

Etna Mining Ordinance

Attest: A True Copy



Rebecca Woodard, Town Clerk

Etna Mining Ordinance

SECTION I. PURPOSE

To define and regulate the excavation, extraction, processing, storage and transportation of sand, gravel, crushed stone, rock, topsoil, borrow and metallic minerals in the Town of Etna, such that said activities are so defined and regulated to:

- A. protect the health, safety and welfare of the public;
- B. preserve and protect the quality and quantity of surface water and ground water, and the aquifer in which the ground water is contained, for current and future use of the residents of the Town;
- C. minimize adverse impacts, such as noise, traffic, dust, etc. on neighboring properties and the quality of life of the residents of the Town and to protect the public roads from degradation;
- D. minimize adverse impacts on fish and wildlife, existing natural features and historic areas within the Town thereby preserving the town's rural character.
- E. preserve the usefulness of the land and its capacity to be an asset to the Town and its residents;

SECTION II. DEFINITIONS

It is the legislative intent of the voters of the Town, in adopting this Ordinance, that all provisions of this Ordinance be liberally construed to protect the health, safety, and welfare of the inhabitants of the Town. In the construction of this Ordinance, the word "including" means "including, but not limited to" and references to Maine statutes and Maine state department or agency rules include any amendments and successor provisions. In addition, the following definitions apply:

Aggregate Mining: For the purposes of this Ordinance, "Aggregate Mining" shall include mining for sand, gravel, crushed stone, and rock.

Applicant: A person with sufficient right, title, or interest to submit an application for a permit pursuant to this Ordinance and includes any duly authorized designee or agent of the applicant.

Buffer Strip: For the purposes of this Ordinance, “buffer strip” shall mean an undisturbed strip of land where development, clearing, or removal of existing vegetation is prohibited. Buffer strips protecting natural resources should be predominantly forested.

Discontinued Mining Pit: The term “discontinued mining pit” shall mean a Mining Pit which is no longer permitted by the Etna Planning Board or Maine DEP. A Mining Pit may be designated as discontinued due to either expiration of, or revocation of, an existing permit. A permit from the Town of Etna may be revoked as set forth in Section VIII.H. or Section IX.E. A discontinued Mining Pit shall be restored according to the provisions set forth in Section IX.E.

Exploration or Exploration Activity: Any bulk sampling or exploratory activity associated with any potential mining operation.

Groundwater: “Groundwater” shall mean all water found beneath the surface of the ground. For the purposes of aquifer protection, this term refers to the subsurface water present in the aquifers and recharge areas.

Historic and Archeological Resources: For the purposes of this Ordinance, “Historic and Archeological Resources” shall mean those entities, places, buildings, objects, etc., and may include stone walls, graveyards, abandoned cellar holes, monuments and markers, and other sites identified by the Town of Etna or the Maine Historic Preservation Commission.

Hydraulic Mining: A form of mining that uses high-pressure jets of water to dislodge rock material or move sediment.

Loam: A fertile soil of clay and sand containing humus. Loam is a subcategory of topsoil.

MDEP: The Maine Department of Environmental Protection and any successor agency.

Metallic Mineral: 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. “Metallic Mineral” does not include ores of thorium or uranium.

Metallic Mineral Mining: The extraction of metallic mineral for commercial sale, by any person, or persons acting in concert, and any associated exploration activities.

Mine Waste: All material, including overburden, rock, ore, tailings, and other mining-related materials, that have been exposed or removed from the earth during exploration or mining activities.

Mining: "Mining" shall be an inclusive term referring to the excavation of the following materials: sand, gravel, rock, crushed stone, topsoil, loam, borrow, and metallic minerals which are excavated, extracted, processed, stored, and transported as a result of Mining Operations.

Mining Area: The aggregate (total) land area devoted to mining and exploration activities, including:

1. land from which earth material is removed in connection with mining and exploration activities
2. land on which material from mining is stored or deposited, and
3. roads on the parcel supporting the mining operation.

Mining Extraction and Excavation: The terms "Mining Extraction" and "Mining Excavation" shall mean the removal of sand, gravel, rock, topsoil, borrow from their natural site of geologic deposition or formation.

Mining Pit: The term "Mining Pit", also referred to as "Pit", shall mean the portion(s) of a Parcel used in the excavation, extraction, processing, or storage of sand, gravel, crushed stone, rock, topsoil, and borrow for which a permit is required and issued. Acreage previously excavated which has been restored in accordance with Section IX.E. will not be counted as part of the Mining Pit in determining pit size for application fee purposes.

Mining Processing: The term "Mining Processing" shall mean the screening, sorting, crushing or other processing of geologic material extracted or excavated.

Mining Storage: The term "Mining Storage" shall mean the storage of sand, gravel, crushed stone, rock, topsoil, or borrow stockpiles.

Mining Transportation: The term "Mining Transportation" shall mean using the public roads in Etna to haul sand, gravel, crushed stone, rock, or borrow taken from mining operations in Etna.

Monitoring Well, Piezometer: The term "Monitoring Well" shall mean a well installed at sufficient depth to permit measurement of the average seasonal high-water table and of sufficient capacity to permit withdrawal of acceptable water samples for analysis. A piezometer is an example of a satisfactory monitoring well.

