Board may assess on the applicant a review fee in addition to any application fees established by the municipal officers. The Board may make such determination at any time during its review of the application. The review fee may not exceed the actual costs associated with reviewing the application, including but not limited to evaluating expert opinions, advice, or testimony during the course of reviewing an application, or evaluating the adequacy of the reclamation plan and financial assurance. The review fee may include the actual fees and costs to the Town of (i) legal notices, mailings, postage, or document reproductions; (ii) administering public hearings and meetings; (iii) attorneys' fees; (iv) third-party consulting fees, including for professional reviews of the application and the record by engineers, surveyors, planners, geologists, hydrogeologists, or other experts; and (v) consulting fees assessed by any state or federal reviewing agencies. Prior to assessing a review fee, the Board will use due diligence to obtain and utilize available free services from governmental or non-profit sources. Should the Board be unable to obtain or timely utilize such free services, or determine that different or supplemental services are necessary or advisable, the Board may assess a review fee.

The Board shall notify the applicant of the estimated review fee, as well as the name, contact information, qualifications, and purpose of any third-party consultants or experts retained by the Board. The applicant shall pay the estimated review fee to the Town within 14 days of receipt of the notification. If the estimated review fee is depleted prior to completion of the Board's review, the Board may provide the applicant with a revised estimate of the review fee from time to time, and the applicant shall pay the revised estimate, less any prior estimate already paid, to the Town within 14 days of receipt of the notification. The Town shall deposit the review fee into an escrow account and may draw on the account to pay for the actual costs associated with the application review. After the Board renders its final decision, the Town shall provide the applicant with an accounting of the actual costs of reviewing the application and shall return any unspent portion of the review fee to the applicant within 30 days.

The municipal officers, in their sole discretion, may refund, reduce, or waive any review fee assessed under this section when the person requesting the refund, reduction, or waiver demonstrates to the satisfaction of the municipal officers that an extreme hardship or injustice would result from payment of the fee.

- D. Effective Date.** The effective date of this Ordinance or any amendments thereto is the date of its adoption by the legislative body of the Town.
- E. Date of Applicability.** Notwithstanding 1 M.R.S.A. § 302, or any other law to the contrary, and regardless of the effective date, this Ordinance applies retroactively to all applications and proceedings that were or are pending before the Board on or any time after ***.

SECTION 3: Applicability

- A. Permit Required.** This Ordinance shall apply to all blasting operations, bedrock quarrying, mining operations, and any expansions of bedrock quarrying or mining operations, except as exempted in subsection C below. No blasting operation, bedrock quarrying, or mining operation may commence

Commented [AD1]: Please include this paragraph if the moratorium expires before voter adoption of the ordinance. The date of applicability should match the date the moratorium expires.

until an application pursuant to this Ordinance has been submitted to and reviewed and approved by the Board.¹

B. Prohibited Activities. Except as exempted in subsection C below, the following activities are prohibited by this Ordinance:

1. Industrial metallic mineral mining.
2. Bedrock quarrying occurring on or after January 1, 2029.
3. Concrete mix or asphalt batch plants.
4. Any activity or operation that does not comply with the requirements of this Ordinance.

C. Exempt Activities. The following activities are exempt from the requirements of this Ordinance:

1. Mineral exploration.
2. Extraction of mining materials or consolidated rock (bedrock or the like), and any associated limited blasting, on a specific site for the purpose of facilitating a permitted use other than bedrock quarrying or mining operations on that site, including without limitation: the construction of a road, driveway, or residential dwelling.
3. The mixing of concrete products on the site of a bona fide residential or commercial construction project.
4. The mixing, washing, and screening of soil, gravel, or crushed rock by a landscaper on a customer's property.
5. Mining operations with a disturbed area of less than ½ acre and where less than 24 cubic yards of mining materials are extracted per year for the exclusive, non-commercial use of the property owner on the property

D. Nonconforming Bedrock Quarrying, Mining Operations. A legally existing, nonconforming bedrock quarrying or mining operation may continue to operate but only in strict compliance with the following requirements:

1. Actual and Substantial Use. A bedrock quarrying or mining operation is a legally existing, nonconforming use if (i) the operation existed lawfully prior to the enactment of this Ordinance; (ii) the preexisting operation was actual and substantial, as demonstrated by substantial investment in the operation or substantial financial loss if the operation is discontinued; and (iii) the nonconforming operation reflects the original nature and purpose of the preexisting operation, is not different in quality or character as well as in degree of the preexisting operation, and is not different in kind in its effect on the neighborhood where it is located.
2. Expansion of Nonconforming Use. The expansion of a legally existing, nonconforming bedrock quarrying or mining operation is prohibited unless the operation, together with any proposed expansion of the operation, complies with the requirements of this Ordinance. No such expanded operation may commence until an application pursuant to this Ordinance has been submitted to and reviewed and approved by the Board.

¹ Proposed bedrock quarrying and mining operations may also need permits or approvals pursuant to the Town's Subdivision and Site Review Ordinance, Shoreland Zoning Ordinance, Floodplain Ordinance, and Road Ordinance.

Commented [AD2]: I recommend that the Board also propose amendments to the Site Plan Review Ordinance to eliminate reference to "mining" and clarify that all Board reviews of mining operations must comply with this Ordinance. This can be done within the same warrant article.

Commented [AD3]: This is a placeholder "sunset" provision for bedrock quarrying in the event that the Town intends to ban such activities. Absent this provision, quarrying may only occur with a permit from the Board, subject to the standards in Section 7 and 8 (for any associated blasting).

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3. Resumption Prohibited. If a nonconforming bedrock quarry or mining operation is abandoned or discontinued for any reason for a period of 24 or more consecutive months, any resumed operation must comply with the requirements of this Ordinance in all respects. A nonconforming bedrock quarrying or mining operation may not be changed to another nonconforming operation.

E. Blasting Operations. Blasting operations lawfully in existence at the time of adoption of this Ordinance may continue pursuant to the previous applicable laws, rules, and permit approvals for a period of six months from the effective date of this Ordinance; thereafter, all blasting operations shall comply with the requirements of this Ordinance.

SECTION 4: Mining Operation Application Classifications

As a part of its initial review, the Board shall classify a mining operation application into one of the following classifications:

Class A. Minimal Impact Class: Mining operations with a disturbed area of less than ½ acre and where 24 or more but fewer than 300 cubic yards of mining materials are extracted per year for the exclusive, non-commercial use of the property owner.

Class B. Medium Impact Class: Mining operations with a disturbed area of ½ acre or more but fewer than 5 acres and where 24 or more cubic yards of mining materials are extracted per year for commercial use or for the exclusive, non-commercial use of the property owner.

Class C. Major Impact Class: Mining operations with a disturbed area of 5 acres or more but fewer than 50 acres and where 24 or more cubic yards of mining materials are extracted per year for commercial use or for the exclusive, non-commercial use of the property owner.

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SECTION 5: Application Submission Requirements

Any application for a permit required under this Ordinance must be submitted in writing to the Board and must be signed and dated by the applicant. Unless modified or waived by the Board, an application for a blasting operation (identified below as "BO"), bedrock quarrying (identified below as "Q"), or mining operation (identified below as "Class A, B, or C") shall contain, at minimum, the information set forth below (See Table 1). The Board may modify or waive any applicable submission requirement when the Board determines that such modification or waiver (1) is not necessary for the Board to evaluate the application against the standards in Section 7 or Section 8; (2) will not adversely affect the general health, safety, or welfare of the Town; and (3) is not contrary to the purposes of this Ordinance.

