

November 26, 2025

VIA ELECTRONIC MAIL

Select Board
Town of Alna
1574 Alna Road
Alna, Maine 04535

Re: Draft Mining Ordinance

Dear Members of the Select Board:

I am writing on behalf of Crooker Construction, LLC ("Crooker") to provide comments on the November 2, 2025, version of the draft mining ordinance ("mining ordinance").

As an initial matter, we would like to confirm that Crooker's quarrying operations would not be subject to permitting under the mining ordinance because Crooker's operations are not expanding.

The mining ordinance exempts existing quarrying operations from permitting. However, existing quarrying operations that *expand* are subject to permitting. The mining ordinance defines expansion as follows: ". . . the enlargement of the land area from which . . . consolidated rock (bedrock or the like), respectively, has been removed or *was manifestly intended to be removed.*" See mining ordinance, pg. 29. To prove a "manifest intent" to remove additional consolidated rock, a property owner can show possession of a permit issued by the Town or other governmental entity pre-dating the effective date of the mining ordinance delineating the boundaries of the affected land. *Id.*

Crooker has several such permits and approvals. In 2003, Crooker obtained a site plan permit to quarry approximately 40 acres of land in Alna. In 2019, Crooker also obtained NOITC approval from the Department of Environmental Protection for the same approximate area. Crooker has been operating in the site plan approval footprint since 2003 and plans to utilize the entire permitted area for its quarrying activities. Thus, Crooker should be exempt from the mining ordinance.

We also note that the mining ordinance runs afoul of the Takings Clause in both the federal and state constitutions by banning rock crushing without providing a

nonconforming provision for existing rock crushing operations. Although the Planning Board has exempted existing quarrying and mining operations from the mining ordinance, rock crushing does not appear to be exempt. See mining ordinance pgs. 4 and 28 (prohibiting rock crushing and exempting rock crushing from the definition of quarrying). A ban on rock crushing would seriously impact Crooker's operations and could force Crooker to shutter its operations in violation of the Takings Clause because it would compel the cessation of Crooker's pre-existing, legal use of its land. See *Inhabitants of Town of Windham v. Sprague*, 219 A.2d 548, 550 (Me. 1966) (noting a provision "for the continuance of the nonconforming use ... is ordinarily included in zoning and police power ordinances because of hardship and [the] doubtful constitutionality of compelling . . . cessation of nonconforming uses"); see also *Day v. Town of Phippsburg*, 110 A.3d 645, 649 (Me. 2015) ("a grandfather clause, which allows the limited continuance of nonconformities, is included in . . . ordinances in order to avoid takings challenges.").

Finally, although Crooker believes its quarrying operation qualifies as an existing operation, and thus the mining ordinance would not apply, Crooker recommends revising the mining ordinance's treatment of quarrying operations. Like the previous proposed mining ordinance, which the town voted to reject, the setback, reclamation and groundwater standards are all overly restrictive. The setback requirements under the mining ordinance are 10 times larger than the state setback requirements; the area of total non-vegetated cover is required to be much smaller under the zoning ordinance than under state law; and the groundwater protection requirement - which prohibits extraction within 5 feet of the seasonal high groundwater table - is too conservative. Crooker has been permitted in Alna to extract to within 2 feet of the seasonal high groundwater table for the last 20 years.

Thank you for the opportunity to submit these comments.

Sincerely,



Georgia Bolduc

cc: Aga Dixon, Drummond Woodsum, Alna Town Counsel
Thomas Sturgeon, President & CEO, Crooker Construction LLC
Ian Messier, Chief Engineer, Crooker Construction LLC
Alna Planning Board