Natural Resources of Local Significance: For the purposes of this Ordinance, "Natural Resources of Local Significance" shall include natural resources as priorities for protection, including:

1. large undeveloped habitat blocks;
2. wildlife travel corridors, deer wintering areas, and significant wading bird/waterfowl wetlands;
3. water resources including aquifers, wetlands, streams (including headwaters), springs, and ponds of any size;

4. vernal pools, riparian habitats, grasslands, and other important habitats, including those mapped by the *Beginning With Habitat* program (MDIFW);
5. farmland and prime agricultural soils;
6. steep slopes;
7. scenic views, and;
8. rare plants, animals and natural communities requiring special protection.

Natural Resources of State Significance: For the purposes of this Ordinance, “Natural Resources of State Significance” shall include areas identified and/or mapped by the Maine Department of Inland Fisheries and Wildlife (MDIFW), U.S. Fish & Wildlife Service (USFWS), Maine Department of Environmental Protection (MDEP) or Maine Natural Areas Program (MNAP) as:

1. habitat for state or federally designated rare, threatened or endangered plant or animal species;
2. protected natural resources as defined by MDEP’s Natural Resources Protection Act, including great ponds, freshwater wetlands, streams or brooks, and Significant Wildlife Habitat;
3. Significant Wildlife Habitat, including high and moderate value Inland Waterfowl and Wading Bird Habitats, Significant Vernal Pools, and high and moderate value deer wintering areas and travel corridors; or
4. Rare or exemplary natural communities.

Overburden: Soil, rock, or other materials which lie above or between the natural deposits to be mined.

Parcel: The term “Parcel” shall mean all contiguous land within which a Mining Pit is located.

Person: An individual, firm, partnership, association, company, limited liability company, corporation, joint venture, municipality, governmental entity, or other legal entity.

Plan: The term “Plan” shall refer to the to-scale plan, normally prepared by a licensed professional, required by Section VIII.C.2. of this Ordinance.

Plant and Animal Habitat of State Significance: For the purposes of this Ordinance, “Plant and Animal Habitat of State Significance” shall include areas identified and mapped by the Maine Department of Inland Fisheries and Wildlife (MDIFW), U.S. Fish & Wildlife Service (USFWS), or Maine Natural Areas Program (MNAP) as:

1. habitat for state or federally designated rare, threatened or endangered plant or animal species;
2. Significant Wildlife Habitat, including high and moderate value Inland Waterfowl and Wading Bird Habitats, Significant Vernal Pools, and deer wintering areas; or
3. rare or exemplary natural communities.

Reclamation: The term “Reclamation” shall refer to restoration procedures set forth in Section IX.E. of this Ordinance.

Stream: For the purposes of this Ordinance, “Stream” shall mean river, stream, or brook as defined in Title 38, Chapter 3, Subchapter 1, Article 5-A, Section 480-B Definitions of the Natural Resources Protection Act (#9). This definition is based on physical characteristics that may require field verification.

Topsoil: Topsoil is defined as the top 2-7 inches of soil that has the greatest organic matter content and microorganisms.

Water Table: The term “Water Table” shall mean the upper surface of groundwater below which the soil is saturated with water.

Wetland: For the purposes of this Ordinance, “Wetland” shall mean a freshwater wetland that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and which under normal circumstances does support, a prevalence of wetland vegetation typically adapted for life in saturated soil conditions. Wetlands generally include marshes, bogs, wooded swamps, and similar areas. This definition is based on physical characteristics that may require field verification.

SECTION III. AUTHORITY

This Ordinance shall be known and cited as the “Town of Etna Mining Ordinance” and is referred to herein as “this Ordinance”. The Town of Etna is referred to herein as “the Town”. This Ordinance is adopted pursuant to and consistent with Title 30-MRSA, Sections 3001 et. seq.

SECTION IV. EFFECTIVE DATE

This Ordinance shall take effect immediately, and notwithstanding the provisions of 1 M.R.S.A. §302, to the maximum extent permitted by law, apply to all proceedings, applications, permits applied for and petitions not pending within the meaning of 1 M.R.S.A. §302 as of September 21, 2023 --the date upon which this Ordinance was first presented to the Etna Select Board -- and pursuant to the authority of a duly called and validly held Town Meeting. Permits applied for and/or granted prior to the effective date of this Ordinance shall remain subject to the provisions of this Ordinance at the time of application until such time as these permits expire.

SECTION V. VALIDITY AND SEVERABILITY

Should any section or provision of this Ordinance be declared invalid by any court of competent jurisdiction, such decision shall not invalidate any other section or provision of this Ordinance, and to this end the provisions of this Ordinance are hereby declared to be severable.

SECTION VI. CONFLICT WITH OTHER ORDINANCES

This Ordinance shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other rule, regulation, by-law, permit, or provision of law. Where this Ordinance imposes a higher standard, the provisions of this Ordinance shall prevail. This Ordinance does not relieve a person of the obligation to comply with all other applicable state, federal, or local laws, rules, and ordinances.

SECTION VII. APPLICABILITY

A. Activities requiring permits: all activities covered by this section will require permitting through the Town of Etna as well as any required by relevant State of Maine and/or federal laws.