- A. Name, address, email address, and telephone number of the applicant, and the name, address and telephone number of the owner of the property, if different from the applicant. (BO, Q, Classes A, B, C)
- B. An application fee, as established by the municipal officers, and any review fee assessed by the Board pursuant to Section 2.C. (BO, Q, Classes A, B, C)
- C. Evidence that the applicant holds right, title or interest in the property, including a copy of the deed(s) of the property together 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. (BO, Q, Classes A, B, C)
- D. A site plan, drawn to scale, including at minimum:

1. The date the plan was prepared with the name, address, email address, and telephone number of the person or company that prepared it. (BO, Q, Classes A, B, C)
2. A scale of no more than 100 feet or less than 40 feet per inch. All dimensions must be marked in feet or decimals of a foot, and north arrow shown. (BO, Q, Classes A, B, C)
3. Contour lines showing elevations in relation to mean sea level as established by the most recent dated National Geodetic Vertical Datum (NGVD) at appropriate intervals to show the effect on the land of existing and proposed grades for areas proposed to be excavated or filled. Contour intervals shall be a maximum of 5 feet. (BO, Q, Classes B, C)
4. A current boundary survey of the property by a licensed surveyor showing lot lines of abutting lots within 1,000 feet as illustrated on the Town of Alna Tax Assessor's Maps and total acreage of the property, and the Town of Alna Tax Assessor's map and lot number(s) and names of all property owners within 1,000 feet of any line of the property, as determined by the Alna Tax Records. (BO, Q, Classes B, C)
5. Location of previously approved and proposed blasting operations and existing and proposed bedrock quarrying or mining operations on the property. (BO, Q, Classes A, B, C)
6. Approximate location of residences on properties within 1,000 feet of the property lines. (BO, Q, Classes A, B, C)
7. Location and identification of existing public and private roads, easements, and rights-of-way on or abutting the property and designation of any roads or rights-of-way which may be for seasonal use only. (BO, Q, Classes A, B, C)
8. Location of proposed access roads to the blasting operation, bedrock quarrying, or mining operation from public roadways. (BO, Q, Classes A, B, C)
9. Location of all applicable setbacks, buffers, and conservation areas, and protected natural resources. (BO, Q, Classes A, B, C)
10. Location and layout of proposed parking, loading, driving, and maneuvering areas. (BO, Q, Classes B, C)
11. Location of existing and proposed utilities and easements, such as sanitary sewage, water supply, and electricity on the property. (BO, Q, Classes A, B, C)
12. Location, intensity, type, size and direction of all outdoor lighting. (Q, Classes B, C)
13. Location, type and size of signs and any existing or proposed permanent outdoor fixtures such as fences, gates, utility poles, solar panels, berms, hedges, and tree lines. (Q, Classes B, C)
14. Location of existing natural drainage ways and proposed storm drainage facilities, including dimensions of culverts, pipes, etc. If any portion of the blasting operation, bedrock quarrying, or mining operation is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood zone shall be delineated on the plan. (BO, Q, Classes A, B, C)
15. Location of all existing wells on the affected property and:
 - a. within 1,000 feet of the property line, if the proposal contains any blasting operations or if the disturbed area of the bedrock quarrying or mining operation is 5 acres or more; or

b. within 500 feet of the property line if the disturbed area of the bedrock quarrying or mining operation is less than 5 acres.

(BO, Q, Classes A, B, C)

16. Location of proposed hazardous material storage areas including but not limited to fuel storage and handling, and wash down areas. (BO, Q, Classes A, B, C)

17. All places in the Town listed on the Maine Historic Preservation Commission's database or the National Register of Historic Places (BO, Q, Classes B, C)

E. Name, address, email address, and telephone number of the proposed manager of operations. (BO, Q, Classes B, C)

F. A traffic impact narrative and an estimate of the average daily traffic during periods of operation projected to be generated by the activity to show that the standards in Article 7 will be met. The applicant must also provide an estimate of the peak number of vehicle trips/day over the course of one year. (Q, Classes B, C)

G. A narrative description by a certified professional of the surface and groundwater impacts, including protection plans, storm water control plan, the identification of any significant mapped aquifers, and documentation of the seasonal high groundwater table. (BO, Q, Classes B, C)

H. Information and a map showing soils conditions on the site of the proposed blasting operation, bedrock quarrying, or mining operation. (BO, Q, Classes B, C)

I. A soil erosion and sediment control plan, prepared in accordance with the standards contained in the latest revision of the Maine Department of Environmental Protection's Erosion and Sediment Control Manuals. (BO, Q, Classes A, B, C)

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J. A reclamation plan showing the final grades and re-vegetation plan, and phasing of the plan if proposed. (Q, Class A, B, C)

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K. A narrative description of the impact on wildlife and habitats, and the identification of any federal or state listed rare, threatened, or endangered forms of animal or plant life, Deer Yards or other Significant Wildlife Habitat designated by the Maine Department of Inland Fisheries and Wildlife, or identified by the Maine Natural Areas Program or an on-site wildlife and habitat survey, including any proposed mitigation. (BO, Q, Classes A, B, C)

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L. A narrative description of the present use of the parcel and property within 500 feet of the proposed operation. (BO, Q, Classes A, B, C)

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M. Estimated longevity of the operation, including phasing. (Q, Classes A, B, C)

N. Proposed hours and days of operation. (BO, Q, Classes B, C)

O. Types and amounts of equipment to be used in the operation. (BO, Q, Classes A, B, C)

P. Proof of technical and financial capacity, including but not limited to: (i) a written statement identifying the consultants and contractors involved in designing and constructing the operation and the long-term operators or managers of the operation, and their respective expertise and experience with constructing, operating, and reclaiming comparable projects; (ii) a written statement from the lender or financing partner identifying the estimated project cost and the basis therefor, and confirming that the developer has funds to cover those costs; (iii) certificates of

insurance evidencing compliance with Section 7(C); and (iv) performance guarantees as specified in Section 12(A), payable to the Town, in an amount estimated by the Planning Board as sufficient to cover the cost of any proposed reclamation, erosion control, or other site improvements required by the Board. (BO, Q, Classes B, C)

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- Q. A Spill Prevention, Control & Containment (SPCC) Plan. (See Section 7(K)). (BO, Q, Classes B, C)
- R. Plan for screening the operation from view from adjoining property owners and any public roads. (BO, Q, Classes B, C)
- S. All submissions made to and permits or approvals received from any federal or state agencies concerning the property. (BO, Q, Classes B, C)
- T. A hydrogeologic study to determine the effects of the proposed activity on groundwater movement and quality within the general area, if required by the Planning Board. (BO, Q, Classes B, C)
- U. Any other information the Board may require, in its discretion, to evaluate compliance with the standards in Section 7 or Section 8. (BO, Q, Classes A, B, C)
- V. In addition, for blasting operations: (BO)
 - 1. The name, credentials, licenses, and qualifications of the blaster and its personnel responsible for the blasting operation.
 - 2. The total number of cubic yards of material estimated to be removed by the blasting operation.
 - 3. An estimate of the number of blasts required to remove the specified amount of material.
 - 4. Hours and dates of proposed blasting operations.
 - 5. A blasting plan that demonstrates compliance with Section 8 of this Ordinance, as well as the applicable provisions of 25 M.R.S.A. ch. 318 and 38 M.R.S.A. § 490-Z(14).
 - 6. Proof that the applicant has a permit from the State of Maine Fire Marshal's Office to use explosives.
 - 7. A valid certificate of liability insurance with a policy limit of not less than \$2,000,000 which includes a statement clearly indicating that blasting and use of explosives is covered under the policy.
 - 8. A copy of the notice that was provided to property owners, as required by Section 8(M).
 - 9. The Board may require the applicant to perform such pre-blast and post-blast water quality tests or hydrogeological studies and to develop a water monitoring program, as required by Section 8(G)(3).

SECTION 6: Application Process

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- A. **Application Submission Requirements.** Unless otherwise directed by the Board, the applicant must submit 10 paper copies and one digital copy of the application containing all submission requirements.
- B. **Notices.** The applicant must send the following notices by certified mail, return receipt requested, in form acceptable to the Board, to the owners of property located within 2,000 feet of the boundary of the lot affected by the application and to the Town Clerk.

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1. Notice of application. The notice must contain a general description of the proposal and a sketch plan, and notice that a copy of the application may be inspected at the Town Office during regular office hours.
2. Notice of Public Hearing. The notice must contain the date, time and location of any public meeting or public hearing by the Board. The notice must be sent at least 7 days before the date of the public meeting or public hearing at which the application will be considered by the Board.

