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*Admitted in:* ME

May 22, 2023

**VIA ELECTRONIC MAIL**

Town of Alna Planning Board  
Chair Amaral and Vice Chair Johnson  
1574 Alna Road  
Alna, Maine 04535  
[Amaral707@proton.me](mailto:Amaral707@proton.me)

Re: Draft Mining Ordinance

Chair Amaral, Vice Chair Johnson, and Members of the Alna Planning Board:

In advance of the May 23, 2023 workshop on the draft Mining Ordinance, I submit the following comments on behalf of Crooker Construction, LLC ("Crooker"), which operates a gravel mine in the Town of Alna pursuant to the February 17, 2003, Subdivision and Site Plan Review Ordinance Permit ("2003 permit").

As you are aware, Crooker is one of Maine's oldest and most experienced earthwork contractors, having operated in the Midcoast region since 1935 and currently employing 170 people. Crooker provides superior materials and construction services to a wide range of businesses, including earthwork and landscape companies, homeowners, and municipalities just like Alna. Crooker's Alna rock mining operation allows Crooker to supply much needed aggregate to the Midcoast region that is needed for roadways, utilities, septic systems, house lots, and essential services.

Crooker's local gravel mining operation that straddles the Alna/Whitefield border is permitted by the 2003 permit as well as by the Maine DEP. Under the 2003 permit, Crooker is subject to the Topsham Blasting Ordinance, which includes comprehensive performance standards that regulate hours of blasting and set water quality and ground vibration and airblast overpressure limits. The 2003 permit, by reference to Topsham's Blasting Ordinance, also requires Crooker to obtain an annual blasting permit, the most recent of which was approved by the Planning Board on April 4, 2023.

We understand the Town's desire to more specifically regulate mining activities, and fully support the Town's efforts to ensure that such essential operations are safe and pose no risk to the residents of Alna. However, Crooker has reviewed the draft Mining Ordinance and is concerned that, if adopted, the ordinance could be interpreted to prohibit Crooker's ongoing and permitted operations in Alna.

As written, the draft Mining Ordinance appears to prohibit certain mining and quarrying activities yet lacks a preexisting nonconforming use provision in violation of constitutional principles. In particular, Article 8(c) of the Mining Ordinance reads:

Article 8. Rock Crushing, Asphalt Batch Plants and Quarrying

C. Quarries: Quarrying or the mining of rock or other consolidated material using explosives or mechanical means is prohibited.

Assuming the draft Mining Ordinance intends to prohibit quarrying through mechanical means or explosives, without a grandfathering or preexisting nonconforming use allowance, the draft Mining Ordinance may force Crooker to shut down its facility, in violation of both the federal and state Takings Clause. U.S. Const. amend. V; Me. Const. art. I, § 21; *Foss v. Maine Turnpike Authority*, 309 A.2d 339, 344 (Me. 1973). Since 1966 the Maine Supreme Court has acknowledged the importance of including nonconforming use provisions in local ordinances to avoid “doubtful constitutionality” under the Takings Clause. *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 immediate cessation of nonconforming uses”); *see also Stewart v. Inhabitants of Town of Durham*, 451 A.2d 308, 311-312 (Me. 1982) (noting “some form of a grandfather clause is probably required” to save a mobile home ordinance “from a constitutional challenge under the takings clause”); *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.”). Accordingly, if the Town’s intent is to prohibit operations like Crooker’s, the ordinance must include provisions that allow for it to continue its permitted operations.

Furthermore, while Section 8(c) of the draft Mining Ordinance clearly prohibits quarrying or the mining of rock through mechanical means or explosives, other sections of the draft Mining Ordinance are inconsistent with this prohibition. For example, the notes in Article 5 suggest regulation based on the type of mining activity, including “quarrying rock,” which is differentiated from “gravel extraction” and “mineral mining.” Further inconsistent with the prohibition is the Article 16(M) definition of mining activities which include quarrying (“any excavation or removal, handling or storage of on-site extracted sand, gravel, borrow, rock, clay, minerals or topsoil including . . . quarrying”). Likewise, it is hard to imagine how quarrying could occur without mechanical means, as the draft Mining Ordinance appears to recognize in its Article 6 standards for blasting hours (Section D) and noise (Section E).

It is also unclear under the ordinance how quarrying is differentiated from “gravel extraction” or “mineral mining.” Typically, a “quarry” refers to a type of mine in which rock (as opposed to topsoil, clay, sand, or gravel) is mined. If it is the Town’s intent to allow only the extraction by hand of certain materials, it should be made clear. However, Crooker suggests that the Town’s intent appears to be regulation of different classes of “mining activities” that include quarrying.

In addition to the fundamental issue of what the Mining Ordinance will regulate and what it will prohibit, we note that the Article 6 noise standards should be revised to include standards for operational noise that are different from blasting noise, as blasting noise

Town of Alna Planning Board  
Chair Amaral and Vice Chair Johnson  
May 22, 2023  
Page 3

levels are higher but shorter in duration. We also note that the groundwater protection performance standards are significantly more restrictive than state standards.

Thank you for your consideration of our comments. Please let me know if you have any questions or need additional information, and we look forward to working with you on the draft Mining Ordinance at the May 23 workshop.

Sincerely,



Georgia Bolduc

cc: Benjamin J. Plante, Drummond Woodsum, Alna Town Counsel  
Thomas Sturgeon, President & CEO, Crooker Construction LLC  
Ian Messier, Chief Engineer, Crooker Construction LLC