B. Prohibited activities: The following activities are prohibited by this Ordinance:

1. Metallic mineral mining operations, and exploration for the same.
2. Any exploration of mining activities that do not comply with the requirements of this Ordinance.
3. Subdividing land parcels to avoid permitting or to open more than the allowed area or number of pits.
4. The mining or stripping of topsoil for sale.
5. Hydraulic mining.

C. Activities subject to the requirements of this Ordinance:

1. Any exploration for, and excavation, extraction, processing, storage and transportation of sand, gravel, crushed stone, rock, or borrow that exceeds five hundred (500) cubic yards of material (i.e. for reference, roughly 39' L x 39' W x 9' deep).
2. Exploration activities for sand, gravel, crushed stone, rock, and borrow:
 - a. At least sixty (60) days before commencing any exploration activities, the applicant must notify, by certified USPS first class mail, return receipt requested, the Town of Etna Planning Board and Code Enforcement Officer.
 - b. The notice must contain a description of the planned exploration activities, including:
 - 1) estimated quantities and dates material will be removed to obtain samples;
 - 2) a map identifying the exact location (latitude and longitude) and size of each:
 - i. drill hole, which shall be installed per common industry practice;
 - ii. test pit exceeding 100 square feet or ground surface impact;

iii. any other exploration activity apart from those defined above must have prior approval of the Town of Etna Planning Board and Code Enforcement Officer.

c. Any exploration activities that are occurring in lawful operation within the Town as of the date of applicability of this Ordinance may continue but the operator must give the notices required by this section within 30 days of the effective date of this Ordinance. Said notices must identify:

- 1) all existing and any new drill holes, test pits
- 2) other sites that, as of the date of applicability, are, or will be, used for exploration activities
- 3) the actual and estimated quantities of material that is, or has been, or will be, removed to obtain samples along with the actual and estimated dates of removal.

SECTION VIII. ADMINISTRATION

A. Permit Required.

1. No person shall engage in or allow, without first obtaining a permit, the excavation, extraction, processing, storage or transportation of sand, gravel, crushed stone, rock, or borrow (said activities hereinafter known as "Mining Operations") where the scope of such operations exceeds or will exceed more than five hundred (500) cubic yards of mined material. (i.e. for reference, roughly 39' L x 39' W x 9' deep).
2. Each mining operation shall require a separate permit. Expansion of existing mining operations shall require a new permit.
3. Maximum un-reclaimed pit size shall not exceed a total of five (5) acres.
4. There shall be no more than one (1) active mining operation per parcel. Permits shall not be transferable.

B. Application Fee. An application fee for a Mining Permit required by this Ordinance shall be paid with the application. The fee, which is non-refundable, shall be paid to the Town of Etna, and shall be used for the administration and enforcement of Town ordinances. An application shall not be considered by the Planning Board until such fee has been received by the Town.

1. Permit fees for mining:
 - a. 500 or less cubic yards= \$0
 - b. Over 500 cubic yards but less than 3 acres of ground disturbance= \$1,000
 - c. Between 3-5 acres of ground disturbance= \$2,000
2. Costs and fees for testing, surveys, professional evaluation, etc., that are requirements to meet the scope of the ordinance shall be the responsibility of the applicant.

C. Application. The Town of Etna does not have a formal application for Mining Operations. An applicant for a Mining Permit instead shall provide, in writing, all information required below. A fully executed original and nine copies of the application shall be submitted to the Etna Town Office not less than fourteen (14) days prior to a regularly scheduled meeting of the Planning Board. The application shall contain the following:

1. General Information. (Note: Items a.-g. shall be entered on the Etna Mining Ordinance Permit Application cover sheet. Answers to items h.-k. shall be inserted in the body of the application.)

- a. Name and current address of owner of record of the Parcel on which Mining Operations are proposed.
- b. Name and current address of the applicant (individual, firm, or corporation) seeking the Mining Permit, if different from the parcel owner.
- c. Name assigned to the proposed Mining Operations.
- d. Proposed duration of mining activity. Permits are valid a maximum of three (3) years. Upon expiration, the applicant must reapply following the same steps described in this section.
- e. The location on the property where the proposed mining operation is planned.
- f. The assessors' tax map and lot number of the Parcel on which Mining is proposed.
- g. A copy of the deed, option to purchase, lease, or other evidence of the applicant's title, right or interest in the Parcel.
- h. The status of the property taxes.
- i. Names and addresses of all owners of property within five hundred (500) feet of the property lines of the Parcel on which Mining Operations are proposed; and the assessors' tax maps and lot numbers of those properties.
- j. The name and registration number of the land surveyor, engineer, soils scientist, and/or similar professional(s), if any, who prepared the Plan (required in Section VIII C.2 below) submitted on behalf of the applicant.
- k. A statement from a bank or other financial institution indicating that the applicant has sufficient resources to fulfill the obligations required by this Ordinance (including Reclamation as hereinafter defined) and any other activities which may be required by the Planning Board (if application is approved, a performance bond will be required before issuance of permit where/when applicable).

2. Existing Conditions.

- a. The applicant shall provide a to-scale plot plan (hereinafter "Plan") showing:
 - 1) Location, bearings, and distances of all property lines of the Parcel on which Mining Operations are proposed.
 - 2) Location of all properties abutting the Parcel, the names of the owners of these abutting properties, and the assessors' tax map and lot number of abutting property.