Evidence of notification by certified mail, return receipt requested must be submitted to the Board. For purposes of this section, "owners of property" are the persons listed in the most recent version of the Town of Alna Real Estate Tax Commitment Book, prepared by the Tax Assessor and available at the Town Office.

C. Completeness for Review. The Board must determine whether the application is complete for review. If the application is found incomplete, the Board must notify the applicant and direct the applicant to submit any omitted or incomplete information within a specified period of time. If the omitted or incomplete information has not been submitted by then, the Board may return the application as incomplete and conclude its review. If the application is found complete for review, the Board must begin its full evaluation of the proposal.

D. Public Hearing. After finding an application complete for review, the Board must hold a public hearing on any proposed blasting operation application, bedrock quarrying application, or Class C mining operation application and may decide, in its discretion, to hold a public hearing on any Class A or Class B mining operation application. In deciding whether to hold a public hearing on a Class A or Class B mining operation application, the Board must consider, among other factors, whether the application presents matters or issues of substantial controversy or public importance, or whether a public hearing would likely reveal new information relevant to the Board's review. If no public hearing is held, the application shall be placed on the agenda of the Board's next regularly scheduled meeting for review. If a public hearing is to be held, the Town shall publish the time, date, and place of the hearing at least 14 days prior to the hearing in a newspaper of area-wide circulation.

E. Site Visits. At any time during its review, the Board may request that the applicant arrange for a site visit with the Board and the public. Notice of the site visit must be given to the public at least 7 days prior to the site visit.

F. Supplemental Information. At any time during its review, the Board may (i) accept, in its discretion, supplemental information or proposed modifications to the application which the applicant requests to submit, and (ii) request additional information from the applicant.

G. Written Decision. The Board must issue a written decision to approve, approve with conditions, or deny any application found complete for review.

H. Burden of Proof. The applicant has the burden of proving, by demonstrable evidence, that a proposal complies with all of the applicable requirements of this Ordinance.

SECTION 7: Standards for Bedrock Quarrying and Mining Operations

Bedrock quarrying, and mining operations must comply with the following standards (See Table 2):

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Commented [AD5]: Suggested changes to this section are meant to provide more predictability and clarity to applicants proposing quarrying or mining operations. Most of these are merely suggestions; if they don't capture your intent, please feel free to rework them.

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A. Property Line and Road Setbacks: No part of any Class A mining operation shall be permitted within 500 feet of any property line or within 500 feet of the center line of a public road and no part of any bedrock quarrying or Class B or C mining operation shall be permitted within 1000 feet of any property line or within 1000 feet of the center line of a public road, except that access ways and drainage ways necessary to reduce run-off into or from the extraction area may be located within these setback areas. Within these setback areas, natural vegetation shall be left intact and, where natural vegetation does not exist, vegetation must be supplemented with vegetation plantings of native species of sufficient quantity, type, and height to prevent erosion, provide for effective infiltration of stormwater runoff, and minimize visibility of mining operations and activities from adjoining property lines and roads. This standard applies to any bedrock quarrying or Class A, B, or C application.

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B. Slopes:

1. No slopes steeper than three (3) feet horizontal to one (1) foot vertical shall be permitted during any mining operation, unless a fence at least five (5) feet high is erected to limit access to such locations. All final grades shall be at a slope no greater than three (3) feet horizontal to one (1) foot vertical. This standard applies to any bedrock quarrying or Class A, B, or C application.
2. Exposed faces must be treated in such a manner as to leave them in a condition that avoids the possibility of rock falls, slope failures and collapse. This standard applies to any bedrock quarrying or Class A, B, or C application.

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C. Liability Insurance: The property owner and operator shall each carry the following insurance, with an insurer authorized to transact insurance business in the State of Maine, for the term of any permit granted under this Ordinance:

1. General liability insurance in an amount not less than \$2,000,000 on a per occurrence basis and not less than \$5,000,000 in umbrella form.
2. If any mining materials, compacted rock (bedrock or the like), or any other extracted materials or mine waste will be transported off-site on any public or private roads, auto insurance in an amount not less than \$2,000,000 on a per occurrence basis and not less than \$5,000,000 in umbrella form.
3. Workers' Compensation insurance in amounts required by applicable law.

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The permit holder shall provide evidence of the existence of such insurance by providing the Board with a certificate of insurance on each anniversary of any permit approval granted under this Ordinance. This standard applies to any bedrock quarrying, Class B or C application.

D. Hours of Operation: The hours of operation of any bedrock quarrying or mining operation shall not be earlier than 8:00 AM and not later than 5:00 PM Monday through Friday, except that the Board may authorize occasional Saturday operations during the above-listed hours only when specific project work necessitates it but not for routine activities that can be accomplished within the Monday through Friday schedule. The Board may condition any approval on a reduction in the hours or days of operation if it finds that such reduction is necessary for the proposal to comply with any of the standards set forth in this Section 7. This standard applies to any bedrock quarrying or Class B or C application.

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E. **Noise:** The bedrock quarrying or mining operation must not, alone or in conjunction with existing activities, cause noise levels to exceed the following maximum sound pressure levels for any continuous, regular, or frequent source of sound:

<u>8:00 a.m. – 5:00 p.m.</u> <u>Monday – Friday</u>	<u>All Other Times</u>
<u>75 dB(A)</u>	<u>50 dB(A)</u>

The following activities are exempt from the above-listed maximum sound pressure levels: Noise generated by construction or temporary maintenance activities, traffic noise on roads, and noise generated by emergency or safety equipment such as back-up beepers, emergency pressure relief valves, and other warning devices.

Sound pressure levels shall be measured at a height of approximately four feet above the ground surface at all property boundary lines of the mining operation area. Measurements of sound pressure level limits must be made using the sound equivalent level of one minute (leq1) (measured in dBA scale). Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI S1.4) "American Standard Specification for General Purpose Sound Level Meters," and shall have been calibrated at a recognized laboratory within the past year.

This standard applies to any bedrock quarrying or Class B or C application.

F. **Dust:** Dust generated by activities at the excavation site, including dust associated with traffic to and from the excavation site, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. All access and egress roads between the operation site and public ways shall be treated with suitable materials to reduce dust and mud for a distance of at least 300 feet from such public ways. Dust control methods may include the application of calcium chloride, providing the manufacturer's labeling guidelines are followed. Visible emissions from a fugitive emission source may not exceed an opacity of 20% for more than 5 minutes in any one-hour period. This standard applies to any bedrock quarrying or Class A, B, or C application.
G. Air Quality; Odors: Bedrock quarrying or mining operation shall not produce emissions of dust, dirt, fly ash, fumes, vapors, or gases in any quantity or of any quality that could damage human health, animals, vegetation or property, or that could soil or stain persons or property at any point beyond the operation's property boundary line. Bedrock quarrying or mining operations shall not produce offensive or harmful odors perceptible beyond their lot lines. This standard applies to any bedrock quarrying or Class A, B, or C application.

H. **Secured Vehicles:** Loaded vehicles, other than individually owned pickup trucks, exiting the property shall be suitably secured to prevent dust and contents from spilling or blowing from the load. No mud, soil, sand, rocks or other materials shall be allowed to accumulate on a public road from loading or hauling vehicles. This standard applies to any bedrock quarrying or Class B or C application.

I. **Roads:** The average and peak number of vehicle trips per day must not result in safety hazards or an unreasonable adverse impact on the character of the Town. Without limiting the foregoing sentence, the number and/or weight of vehicles passing through or by places or buildings listed on the Maine Historic Preservation Commission's database or the National Register of Historic Places must not cause unreasonable adverse impacts on such historic places or buildings. Any vehicular demand on existing Town roads, public rights-of-way, or public easements caused by the bedrock

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quarrying or mining operation and associated transport of materials must not exceed the capacity of those roadways or cause the premature failure, aging, or diminished utility of those roadways. In making findings concerning this standard, the Board may impose conditions on the operation, including conditions on the method of transport, trucking or travel routes, hours, maximum weight limits of trucks, and maximum number of truck trips used to transport materials on public roadways. This standard applies to any bedrock quarrying or Class B or C application.