- 3) Existing elevations and contours of the land both within and extending one hundred (100) feet beyond the boundaries of the Parcel at intervals not to exceed ten (10) feet in elevation. The scale used to define contours shall appear on the Plan and be expressed in "feet above sea level"
 - 4) Locations, names and widths of existing roads and rights-of-way within or adjacent to the Parcel on which Mining Operations are proposed.
 - 5) Direction of existing surface water drainage (flow) across the Parcel.
 - 6) Location of any private water supplies located within five hundred (500) feet of any boundary of the proposed Mining Operations.
 - 7) Location of any public water supplies located within 1,000 feet of any boundary of the proposed Mining Operations (to be distinguished from the property boundary).
 - 8) Location of any natural resources of local or state significance, land cover types, floodplain areas, historic and archaeological resources, fences, structures, and other unique features within the parcel or at a minimum within the footprint of the proposed Mining Operation and a buffer of 250 feet, together with a description of such features.
 - 9) Location of open drainage courses (streams and springs), lakes and ponds of any size, wetlands of any size, land cover type including forest stands and grasslands, historical and cultural features of state and local significance, plant and animal habitat of state significance, natural resources of local significance, within the Parcel on which Mining Operations are proposed, including, but not limited to, floodplains, deer wintering areas, significant wildlife habitats, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archeological resources, together with descriptions of such features.
- b. The applicant shall provide documentation of the average seasonal high water table level (expressed in feet above mean sea level) within the area where Mining Operations are proposed.
3. Proposed Pit. On the to-scale plot plan required in Section VIII C.2.a. above, the applicant shall also indicate:
- a. the portion of the parcel for which the applicant seeks a Mining Permit (hereinafter called the "Mining Pit" or "Pit").

- b. the surveyed location, bearings, and distances of the boundaries of the Mining Pit.
 - c. location of all setbacks and buffers within the Parcel.
 - d. the area, in acres, of the Pit.
4. Proposed Operations: On the to-scale plot plan required in Section VIII C.2.a above, the applicant shall also indicate, with color, grids, or other means:
- a. the area(s) of proposed Mining Operations during the life of the permit.
 - b. the area(s) of proposed Reclamation during the life of the permit.
 - c. if applicable, the area(s) of Mining Operations during the life of the immediate prior permit.
 - d. if applicable, the area(s) of Reclamation during the life of the immediate prior permit.
 - e. the buffer strip(s) to be maintained as required in Section IX.A.
 - f. the location and length of all access roads, existing and proposed, from a public roadway to the proposed Pit.
 - g. the location of all stream crossings, existing or proposed.
 - h. the location and dimensions of all buildings and structures, existing and proposed, whether temporary or permanent, within the Parcel.
 - i. the size, location, intensity, and direction of all outdoor lighting (all lighting shall be dark sky compliant).
 - j. location of any proposed hazardous material storage areas including, but not limited to, fuel storage and handling.
 - k. location of monitoring well(s), existing or to be installed, to be used to monitor the separation distance between the excavation floor of the Pit and the average seasonal high water table elevation.
 - l. the estimated longevity of the Mining Pit based on anticipated removal rates.
 - m. a written plan describing how setback and screening requirements as set forth in Sections IX.A & IX.B. shall be met.
 - n. a written plan describing any proposed washing operation and its impact on existing ground water quantity and quality.
 - o. the type, size, and location of any equipment, plans for blasting, or other procedures that are likely to generate noise levels exceeding 70db at the lot lines.
 - p. an estimate of the average daily traffic on public roads generated by Mining Operations during periods of operation.
 - q. a written soil erosion and sedimentation control plan prepared in accordance with the standards contained in the latest revision, *Best Management Practices for Erosion and Sediment Control*, as established by the State. Indicate any catch basins, dry wells, drainage ditches, swales, retention basins and storm sewers to be installed or created on the Plan.

- r. a written Reclamation Plan describing in detail the manner in which the Mining Pit shall be restored in accordance with the provisions described in Section IX.E.
- s. copies of all submissions to, and permits or licenses issued by, federal or state agencies with regard to Mining Operations on the Parcel.
- t. current aerial imagery of the area showing the specific location of the proposed Mining Operation shall be provided as part of the application. The Planning Board may require additional information from the applicant in addition to that requested in the application as set forth above. See Section VIII.E. below.

D. Application Requirements Waiver: The Planning Board may modify or waive any of the requirements set forth in Section VIII.C. above when the Board determines that such modification or such waiver of said requirements would not adversely affect the general health, safety, and welfare of the residents of the Town or otherwise be converse to the purposes and intent of this Mining Ordinance.

E. Application Review Process:

1. Review of Application for Completeness: The Planning Board shall review an application for a Mining Permit to determine whether the application is complete. The Board shall also review the findings of the Code Enforcement Officer's Annual Compliance Inspection(s) for the Parcel in question if the same was previously permitted for Mining Operations. If the Board determines the application is not complete, it shall inform the applicant of the information necessary to make the application complete.
2. Site Walk: Within forty-five (45) days of receipt of a complete application, the Board shall visit the Parcel proposed for Mining Operations to verify in the field the location of the site, boundaries, natural features, access roads, and other information presented in the application. Following the site walk, the Board may require additional information to be submitted by the applicant. It will be at the discretion of the Planning Board to schedule the Site Walk based upon weather and/or seasonal conditions.
3. Public Hearing: Within forty-five (45) days of receipt of a complete application, but after the site walk noted in Section VIII E.2. above, the Board shall hold a public hearing regarding the application. The Town of Etna shall publish, at the expense of the applicant, notice of the date, time, and place of the hearing in a newspaper of general circulation at least twice, the date of the first publication to be not less than ten (10) days prior to the hearing. In addition, the Town shall mail, by certified mail (return receipt requested) and at the expense of the applicant, a notice of the public hearing to all abutters of the Parcel on which Mining Operations are proposed not less than ten (10) days prior to the hearing. Following the public hearing, the Board may require additional information to be submitted by the applicant.
4. Additional Information: The Planning Board may also require an independent evaluation and/or study from an accredited independent person or firm in addition to information provided by the applicant. This evaluation and/or study shall be done by a person or firm of

the Board's choosing. Said person or firm shall be required to estimate the cost of an evaluation or study and the applicant shall pay to the Town of Etna the full estimated cost. At the completion of the evaluation or study, any balance due shall be paid to the Town by the applicant or any balance remaining shall be returned to the applicant.

5. Planning Board Decision: Within seventy-five (75) days of receipt of a complete application or, if additional information as noted in Sections VIII E.2, E.3, and E.4 above is required, at a mutually agreed upon later time, but after the Site Walk and Public Hearing, the Board shall grant without conditions, or grant with conditions, or deny the permit. The Board shall grant the permit, either without or with conditions, if the Board makes a positive finding, based on all the information available to the Board, that the proposed Mining Operations are in conformance with the Performance Standards set forth in Section IX.

F. Length of Permit: Permits may be granted for a period not to exceed three (3) years.

G. Appeals:

1. Any decision of the Planning Board may be appealed by any party of standing to the Etna Board of Appeals, or in the absence of such board, to the Select Board. The appeal shall be in writing and submitted within thirty (30) days of the date of the written decision of the Planning Board and shall be accompanied by the required fee as established by the Etna Board of Selectmen.
2. A hearing shall be conducted by the Board of Appeals or Select Board per G.1 above, which shall act solely in an appellate capacity. Following a hearing, that shall not be de novo, but shall be limited to a review of the record developed before the Planning Board, and the parties' arguments based on that record, the Board of Appeals or Select Board may reverse the decision of the Planning Board only upon a finding that the decision is clearly contrary to specific provisions of the applicable ordinance. Upon reversal, the matter shall be remanded to the Planning Board for further proceedings consistent with the Board of Appeals' or Select Board's ruling.

H. Enforcement:

1. Annual Compliance Inspection:

- a. All Mining Operations shall be inspected annually for the purposes of ensuring compliance with this Ordinance and any additional conditions placed on the permit. The Annual Compliance Inspection shall be conducted by the Code Enforcement Officer (CEO) in the Spring prior to June 1.
- b. The CEO shall issue a *Report of Compliance* if it is determined that the Mining Operations and Reclamation are in compliance with the Ordinance and any conditions which were placed on the permit at the time of issuance. The report shall be written and provided to the Planning Board, Select Board, and the permit holder. If the Planning Board determines the Report of Compliance conflicts with the compliance requirements of the Ordinance, then the Board may seek to hire an

accredited and independent firm to perform a thorough Ordinance compliance review.

- c. The CEO shall issue a *Report of Non-compliance* if it is determined that the Mining Operations and Reclamation are not in compliance with the Ordinance and/or any conditions which were placed on the permit at the time of issuance. The report shall be written and copies of the report provided to the Planning Board, Select Board, and the permit holder.

2. Notice of Violation:

- a. When the CEO or Planning Board finds that Mining Operations and/or Reclamation are not in compliance with the Ordinance and/or any additional conditions which were placed on the permit at time of issuance as described in Section VIII H.1.c. above, the CEO shall issue to the permit holder in writing a *Notice of Violation* specifying the particular violation(s), ordering the permit holder to cease immediately any further violation(s), and ordering the permit holder to take any necessary remedial actions to bring operations into compliance.
- b. If within thirty (30) days after issuance of the *Notice of Violation* the permit holder takes such remedial actions which, in the determination of the CEO, bring the Mining Operations into compliance, the *Notice of Violation* shall be rescinded by the CEO and a *Report of Compliance* issued.
- c. If thirty (30) days after issuance of the *Notice of Violation* the CEO determines that the permit holder persists in violation and/or has not taken such remedial actions as to bring the Mining Operations into compliance, the CEO shall issue in writing a *Stop Work Order* requiring immediate cessation of all Mining Operations authorized under the existing permit. The Planning Board shall then have the authority to seek revocation of the Mining Permit. If a Mining Permit is revoked, the pit owner/operator is required to immediately commence such Reclamation as is required by Section IX.E. of this Ordinance and as was required by the revoked permit.
- d. If the Mining Operation and/or Reclamation does not stop upon the issuance of the CEO's *Stop Work Order*, the Town may immediately file for relief in the Superior Court pursuant to 30-A M.R.S.A § 4452.