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J. **Debris, Shelters:** No equipment debris, junk, or other material not needed for mining activity shall be permitted at the site. Any temporary shelters or buildings erected for such operations and equipment used in connection therewith require separate building permit approval and shall be removed following the end of the commercially useful life of the operation or the expiration of the permit. This standard applies to any bedrock quarrying or Class A, B, or C application.

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K. **Spill Containment Plan:** Except subsection 4, below, this standard applies to any bedrock quarrying or Class B or C application; subsection 4 applies to any bedrock quarrying or Class A, B, or C application.

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Deleted: (Applies only to Classes B and C, e

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1. A spill prevention, control, and countermeasures plan ("SPCC Plan") prepared by a qualified professional and in compliance with Maine Department of Environmental Protection regulations must be submitted to the Board as part of the application and shall be kept with any permit granted in the Town's permanent records. The applicant must comply with the SPCC plan during the life of the mining operation.

Deleted: shall be required for Class B and C projects and must be complied with. The plan shall...

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2. **Petroleum Products Storage:**

Deleted: for approval prior to the movement of any mechanized equipment to the sites part of the application

a. Any petroleum products, highly flammable or explosive liquids, solids or gasses to be stored on site shall be located in bulk, above ground, anchored tanks or containers, having a roofed, secondary containment system, adequate to contain 110% of the full contents of such container, for control of spills and leaks, and must be located at least 1,000 feet from any lot line or public road, and at least 75 feet from any interior road.

Deleted: a. If any petroleum products or other materials with potential to contaminate groundwater are to be stored on the site, a Spill Prevention Control, and Countermeasures (SPCC) Plan shall be submitted. A SPCC Plan shall be developed in accordance with DEP regulations, Section 5A of Chapter 378 Performance Standards for the Storage of Petroleum Products (CMR 378) and shall be submitted with the application and kept with the permit in the Town's records.¶
b

b. The use of underground tanks is strictly prohibited.

3. **Machinery Maintenance:**

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a. Crankcase oil, hydraulic fluids, and similar products shall not be changed, stored or disposed of within the excavation area, unless specifically covered in the SPCC Plan.

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b. Routine maintenance operations, such as refueling or oil changes, may be allowed for fixed equipment such as screeners, crushers and wash facilities provided that a secondary containment system in accordance with the SPCC Plan, adequate to contain 110% of the full contents of said equipment, is installed.

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4. Any discharge or leak of petroleum product over a gallon shall be immediately reported to the Code Enforcement Officer and a report kept with the permit in the Town's records. All discharges or leaks of any size shall be cleaned up promptly according to applicable law.

Deleted: the spill containment and cleanup provisions of the Department of Environmental Protection Rule CMR 378, Section 5Applicable law

5. A copy of the SPCC Plan shall be kept available on site at all times.

Deleted: (Classes A, B, C)

6. The applicant shall demonstrate to the Board's satisfaction the applicant's technical and financial ability to implement the SPCC Plan.

Deleted: Spill Prevention Control and Countermeasures Plan

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- L. Removal or Burial of Debris:** All organic debris, brush, stumps, boulders, and similar materials shall be removed or disposed of in a location delineated on the site plan. The grinding of stumps and brush for use as erosion control material is appropriate, provided it is stored in a designated area delineated on the site plan until used. This standard applies to any bedrock quarrying or Class A, B, or C application.
- M. Storm Drainage:** All bedrock quarrying or mining operations shall be internally drained, and the extraction footprint shall be operated in such a manner as to safely hold a volume of precipitation equal to that which may be expected from a 25-year, 24-hour storm event for the region based upon the USDA Natural Resources Conservation Service data. This standard applies to any bedrock quarrying or Class B or C application.
- N. Water Courses:** Bedrock quarrying or mining operations shall not impede or accelerate water flows into or out of existing natural water courses. All water from existing water courses shall leave the site at the original natural drainage points. This standard applies to any bedrock quarrying or Class B or C application.
- O. Reclamation:** A reclamation plan is required for all bedrock quarrying and Class B and C operations and must be complied with. The operation shall be phased so that the total non-vegetated extraction area does not exceed three (3) acres at any given time. Topsoil or loam shall be retained to cover all reclaimed areas, which shall be reseeded and stabilized with a variety of vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the reclamation. The plan shall include dates by which the various temporary and permanent reclamation practices will be conducted. Prior to submitting the reclamation plan to the Board, the applicant shall submit the plan to be evaluated by the Knox/Lincoln County Soil and Water Conservation District. The Board will consider any comments and recommendations of the District as part of its review of the application. This standard applies to any bedrock quarrying or Class B or C application.
- P. Disturbed Area:** The disturbed area of bedrock quarrying shall not exceed ** acres. The disturbed area of a mining operation shall not exceed the limits set for each classification in Section 4, but in no event fifty (50) acres. All disturbed areas shall be reseeded and restored to a stable condition adequate to meet the provisions of the Maine Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers (2016) and the Maine Erosion and Sediment Control Field Guide for Contractors (2014), published by the Maine Department of Environmental Protection. This standard applies to any bedrock quarrying or Class A, B, or C application.
- Q. Groundwater Protection:** The bedrock quarrying or mining operation must not adversely impact either the quality or quantity of groundwater for either drinking water or groundwater flowing into the Sheepscot River or any of its tributaries. No excavation or extraction shall occur within 5 feet of the seasonal high groundwater table. This standard applies to any bedrock quarrying or Class A, B, or C application.
- R. Wildlife and Plant Habitat:** Bedrock quarrying or mining operations shall not impair, disturb, or displace any federal or state listed rare or endangered form of animal or plant life; nor shall they destroy or impair any wildlife habitat that could be avoided by modification of the proposed operation. This standard applies to any bedrock quarrying or Class A, B, or C application.
- S. Discharges:** No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that may run off, seep, percolate, or wash into surface or

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- Deleted: for a Class B operation and five (5) acres for a Class C)
- Deleted: The total mining operation including stockpiles, structures and access roads shall not exceed five (5) acres for a Class B and ten (10) acres for a Class C at any given time. ...
- Deleted: disturbed land
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- Commented [AD8]: This is a placeholder: consider whether or not you want a total maximum size on quarrying and mining operations -- see definition of "disturbed area" and note that it includes all active and reclaimed land areas. Note that the 50-acre suggested limit on mining operation is also included in the Class C classification, above.
- Deleted: as amended or revised
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groundwater so as to contaminate, pollute, or harm such waters or cause nuisances, such as oil or scum, color, odor, taste, or unsightliness or that may be harmful to human, animal, plant, or aquatic life. This standard applies to any bedrock quarrying or Class A, B, or C application.

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T. Exterior Lighting: All exterior lighting shall be designed to minimize adverse impacts on neighboring properties and dark skies. If lighting is provided at site, lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel or the night sky. Motion sensor control is preferred. This standard applies to any bedrock quarrying or Class A, B, or C application.

Deleted: (Class A, B, C)

U. Emergency Vehicle Access: Provision shall be made for convenient and safe emergency vehicle access to all buildings, structures, and associated facilities at all times. This standard applies to any bedrock quarrying or Class A, B, or C application.

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V. Visual Screening: All storage areas, extraction areas, machinery, service areas, truck loading areas, pipelines or electrical transmission lines, utility buildings, and other structures, facilities, and equipment shall be screened from view from abutting properties and public roads by existing vegetative buffers, by plantings using a diversity of native plants, or other screening methods. Utility buildings, equipment storage facilities, and all other structures shall either (A) utilize siding that is residential in appearance (such as clapboard siding in wood, metal or vinyl, shingles or shakes, board and batten, and other sidings commonly found on site-built housing) or (B) be temporary structures that must be removed when mining operations cease. This standard applies to any bedrock quarrying or Class B or C application. **W. Utilities:** The bedrock quarrying or mining operation shall not impose a burden upon public utilities that could be avoided by modification in the operation. This standard applies to any bedrock quarrying or Class B or C application.

Deleted: Exposed

Deleted: soil, gravel or rock

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Deleted: to prevent them from detracting from surrounding properties. Utility buildings

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Deleted: X. Impact

Deleted: on Historic Places: The number and/or weight of vehicles passing through or by places listed on the Maine Historic Preservation Commission's database or the National Register of Historic Places must not cause unreasonable adverse impacts on the historic places...

X. Adequate Technical and Financial Capacity. The applicant must have adequate technical and financial capacity to develop, operate, and reclaim the operation in compliance with all applicable standards in this Section 7.

Deleted: on Historic Places: The number and/or weight of vehicles passing through or by places listed on the Maine Historic Preservation Commission's database or the National Register of Historic Places must not cause unreasonable adverse impacts on the historic places...

Y. Bedrock Quarrying: For bedrock quarrying operations, hydraulic mining and block caving are prohibited.

Commented [AD10]: This is a placeholder for additional quarrying standards that you may wish to adopt.

Z. Performance Guarantee: The Board may require a permit holder to provide one or more performance guarantees in accordance with Article 12(A).

Commented [Cj11]: DW 11/27/23

SECTION 8: Standards for Blasting Operations

Blasting operations associated with mining operations are prohibited. Blasting operations associated with bedrock quarrying shall comply with the following standards:

Commented [AD12]: Suggest adding a new section identifying standards for blasting operations. These are mere suggestions based on the Topsham and Freeport blasting ordinances, as well as New Hampshire BMPs. I recommend that the Board seek a review of these suggested standards by a hydrogeologist or other mining/blasting expert.

A. Maximum Extraction of Consolidated Rock. No more than 15,000 cubic yards of consolidated rock (bedrock or the like) may be removed or extracted per 180-day blasting operation.

Deleted: 30

B. Water Table Limit. No blasting operation shall cause excavation or extraction to occur within 5 feet of the seasonal high groundwater table.

C. Evidence of Compliance. The applicant must demonstrate the applicant's history of strict compliance with applicable local, state, and federal blasting laws, regulations, and approvals, including without limitation the requirements of 38 M.R.S.A. § 490-Z(14) and of this Ordinance.

Commented [AD13]: This statute houses the DEP requirements for blasting associated with quarrying.

D. Bond. The Board may require the blaster to provide a blasting contractor bond in accordance with Article 12(A).

Deleted: The Board may require the applicant or the blaster to post a bond in an amount to be determined by the Board....

Commented [Cj14]: DW 11/27/23

E. Hours of Blasting. Hours of blasting shall be limited to 9:00 AM to 5:00 PM Monday through Friday excluding federally recognized holidays.

F. Frequency of Blasting. The frequency of blasting shall not exceed 4 blasts per day. The frequency of blasting shall not exceed 7 blasts in any 180-day period. Detonation of misfires count towards these frequency limitations.

G. Groundwater Protection.

1. All blasting operations shall follow best management practices to prevent contamination of groundwater and prevention of misfires, including preparing, reviewing, and adhering to a blasting plan approved by the Board; dust management; air quality; proper drilling, explosives handling, and loading procedures; observing the entire blasting procedures; evaluating blasting performance; and handling and storage of blasted materials.
2. The applicant shall conduct pre-blast and post-blast water quality tests in a location within 250 feet of the property line of the blasting area before and after the blasting operation. Post-blasting testing shall be done no sooner than 24 hours and no later than 48 hours following a blast. Turbidity and water quality in wells tested shall be no greater than that which existed prior to the blasting operation as established by the pre-blast water quality test.
3. Where the Board is concerned that blasting operations may impact groundwater quality or drinking water supplies, the applicant shall perform such pre-blast and post-blast water quality tests or hydrogeological studies as may be necessary to develop a water monitoring program in order to monitor any adverse impacts of the operation on the quality or quantity of groundwater and drinking water supplies.
4. Explosive products shall be selected that are appropriate for site conditions and safe blast execution, and that have adequate water resistance for the site conditions to minimize the potential for groundwater contamination.
5. Muck piles (the blasted pieces of bedrock) and rock piles shall be managed so as to reduce the potential for groundwater contamination including by removing the muck pile from the blast area as soon as practicable and by managing the interaction of blasted rock piles and stormwater to prevent contamination of surface water and groundwater.

H. Wildlife Protection. The blasting operation shall not impair, disturb, or displace any federal or state listed rare or endangered form of animal or plant life; nor shall they destroy or impair any wildlife habitat that could be avoided by modification of the proposed operation.

I. Noise. Noise from blasting operations may not exceed 75 db(A), as measured at a height of approximately four feet above the ground surface at all property boundary lines of the blasting operation area. Measurements of sound pressure level limits must be made using the sound equivalent level of one minute (leq1) (measured in dBA scale). Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI S1.4) "American Standard Specification for General Purpose Sound Level Meters," and shall have been calibrated at a recognized laboratory within the past year.

J. Vibration. The blasting operation shall not cause or create ground vibration on a property boundary line which is in excess of that indicated in the table below:

<u>Frequency (cps.)</u>	<u>Vibration Steady State</u>	<u>Displacement (in.) Impact</u>
<u>Under 10</u>	<u>.0005</u>	<u>.0010</u>
<u>10-19</u>	<u>.0004</u>	<u>.0008</u>
<u>20-29</u>	<u>.0003</u>	<u>.0006</u>
<u>30-39</u>	<u>.0002</u>	<u>.0004</u>
<u>40+</u>	<u>.0001</u>	<u>.0002</u>

1. Buildings shall not be subjected to a velocity from blasting in excess of two inches per second at the building.
2. A calibrated seismograph must be on-site and operating during all blasts. All data obtained from the seismograph must be made available to the Town within 5 calendar days of any blasting activity.

K. Qualified Blaster. All blasting operations shall be conducted by a blaster who is fully licensed and insured for the transportation, use and handling of explosives and by experienced, trained, and competent personnel who understand the hazards involved and have demonstrated knowledge of safety requirements and current applicable regulations.

L. Blasthole Loading Practices. The following blasthole loading practices shall be followed:

1. Drilling logs shall be maintained by the driller and communicated directly to the blaster. The logs shall indicate the depths and lengths of voids, cavities, and fault zones or other weak zones encountered, as well as groundwater conditions.
2. Explosives shall be managed on-site so that they are either used in the borehole, returned to the delivery vehicle, or placed in secure containers for off-site disposal.
3. Spillage around the borehole shall be placed in the borehole or cleaned up and returned to an appropriate vehicle for handling or placement in secured containers for off-site disposal.
4. Loaded explosives shall be detonated immediately and shall not be left in the blastholes overnight, except when safety or weather require detonation to be postponed.
5. Loading equipment shall be cleaned in an area where wastewater can be contained and disposed of in a manner that prevents release of contaminants to the environment.
6. Explosives shall be loaded to maintain good continuity in the column load to promote complete detonation. Industry accepted loading practices for priming, stemming, decking, and column rise need to be attended to.

M. Notice to Landowners and the Public.

1. The applicant shall send a notice by certified mail, return receipt, to the owners of property located within 2,000 feet of the boundary of the lot containing the blast area and to the Town Clerk. The notice must include: (i) the name, email address, and phone number of the applicant; (ii) the name of the property owner if different than the applicant; (iii) a scaled

map denoting all blasting locations and identifying all structures within 2,000 feet of the boundary of the lot containing the blast area; (iv) hours and dates of proposed blasting activity; and (v) the offer of a pre-blast survey of each structure and pre-blast water quality test of each drinking water source, all at the applicant's expense, allowing a minimum of 14 days' response time from the date of the return receipt.

2. The applicant shall publish notice of the date, time and location of blasting in a newspaper of general circulation in the Town within two weeks prior to the blasting.

N. Notice to Fire Chief. The applicant shall cause the Fire Chief to be notified of:

1. Any planned blast at least 24 hours prior to the planned detonation and shall give the time (within 2 hours), location where the blasting operation is to occur, the amount of explosives to be used, and the name and contact information of the person responsible for the blasting operation.
2. Any misfires and the proposed corrective action within 5 calendar days of the misfire.