- 3. Right of Entry: The Code Enforcement Officer or any firm, licensed professional, or service hired to serve obligations to this Ordinance is authorized to enter any Parcel on which a permitted Mining Pit is located for the purpose of monitoring compliance with the provisions of this Ordinance and any additional conditions which were placed on the permit by the Planning Board. If the permit holder denies entry to any parties given Right of Entry through this Ordinance, the CEO or approved parties shall not enter the property without first obtaining an administrative warrant pursuant to the Maine Rules of Civil Procedure. However, failure by, or on behalf of, the permit holder to grant the CEO or approved parties

access to the Parcel shall be considered just cause for the Planning Board to seek revocation of the Mining Permit.

4. Prosecution:

- a. In the event that the permit holder continues operations after a permit has either expired or been revoked, the CEO shall immediately issue a Stop Work Order. If the Mining Operation and/or Reclamation does not stop upon the issuance of the CEO's *Stop Work Order*, the Select Board may immediately file for relief in the Superior Court pursuant to 30-A M.R.S.A § 4452.
- b. Continuing Mining Operations without a permit, whether such permit has expired or has been revoked, shall subject the operator to a fine of five hundred dollars (\$500.00) per day per violation.

SECTION IX. PERFORMANCE STANDARDS

All Mining Operations shall comply with State of Maine Best Management Practices for Erosion and Sedimentation Control. Permitted Mining Operations shall conform to the following standards:

- A. Setbacks: The purpose of setbacks is to lessen adverse impacts, such as noise, erosion, despoiling of views, and deterioration of water quality on neighboring properties and residents, and on the town's natural resources, historic areas, and rural character.
 1. A buffer strip of not less than 250 feet shall be maintained between the boundary of the Mining Pit and the boundary of the Parcel on which the Pit is located.
 - a. However, the buffer strip between permitted Mining Pits on abutting parcels may be eliminated with the written permission of both owners and approval of the Etna Planning Board, but the maximum open pit size for both parcels combined shall not exceed 5 acres (which means that portion of the Mining Pits for each property may need to be restored before excavating in the buffer area between the parcels).
 - b. The slope from the lowest elevation of a Pit adjacent to the buffer strip may not exceed the 2.5:1 slope as required and described in Section IX.E.1.a. or to original grade if it was greater. The restored slope shall not infringe on the buffer strip.
 2. A buffer strip of not less than 500 feet in width shall be maintained between the boundary of the Pit and an existing private drinking water supply. A buffer strip of at least 1,000 feet shall be maintained between the boundary of the Pit and any public water supply.
 3. A buffer strip of not less than 250 feet in width shall be maintained between the boundary of the Pit and the nearest edge of any public road, public right-of-way or the nearest edge of any private road serving as the principal road in a subdivision.
 4. A buffer strip of not less than 250 feet in width shall be maintained between the boundary of the Pit and the normal high-water line of any stream, wetland, or pond.

5. The width of a buffer strip between the boundary of the Pit or any permanent clearing and the habitat of a state or federally designated rare, threatened, or endangered plant or animal species, or a rare or exemplary natural community, shall be determined by the Planning Board on a case-by-case basis in consultation with the jurisdictional agency (MDIFW, USFWS, MNAP).
 6. A buffer strip of not less than 100? feet in width shall be maintained between the boundary of the Pit or any permanent clearing and the edge of a Significant Wildlife Habitat as identified and/or mapped by MDIFW.
 7. The Planning Board shall have the authority to require wider buffer areas, on a case-by-case basis in consultation with the Maine Historic Preservation Commission and/or any other relevant resource specific to the need, if it determines that the above set-back distances are insufficient to achieve the purposes of protecting private and public water supplies, screening Mining Operations from public view, protecting water bodies, streams, wetlands, or other resources of significance to the town, including any permanent clearing and/or historic or archeological resource or features as noted in Section IX.A.
- B. Screening: Screening within all required buffer strips as described in Section IX. A. above shall be required in order to prevent direct view of Mining Operations from any private residence and/or business, public road, public right-of-way, and private road serving as a principal road in a subdivision and to reduce the volume of noise generated from Mining Operations affecting neighboring properties. Natural features such as trees, shrubbery, berms, and hills shall be maintained as screening where possible. Where such natural features are not present or are insufficient to provide the required screening, the Planning Board may require construction of fences and/or additional plantings. Where topography makes it impracticable to screen Mining Operations from public view, the Planning Board shall have the authority to alter or waive the screening requirement.
- C. Groundwater Protection:
1. No Mining Pit shall be worked at any time at a level less than five (5) feet above the existing water table. The location of the water table shall be established prior to any excavation taking place. The water table shall be determined by use of monitoring wells. At least one monitoring well shall be installed for any Mining Operations for which a permit is required.
 2. Prior to Initiating work on the mining site, and/or as required throughout operation of the Mining Pit to periodically monitor water quality impact, as may be deemed necessary by the Planning Board, the permittee shall provide documentation of water quality as determined from samples taken from each monitoring well, as well as any other water resource (i.e. streams, ponds, vernal pools, private wells, public supplies, etc.) potentially impacted by the Mining Operation the Planning Board deems necessary. Field parameters measured and recorded at each sampling event shall be pH, specific conductance, turbidity, and temperature. Laboratory analyses shall include iron, manganese, Volatile Petroleum

Hydrocarbons and Extractable Petroleum Hydrocarbons, and coliform bacteria. Samples shall be taken by a certified professional hydrologist, or a professional engineer licensed in the state of Maine, and analyses shall be completed by an accredited laboratory.