O. Notice to Dispatch. The applicant shall notify the Lincoln County Public Safety Dispatch by phone before the first blast and after the last blast each day.

P. Warning Signs. The applicant shall cause warning signs to be placed along property lines of the blasting site at least 7 days prior to the blasting operation.

Q. Warning Horns. The applicant shall cause warning horns to be sounded prior to each blast as required by NFPA 495 Explosive Materials Code.

SECTION 9: Imposition of Conditions

In granting approval for a blasting operation, bedrock quarry, or mining operation, the Board may impose reasonable conditions, including but not limited to: limiting the routes that may be used by the permit holder for transporting materials; requiring the permit holder to pay for the cleaning, repair, and resurfacing of roads used as part of any operation that may be or have been adversely affected by such operation; limiting the hours of operation; requiring the permit holder to conduct water quality and quantity monitoring during the life of the operation; requiring the permit holder to secure one or more performance guarantees in accordance with Section 12(A) below; and establishing a permit expiration date that is more restrictive than the date set forth in Section 12(C) below.

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Deleted: SECTION 9: Rock Crushing, Asphalt Batch Plants, Quarrying, and Mineral Mining¶
Rock crushing, asphalt batch plants, quarrying including the use of explosives and mechanical means, and mineral mining are prohibited, except as allowed below. ¶
Limited blasting on a specific site for the purpose of facilitating a permitted use on that site unrelated to mining activities including, but not limited to constructing a structure or road is permitted....

SECTION 10: Annual Reports and Inspections

A. Annual Reports. The permit holder must file a report annually containing:

1. Certificates of insurance as required by Section 7(C).
2. Performance guarantees as required by Section 12(A).
3. For any approved bedrock quarrying or mining operation, the permit holder must file a report annually including the cubic yards of material removed from the site, the total non-vegetated extraction area, the total mining operation area as described in Section 7(O), the total disturbed area, records and other evidence demonstrating compliance with any permit conditions, a description of reclamation activities, and a list of any complaints by any residents or landowners in the Town about the operation received by the permit holder or operation's management.

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4. Pre-blast and post-blast water quality tests or hydrogeological studies, or other submittals pursuant to a water monitoring program, as required by Section 8(G)(3).

Deleted: 7(Z)(9)

5. Any other reports or information required by the Board as part of any permit condition of approval.

B. Inspections. All permitted blasting operations, bedrock quarrying, and mining operations shall be inspected as follows:

1. The CEO or other person designated by the Board shall review all documentation and required reports, and conduct onsite inspections of the operation to document compliance with all applicable laws, regulations, ordinances, and permit approvals.
2. The frequency of inspections shall be at the discretion of the CEO or other inspector designated by the Board except that inspections of bedrock quarrying or mining operations shall, at a minimum, occur every year until the entire site is reclaimed. The CEO shall report to the Board annually on these inspections.
3. The municipal officers shall establish an inspection fee, which shall be assessed against all permitted blasting operations, bedrock quarrying, or mining operations.

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SECTION 11: Transferability of Permit

Within thirty (30) days of the date of the transfer, by sale or otherwise, of land upon which a bedrock quarrying or mining operation is permitted, the new owner(s) shall apply to the Board for an amendment to the permit, which application shall provide proof of change in title and ownership, proof of liability insurance required under Section 7(C), proof of any performance guarantee required under Section 12(A), and proof of technical and financial capacity of the new owner to carry out the permitted operation in accordance with this Ordinance and the permit.

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SECTION 12: General Provisions

A. Performance Guarantee. Whenever one or more performance guarantees are required by this Ordinance or as a condition of approval of a permit issued by the Board pursuant to this Ordinance the following requirements apply:

Deleted: Financial Assurance

1. Review; Delegation. The performance guarantee must be satisfactory to the Board as to scope, amount, form, sufficiency, manner of execution, and surety. The Board may delegate to the Town Attorney the review and acceptance of any performance guarantee in accordance with this Section 12(A).
2. Form. The performance guarantee must be in the form of a performance bond, a certified check payable to the Town, an escrow account, an irrevocable letter of credit, or some other form of guarantee that is acceptable to the Board.
3. Scope; Amount. The performance guarantee must be of an amount sufficient to faithfully perform and discharge all obligations imposed by this Ordinance and the permit approval, including without limitation the full cost of all required site improvements, reclamation of disturbed land, and decommissioning of any facilities or improvements associated with the permit approval, as determined by the Board. Separate performance guarantees may be required by the Board for any required site improvements, reclamation work, and decommissioning work. For reclamation and decommissioning work associated with a bedrock quarrying or mining operation, the permit holder must arrange for the cost to be recalculated by

a Maine-licensed engineer as part of any renewal application submitted pursuant to Section 12(D), and the amount of the performance guarantee may be adjusted by the Board if the recalculated cost of reclamation or decommissioning materially changes.

4. Schedule. The performance guarantee must contain (i) a schedule and cost estimates for each major phase of required site improvements, reclamation work, or decommissioning work, taking into account inflation; (ii) a basis for estimating costs; (iii) provision for the release of part or all of the performance guarantee to the permit holder; and (iv) one or more dates after which the permit holder will be in default and the Town must have access to the guaranteed funds to complete required site improvements, reclamation work, or decommissioning work. The Board may approve phased performance guarantees when activity is approved in separate and distinct phases.
5. Effective Date. The performance guarantee shall be effective throughout the term of the permit as well as the time required to complete all reclamation or decommissioning obligations, and shall be conditioned that in the event that the permit holder or any successors and assigns fail to comply with any applicable requirements of this Ordinance or any permit approval, the Town shall recover all damages suffered by the Town as a result thereof. In addition, a period not to exceed one year, or such other period as the Board may determine appropriate, from the date of permit approval must be set forth in the performance guarantee as the time within which any required site improvements must be completed.
6. Continuing Obligation. The performance guarantee shall be a continuing obligation of the permit approval, and thereafter until the permit holder has satisfied all of its obligations that may have arisen from the applicable provisions of this Ordinance or the permit approval.
7. Annual Reporting. The permit holder shall evidence the existence of any performance guarantee required by this Section 12 by submitting to the Board or its designee copies such performance guarantee on each anniversary of the permit approval.

- B. Amendments to Approved Operations:** Prior to making any change or revision to a blasting operation, bedrock quarrying, or mining operation that has been approved by the Board, the permit holder must submit an amendment application to the Board. The amendment application is subject to the review procedures, submission requirements, standards, and other provisions of this Ordinance as apply to a new application.
- C. Substantial Start:** The operation must be substantially started within two years of approval by the Board. The permit shall expire two years from the date of issuance if no substantial start in mining activity is made during that period.
- D. Permit Expiration:** Unless otherwise conditioned in writing by the Board, a blasting operation permit granted by the Board shall be effective for no more than 180 days from the date of issuance, and a bedrock quarry or mining operation permit granted by the Board shall be effective for no more than 5 years from the date of issuance. Thereafter, the applicant must submit a renewal application, which is subject to the review procedures, submission requirements, standards, and other provisions of this Ordinance as apply to a new application.

SECTION 13: Validity

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

Deleted: <#>The person identified in the reclamation plan as responsible for reclamation must demonstrate financial assurance, in the form of a performance bond, surety bond, irrevocable letter of credit or other form of financial assurance acceptable to the Board, for the total cost of reclamation of the site. The financial assurance must be satisfactory to the Board as to scope, amount, form, sufficiency, manner of execution, and surety. The financial assurance funds may be used for any activities related to interim or final reclamation and for any damage to municipal infrastructure caused by the operation. The financial assurance must be updated every 5 years after approval of the operation, or within six months of expenditure of any funds and every five years thereafter. Updates to a financial assurance required under this section must be submitted to the Board on or before December 31st of the year in which such updates are required. ¶

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Language suggested by a member of the public:¶
Section 12 – General Provisions¶
Section 12A---Insurance¶

(a) The Applicant shall carry, insurance throughout the term of the Permit with the Town of Alna as an additional insured, with an insurance company satisfactory to the Town, indemnifying the Town and the Applicant from and against all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance and/or extraction of material of the mining operation. The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000.00) as to any one occurrence. The amount of such insurance for liability for injury or death to any person shall be no less than One Million Dollars per occurrence (\$1,000,000.00). The amount of such insurance for excess liability shall be Five Million Dollars (\$5,000,000.00) in umbrella form. ¶

(b) The Applicant shall carry insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence. ¶

(c) All insurance coverage, including Workers' Compensation in amounts as required by applicable law, shall be maintained throughout the entire term of the Permit. All expenses incurred for said insurance shall be at the sole cost and expense of the Applicant. ¶

(d) The following conditions shall apply to the insurance policies required herein:¶

Deleted: Section 12C---Reporting¶

The Applicant shall annually submit to the Town, or its designee, copies of all current certificates regarding (i) all insurance policies as required herein, and (ii) the performance bond as required herein. ¶
Section 12D---Indemnification¶

The Applicant shall, at its sole cost and expense, indemnify and hold harmless the Town, its officials, boards, commissions, committees, agents and/or employees against all claims for damage due to the actions of the Applicant, its employees, officers or agents arising out of the construction, installation, maintenance, operation, and/or reclamation of the mining operation under the Permit, including without limitation, damage to persons or property, both real and personal, caused by the maintenance, operation, and/or removal of any structure, equipment, and/or material. Indemnified expenses shall include all reasonable attorneys' fees and costs incurred up to such time that the Applicant assumes defense of any action hereunder. The Town shall give the Applicant timely written notice of its obligation to indemnify and defend the Town within a reasonable time from receipt of a claim or action pursuant to this section. ¶

SECTION 14: Conflicts with Other Ordinances

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other ordinance, law, regulation, rule, the more restrictive provision shall control.

SECTION 15: Appeal

Any aggrieved person may appeal a decision of the Board directly to the Maine Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Deleted: Appeals of this ordinance shall be governed by the Town of Alna Board of Appeals Ordinance.¶

SECTION 16: Amendments

This Ordinance may be amended by a majority vote of the Town Meeting in accordance with applicable state law. Amendments may be initiated by a majority vote of the Board, the municipal officers, or upon the written petition of registered voters of the Town pursuant to 30-A M.R.S.A. §§ 2522 or 2528. The Board shall conduct a public hearing on any proposed Ordinance amendment. Following the public hearing, the Board may recommend to the municipal officers whether or not an article to amend the Ordinance should be included in the warrant for a regular or special Town Meeting. In making its recommendation, the Board may recommend amendments to the Ordinance that deviate from the originally proposed amendments. The Board will endeavor to submit its recommendation to the municipal officers within 30 days of the conclusion of the public hearing. Board action pursuant to this Section 16 is not a decision subject to any rights of appeal.

SECTION 17: Compliance and Enforcement; Penalties

A. Enforcement Authority. The CEO is responsible for enforcing the provisions of this Ordinance and the terms and conditions of any permit or approval issued hereunder. The CEO is appointed or reappointed annually and, if certified in accordance with 30-A M.R.S.A. § 4451, has all of the powers and authorities described in 30-A M.R.S.A. § 4452.

Deleted: This Ordinance can only be amended by a majority vote of the Town Meeting. Amendments may be initiated by a majority vote of the Planning Board, the Selectboard, or on petition of 10% of the number of registered voters of the Town who voted in the last gubernatorial election. The Planning Board shall conduct a public hearing on any proposed amendment.¶

B. Inspections; Investigation of Complaints. The CEO may conduct site inspections to ensure compliance with all applicable laws and all terms and conditions attached to permits and approvals under this Ordinance. The CEO may also investigate all complaints of alleged violations of this Ordinance.

C. Notice of Violation. If, after investigation, the CEO finds that any provision of this Ordinance or any condition of a permit or approval issued under this Ordinance has been violated, the CEO must give written notice of the violation, in person or by certified mail return receipt requested, to the owner or occupant of the premises and to any other person responsible for the violation, indicating the nature of the violation and ordering any action necessary to correct it (including discontinuance of illegal use and abatement of nuisance conditions) within some designated reasonable time. A copy of each such notice of violation must be submitted to the municipal officers.

D. Legal Prosecution of Violations. If, after notice and demand, a violation has not been abated within the time specified in the notice of violation, the CEO must refer the matter to the municipal officers, who may institute in the name of the Town any and all actions and proceedings, in law or in equity, including seeking injunctions of violations and the imposition of fines, that the municipal officers determine are appropriate or necessary to prevent, correct, restrain, or abate any violation of this Ordinance.

E. Fines and Penalties. Any person who violates any term or condition of a permit or approval or who violates or continues to violate any provision of this Ordinance after receiving notice of such

violation is subject to such fines, penalties, actions and orders as are authorized by 30-A M.R.S.A. § 4452. A fine or penalty may be imposed for each violation. Each day that a violation continues constitutes a separate offense.

SECTION 18: Definitions

Unless specifically defined below, words and phrases used in this Ordinance shall have their common, plain, and ordinary meaning. Words in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word “may” is permissive; “shall” or “must” are mandatory and not discretionary.

As used in this Ordinance, unless the context clearly otherwise requires, the following words shall have the following meaning:

AQUIFER: A geologic deposit that yields useful quantities of groundwater to wells and springs as mapped by the Maine Geological Survey with a sustained yield of over 10 gallons per minute.

BEDROCK QUARRYING: The extraction, excavation, removal, handling, or processing of consolidated rock (bedrock) or other hard nonmetallic material that requires cutting, blasting, or similar methods of forced extraction, and any structures, facilities, equipment, and processes associated with such activities, including but not limited to blasting, stripping, drilling, rock crushing, and sorting. This definition does not include mineral operations, concrete mix or asphalt batching plants, or industrial metallic mineral mining.

BLASTING: The use of explosives to break up or otherwise aid in the extraction of bedrock or other consolidated natural formations.

BLASTING OPERATION: The location, extent, and amount of blasting, as authorized pursuant to a 180-day blasting operation permit granted by the Board.

BORROW PIT: A place where sand, fill or gravel is excavated.

DISTURBED AREA: The total land area owned or controlled by a person or persons acting in concert that is devoted to a mining operation, metallic mineral mining, or bedrock quarrying, regardless of the number of extraction sources or sites used, including: (i) all land areas that are stripped, graded, grubbed, filled, bulldozed, or excavated at any time during the site preparation (including existing or new access and egress roads); (ii) all land from which mining material, metallic minerals, or consolidated rock (bedrock or the like) is removed in connection with, respectively, a mining operation, metallic mining, or bedrock quarrying, including but not limited to: all reclaimed and unreclaimed land; land that has or will have the overburden removed; land on which stumps, spoil, or other solid waste has or will be deposited; and storage areas or other land that will or has been used in connection with a mining operation, metallic mining, or bedrock quarrying; (iii) land on which mining material, metallic minerals, or consolidated rock (bedrock or the like) is temporarily or permanently stored or deposited; (iv) land on which processing, beneficiating, or treatment facilities (including groundwater and surface water management treatment systems) are located; (v) land on which water reservoirs used in a mining operation, metallic mining, or bedrock quarrying are located; and (vi) land used for mineral exploration activities, including by hand sampling, test boring, or other methods of determining the nature or extent of mineral resources.

EXPANSION: In connection with a mining operation or bedrock quarrying, the enlargement of the land area from which mining material or consolidated rock (bedrock or the like), respectively, has been removed or was manifestly intended to be removed. The burden is on the property owner to establish

Deleted: The Code Enforcement Officer shall investigate all complaints of alleged violations of this Ordinance. Findings of that investigation shall be presented to the Planning Board and the Selectboard, in writing, and shall detail the nature of the initial complaint, all activities conducted to ascertain the validity of the complaint and findings of that investigation. The Selectboard is charged with the prosecution for all violations of the provisions of this Ordinance. ¶

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Deleted: D. CODE ENFORCEMENT OFFICER (CEO): The person appointed by the Select Board to oversee that all ordinances enacted by the Town are properly followed. ¶ E.