3. No ditching, trenching, pumping or other methods shall be used to lower the water table for the purpose of allowing more Mining extraction than would be permitted without such lowering of the water table.
 4. In the case where water is required for the purposes of washing Mining materials, water shall be taken from a drilled well and shall not be taken from any natural water bodies, such as streams, ponds, bogs, springs, etc.
 5. No substance or item harmful to groundwater quality including, but not limited to, salt, creosoted timber, tree stumps, building waste, petroleum products or rubbish shall be dumped in a Mining Pit.
 6. Petroleum products, such as fuel and lubricants, being used in Mining Operations shall be kept under cover and upon an impermeable spill-proof base sufficient to contain the volume of the petroleum products in the event of a spill.
 7. The Planning Board may increase the separation distance required if it determines that the water table of neighboring properties will be adversely affected by Mining extraction to the five-foot minimum separation from the water table.
- D. Stream Crossings: Any new or replacement stream crossing on an access, haul or other supply road within the Mining Operation must be designated and installed to meet Stream Smart standards (<http://maineaudubon.org/projects/stream-smart/>). Specifically, crossings must:
1. Not block fish or other aquatic organism passage;
 2. Be sized based on the size of the watershed as determined by a licensed professional engineer and designed to pass or exceed the flow of a 100-year flood; and
 3. Be sized at least 1.2 times the bank-full width of the stream.
 4. If installing a culvert, it shall be embedded into the stream bottom substrate at least one foot or 25% of the diameter of the culvert whichever is greater, to a maximum of 2 feet (measured from the invert). The culvert shall be designed, installed, and maintained to match the natural stream grade to avoid drops or perching.
 5. Conform with any and all requirements, as well as obtain any and all permits/licenses pursuant to the Town's Shoreland Zoning Ordinance.
- E. Reclamation:
1. Reclamation Plan: Any area from which mined materials have been extracted and from which no further Mining extraction is either proposed by the pit operator or eligible for permitting by the Planning Board under the terms of the Ordinance shall be restored to a natural state within the specifications set forth below:
 - a. No slopes shall have an incline greater than 2.5 horizontal to 1 vertical (2.5:1). Slopes greater than 2.5:1 shall be regraded, except that a steeper slope may be allowed if slope stability analysis is submitted that there will be no failure or

sloughing of slopes, or regraded to original grade if it was greater than 2,5:1 originally. The restored slope shall not infringe on the buffer strip.

- b. All disturbed surfaces shall be covered with a minimum of four (4) inches of topsoil. All topsoil stripped prior to mining shall be retained on the premises and shall be seeded and mulched or otherwise stabilized. If additional topsoil is required to comply with the Reclamation requirements of this Ordinance, it shall be obtained from verified off-site sources if needed to fully cover all disturbed surfaces to avoid importation of invasive species, toxins, etc.
- c. Vegetative material used in Reclamation shall consist of native grasses, legumes, herbaceous, or woody plants or a mixture thereof. The owner/operator shall guarantee that if, after two years from the Reclamation completion date, less than 85 percent of the planted area does not sustain vegetation, the failed areas shall be replanted. (See Best Management Practices for Erosion and Sediment Control 3/2003, and any subsequent amendments).
- d. All structures, such as refueling pads and gates, shall be removed and all access, haul or other support roads shall be subjected to Reclamation once no longer used.
- e. All stream crossings installed or upgraded as part of the Mining Operation shall be removed and restored to natural conditions on all access, haul or other support roads once no longer used.
- f. Reclamation activities shall be completed within one year:
 - 1) Reclamation of previously excavated areas proposed or required as part of Mining Permit must be completed within one year following the permit expiration or revocation date. Failure to complete Reclamation within the one-year time frame shall be sufficient grounds for:
 - i. Revocation of an existing Mining Permit; and/or
 - ii. Denial of a subsequent Mining Permit for the same parcel until such time as required Reclamation is completed, and/or;
 - iii. Forfeiture of performance bond.
 - 2. Filing of Reclamation Plan: The owner/operator of the Pit shall record the Planning Board approved Reclamation Plan with the Penobscot County Registry of Deeds. Recording the Reclamation Plan with the deed to the property will assure the Town of Etna that the sale of the property to any other owner for any reason will cause the new owner to comply with the terms of the Reclamation Plan unless the new owner applies for and receives a Mining Permit within six months of assuming ownership of the Pit.
 - 3. Performance Guarantee- Performance Bond:

- a. The Planning Board shall require a performance bond based upon the size of the Mining Operation to be used to address damage resulting from the operations to town roads or other property, and for reclamation of the mining area if the permit holder fails to comply with permit requirements. The amount of the bond shall be determined by the Planning Board, who shall ensure it is sufficient to cover the estimated cost of reclamation and restoration of the site.
- b. Should the owner/operator fail to complete required reclamation work, a lien in an amount three times the estimated cost to complete required Reclamation shall be recorded against the Parcel.