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by substantial evidence that the owner manifested an intent to remove mining material or consolidated rock from a land area that has not been actually so used as of the effective date of this Ordinance. Evidence to demonstrate such intent may include: clearing and grading of land in preparation for removal, stockpiling topsoil from such land, conducting mineral exploration activities on such land, and obtaining permits and securing financing to cover such land and removal activities. An operation that is limited in its geographic extent by a governmental permit or approval or the proposed removal of mining material or consolidated rock from a new parcel of land (as opposed to a new portion of the same parcel where mining material or consolidated rock has been removed), is *prima facie* evidence that the property owner did not manifest said intent. **GROUNDWATER:** All of the water found beneath the surface of the ground present in aquifers and recharge areas.

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INDUSTRIAL METALLIC MINERAL MINING: The exploration for or extraction of metallic minerals, by a person or persons acting in concert, which has a disturbed area of ½ acre or more. Industrial metallic mineral mining includes any structures, facilities, or processes associated with the exploration for or extraction of metallic minerals, including but not limited to: (i) bulk sampling; preparation, washing, cleaning, processing, beneficiation, or other treatment of metallic minerals; and (ii) the storage or stockpiling of bulk sampling materials or mine waste, whether or not the exploration or extraction occurs within the geographic boundaries of the Town; and reclamation activities. For purposes of this definition, “metallic mineral” means any ore or material to be excavated from the natural deposits on or in the earth for its metallic mineral content to be used for commercial or industrial purposes; “mine waste” means all materials, including overburden, rock, ore, tailings, and other mining-related materials, that have been exposed, extracted, or removed from the earth; and “bulk sampling” means the removal of samples of earth materials to test the feasibility, method, or manner of extraction or processing of metallic minerals by drilling, boring, digging of shafts and tunnels, or digging of pits and trenches.

MINERAL EXPLORATION: Hand sampling, test boring, or digging of test pits to determine the nature or extent of mineral resources, other than methods associated with industrial metallic mineral mining, where the disturbed area is less than ½ acre and the land is restored to its original condition after exploration activities cease.

MINING MATERIALS: Unconsolidated surface materials such as sand, gravel, aggregates, borrow, clay, silt, peat, loam, or topsoil. This definition does not include metallic minerals, consolidated rock (bedrock), or other hard nonmetallic material that requires cutting, blasting, or similar methods of forced extraction.

MINING OPERATION: The extraction, excavation, removal, handling, processing, storage, or transport of mining materials, and any structures, facilities, equipment, and processes associated with such activities, including but not limited to washing or screening operations and the storage and sorting of mining materials. “Mining operations” include but are not limited to: gravel pits, clay pits, borrow pits, and topsoil removal sites. This definition does not include bedrock quarrying, concrete mix or asphalt batching plants, or industrial metallic mineral mining.

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PRE-BLAST / POST-BLAST WATER QUALITY TEST: An assessment of the turbidity and level of groundwater contamination caused by the release or spillage of blasting chemicals. At a minimum, a pre-blast or post-blast water quality test must measure levels of turbidity, blasting chemicals, volatile organic compounds and semi-volatile organic compounds, metallic minerals, PFAS and pH.

Deleted: H. MINING OPERATIONS: Facilities, structures, roads, and areas where mining and associated activities take place including but not limited to sand or gravel pits, clay pits, borrow pits, and topsoil removal sites. ¶

I. MINERAL MINE: A place where ore or metallic minerals are excavated. ¶

J. QUARRY: A place where rock is excavated.

RECLAMATION: The restoration to conditions similar to what existed prior to the bedrock quarrying or mining operation. This may include, but is not limited to, grading and shaping of the land, the planting of

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trees, the seeding of grass, legumes or crops for harvest, or the enhancement of wildlife and aquatic resources.

RECLAMATION PLAN: A written document that described how the disturbed area will be restored or altered for the productive use of the land after an operation is complete. Such a plan shall include final grading and re-vegetation plans for all reclamation plan phases.

SEASONAL HIGH GROUNDWATER TABLE: The upper elevation at which the groundwater table normally is located during the season of the year when such levels are at their highest. It generally occurs in the spring and fall but could occur at other times.

SETBACKS: The minimum horizontal distance from a property line or the center line of a road to the nearest part of an operation.

SUBSTANTIAL START: The actual removal or extraction of mining material or compacted rock (bedrock or the like). Substantial start requires more than vegetation clearing or other site preparation.

Approved at Town Meeting _____ (Date)

Attested a True Copy, _____, Town Clerk Date: _____

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Table 1: Submission Requirements	Class A	Class B	Class C	Q	BO
A. Contact information	✓	✓	✓		
B. Verification of right	✓	✓	✓		
C. Site plan	✓	✓	✓		
1. Date and Preparers details	✓	✓	✓		
2. Scale	✓	✓	✓		
3. Contour lines		✓	✓		
4. Boundary Survey		✓	✓		
5. Mining activity on property	✓	✓	✓		
6. Residences on property	✓	✓	✓		
7. Existing public and private roads	✓	✓	✓		
8. Proposed access roads	✓	✓	✓		
9. All setbacks	✓	✓	✓		
10. Proposed parking		✓	✓		
11. Utilities and easements	✓	✓	✓		
12. Outdoor lighting		✓	✓		
13. Permanent outdoor fixtures		✓	✓		
14. Drainage ways	✓	✓	✓		
15. Existing wells	✓	✓	✓		
16. Hazardous waste storage	✓	✓	✓		
17. National Register of Historic Places	✓	✓	✓		
D. Manager information		✓	✓		
E. Average daily traffic		✓	✓		
F. Groundwater narrative		✓	✓		
G. Soils condition		✓	✓		
H. Erosion and Sedimentation plan	✓	✓	✓		
I. Reclamation plan	✓	✓	✓		

J. Wildlife impact narrative	✓	✓	✓		
K. Property use within 500 ft narrative	✓	✓	✓		
L. Estimated longevity	✓	✓	✓		
M. Proposed hours/days of operation		✓	✓		
N. Types of Equipment	✓	✓	✓		
O. Proof of financial capacity		✓	✓		
P. Spill Prevention Control & Containment plan (SPCC)		✓	✓		
Q. Screening plan		✓	✓		
R. Federal & State		✓	✓		
S. Hydrogeologic study		✓	✓		
T. Pertinent information for section 7	✓	✓	✓		

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Table 2: Standards	Class A	Class B	Class C	Q	BO
A. Property lines	✓	✓	✓		
B. Slopes	✓	✓	✓		
C. Liability insurance		✓	✓		
D. Hours of operation		✓	✓		
E. Noise	✓	✓	✓		
F. Dust	✓	✓	✓		
G. Air quality	✓	✓	✓		
H. Secured vehicles		✓	✓		
I. Roads		✓	✓		
J. Debris, shelters	✓	✓	✓		
K. Spill containment plan	✓	✓	✓		
1. Spill prevention, control, and contermesures plan		✓	✓		
2. Petroleum products storage		✓	✓		
3. Machinery maintenance		✓	✓		
4. Discharge or leak reported to CEO	✓	✓	✓		
5. Copy of SPCC at town office		✓	✓		
6. Demonstrate ability to implement SPCC		✓	✓		
L. Removal or burial of debris	✓	✓	✓		
M. Storm drainage		✓	✓		
N. Water courses		✓	✓		
O. Reclamation plan		✓	✓		
P. Disturbed areas	✓	✓	✓		
Q. Groundwater protection	✓	✓	✓		
R. Wildlife and plant habitat	✓	✓	✓		
S. Discharges	✓	✓	✓		

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T. Exterior lighting	✓	✓	✓		
U. Emergency vehicle access	✓	✓	✓		
V. Visual screening	✓	✓	✓		
W. Historic place impact	✓	✓	✓		

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