F. Transportation:

1. All vehicles carrying mined material, either to or from a Mining Pit, shall have the load covered and tailgates secured to prevent spillage of any part of the load on the public roads within the Town.
2. All access/egress roads leading to or from a Mining Pit shall be paved or otherwise surfaced for a distance of not less than one hundred (100) feet from the near edge of the pavement of a paved public road so as to prevent mud, stones, and the like from being brought onto the public road.
3. Except as set forth in Section IX E.2.7 above, access roads in and around the Pit shall not be oiled, salted, or paved.
4. A minimum sight distance of 12.5 feet for every mile-per-hour of posted/legal speed limit shall be provided where an access/egress road intersects a public road. Sight distances shall be measured as per the Maine DOT Access Management Rules (MRS 17-229, Chapter 299). If the public road is a State road, a Driveway Entrance Permit issued by the Maine Department of Transportation shall satisfy this standard.
5. The angle of intersection of an access/egress road and a public road shall be a minimum of 60 degrees and a maximum of 90 degrees.
6. The maximum permissible grade within 75 feet of such intersection shall be 5%.
7. Road signs stating "Trucks Entering- 500 feet" shall be installed 500 feet from where access roads intersect public ways. Said signs shall be paid for by the permit holder and installed by permission of and in cooperation with the Maine Department of Transportation.
8. The Planning Board reserves the right to adjust requirements/conditions of a permit in the event a real danger is presented to either traffic or damage to roads.

G. Hours of Operation:

1. Regular hours of operation shall be 6 a.m. to 6 p.m. daily with the exception of Sunday, when no Mining Operations or Pit Reclamation work are permitted.
2. In emergency situations involving public health and/or public safety, Mining Operations may occur, but only after notification is made to and permission granted by the CEO. A written report shall be filed within 25 hours of commencement of such emergency operations describing the nature of the emergency warranting such operations.
3. Mining Operations shall not occur on the following holidays: Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day.

H. Noise:

1. Noise shall not be objectionable due to intermittence, beat frequency, shrillness, or volume beyond the boundaries of the Parcel(s) on which Mining Pit is located.
2. Sound pressure levels shall be measured on a sound level meter at all boundary lines of the Parcel on which the Mining Pit is located.
3. The sound pressure limit shall not exceed 70 dB at any Parcel boundary line.

I. Annual Report:

1. On an annual basis, not less than thirty (30) days following the anniversary date of the permit, the Mining Pit owner/operator shall provide a written report to the CEO containing the following:
 - a. The volume of material excavated from the Pit during the previous twelve (12) month period.
 - b. Any Reclamation completed during the previous twelve (12) month period.
 - c. Water table levels, expressed in feet above mean sea level, measured within thirty (30) days of the anniversary date of the permit, in all Monitoring Wells/piezometers within the Pit; and the level, expressed in feet above mean sea level, of the lowest point in the Pit floor.
 - d. Water quality data, as determined within thirty (30) days of the anniversary date of the permit, from samples taken from each Monitoring Well/piezometer. Data shall include results of field parameters and analyses, set forth in Section IX.

J. Exterior Lighting:

1. All exterior lighting shall be designed to ensure safe movement of people and vehicles and to minimize adverse impact on neighboring properties and public ways.
2. Lighting shall be arranged to minimize glare and reflection on adjacent properties and the traveling public.
3. All lighting shall be dark sky compliant.

K. Air Pollution:

Mining Operations shall not create an emission of dust or dirt at any point beyond the boundary line of the Parcel on which the Pit is located that could damage human health, animals, vegetation, or property or that could soil or stain persons or property.

L. Landscape Preservation:

Environmentally sensitive areas and areas that support significant resources, including aquifers, wetlands, steep slopes, floodplains, large undeveloped blocks of habitat, wildlife travel corridors, historic sites, existing and potential archeological sites, farmland and prime agricultural soils, and scenic views shall be maintained and preserved to the maximum extent practicable. In its evaluation of whether the proposed activities avoid and minimize impacts to these resources and the overall rural character of the town, the Planning Board may consider and recommend alternatives to the Mining Operation, including modification of the proposed design, timing of construction and/or operation, and extent of excavation.

M. Adverse Effect:

The proposed Mining Operations shall not adversely affect the value of neighboring properties as determined by a licensed appraiser.

N. Additional Standards:

The Planning Board shall have the authority to modify and/or apply additional standards and/or impose such conditions not otherwise specified in this Ordinance as may be necessary to minimize any adverse effects associated with Mining Operations on public health and safety, and on surrounding land uses and resources.

O. Notice of Blasting:

Notice for blasting shall be provided to the Etna Town Office, the Etna Volunteer Fire Department, and to any school or residence within _____ feet of the blasting site at least 10 minutes before the estimated blast time.

This ordinance was adopted by the Etna town meeting held on 6-12-2024.

The Etna Select Board

LeRoy Hall LeRoy Hall, Chair

Daniel French

Shane Shaw Shane Shaw

Brian Curtin Brian Curtin
Daniel Smith Daniel Smith