

SECTION 600 - MINERAL EXTRACTION

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601 Purpose

- A. The purpose of this section is to regulate sand and gravel and other quarrying operations, including the removal, processing and storage of topsoil or loam, rock, sand, gravel and other earth materials (hereinafter "mineral extraction"). The Planning Board shall follow the site plan review requirements in Section 800 when more than 25,000 square feet of gross area is to be developed, as defined in Section 300. (See definition of "Development")

- B. The removal of stone, sand and gravel from banks or quarries and the processing of said materials shall not be permitted without the approval of the Planning Board. The removal of loam, topsoil or sod is permitted in any of the Town's zoning districts. Such material may be hauled away to other locations, either inside or outside the Town of Windham. The Planning Board may approve the removal and processing of such materials after public hearing thereon, and a finding that such removal and processing will be performed subject to the conditions and safeguards set forth in this section.

- C. These regulations are intended to protect the quality and quantity of the ground and surface waters, to control erosion, to provide for the reclamation and rehabilitation of mineral extraction sites so that future uses shall be compatible with the surrounding neighborhood, and to minimize any adverse impact of such pit operations on adjacent and nearby properties.

602 Application

- A. Existing pits, expansions over five (5) acres, loam stripping exceeding one quarter (1/4) of an acre, and new operations which are started or approved after the effective date of this amendment shall be governed by this section. This section applies to all private, public and municipal mineral extraction operations within the Town of Windham.

- B. Whereas the Town of Windham recognizes that exceptions to this section may become necessary in a time of great need, such as a natural disaster necessitating ready and immediate access to sand, gravel and other earth materials, provision is herein made for the temporary suspension of the application process included herein if approval for said suspension is granted by a majority of the Town Council.
- C. The applicant shall pay a processing fee and establish a peer review escrow account as set by the Town Council in the Windham Fee Schedule (*See Appendix A Fee Schedule*)

603 Exemptions

- A. The following activities are exempt from the provisions of this section of the Ordinance:
 - 1. Excavation whose sole purpose is to determine the nature or extent of mineral resources. It is accomplished by hand sampling, test boring, or other methods which create minimal disturbance. Test holes shall be filled in immediately after use.
 - 2. The removal of less than two hundred (200) cubic yards of material (except topsoil) in any one (1) year, provided such removal does not disturb more than one (1) acre of land.
 - 3. The removal of any amount of sand, gravel, or loam from a site is an exempt activity if it is undertaken as part of an approved on-site construction project, is part of normal farm operations, or the sand, gravel, or loam is being moved to a contiguous site having the same ownership or is being used by the owner for their own use.
 - 4. Excavation or grading which is undertaken as part of and subordinate to an approved construction project such as a subdivision, permitted structure or road.
 - 5. Existing pits may only expand in conformance with this section. The owner(s) must file a plot plan within ninety (90) days of the effective date of this section, showing the active part of the pit, as distinguished from those slopes and setbacks existing at the time of adoption of this section, which shall be exempt.

604 Permit Application Requirements

- A. All applicants shall submit an application to the Planning Department. The Planning Department shall verify that the application is complete prior to placing the applicant on an agenda to appear before the Planning Board. Approval from the Planning Board is required prior to the applicant initiating any phase for which the applicant seeks approval. This information is in addition to information provided as part of the site plan review criteria required under section 800 et seq. The following information shall be submitted to the Planning Board when applying for a permit. All plans shall be drawn to a scale not greater than one inch equals one hundred feet (1"=100').

- B. The location of existing wells, streams, springs, intermittent streams and wet areas. The depth of groundwater at the site of the proposed excavation as determined by test borings shall substantiate that groundwater will not be disturbed.
- C. Contours of the land within and extending beyond the boundaries of the parcel for two hundred (200) feet at five (5) foot intervals, or at intervals acceptable for a MeDEP permit application, or at intervals required by the Planning Board for mineral extraction operations of under five (5) acres.
- D. The location of all proposed hazardous materials storage areas. Hazardous materials shall be located in an impervious containment area.
- E. Plans for controlling access to the site. At a minimum, a solid gate with a lock shall be located at any entrances or exits.
- F. Provisions for shielding the excavation from surrounding properties with adequate screening or buffering for a visual and acoustical buffer between the project and adjacent properties if a natural buffer does not exist. Signs and lighting shall be designed to prevent public nuisance conditions or undesirable aesthetic effects on the neighborhood.
- G. A final rehabilitation plan including seeding, planting, drainage, erosion control, final grading, shaping, and surface stabilization plans showing contours at five (5) foot intervals. Plans shall be approved by the Cumberland County Soil Conservation Service, a Registered Forester, a Certified Soils Scientist or a Registered Maine Civil Professional Engineer. The proposed use of the property at completion of the project shall be described. A time schedule for rehabilitation shall be included. Any project which is proposed to operate for more than five (5) years shall be designed to operate in phases, if possible.
- H. Applicable state and/or federal permits shall be required prior to final approval from the Planning Board. For applications requiring site plan review, the Planning Board shall have the authority to review the applicant's technical capacity to comply with state and federal permitting requirements, including those for temporary or permanent drainage and sedimentation control, storage and containment of any materials, noise, vibration levels, and dust levels and measures for minimization.
- I. Hours of operation. These shall be compatible with the surrounding neighborhood and shall minimize any adverse impact of the pit operations on adjacent and nearby properties.

605 Plan Review

- A. The Planning Board may impose such conditions as are necessary to safeguard the health, safety and welfare of the community. Where considered necessary by the

Planning Board, the plan required to accompany the application shall be prepared by a Registered Maine Civil Professional Engineer and/or Maine Certified Geologist at the applicant's expense. The plan review shall take into consideration at least the following:

1. Fencing, landscaped buffer strips, and other public safety and nuisance considerations for compliance with Sections 604(F) and 606(B).
2. Signs and lighting for compliance with Section 604(F).
3. Adequate parking spaces, loading and unloading areas for compliance with Section 812(C).
4. Safe entrances and exits for compliance with Sections 604(E) and 812(B).
5. Total estimated life of the pit for compliance with Section 608.
6. Days and hours of normal operation for compliance with Section 604(I).
7. Methods of operation, removal or processing for compliance with Sections 604(H) and 606(A).
8. Area and depth of excavation for compliance with Sections 604(B), 604(H) and 606(A).
9. Provision for temporary or permanent drainage and sedimentation control for compliance with Sections 604(H) and 606(A).
10. Disposition of stumps, brush and boulders with Section 812(O).
11. Type and location of temporary and permanent structures for compliance with applicable zoning requirements.
12. Storage and containment of any materials (e.g., petroleum products, salt, hazardous materials, rubbish, treated timber) on the property for compliance with Sections 604(D), 812(L) and (O).
13. Complete rehabilitation proposals for compliance with Section 607.
14. Noise levels for compliance with Section 812(S).
15. Vibration levels in compliance with Sections 604(H) and 606(A).
16. Dust levels and measures for minimization in compliance with Sections 604(H) and 606(A).

606 Excavation Regulations

- A. A Mineral Extraction operation within the Town of Windham that is regulated by the Maine Department of Environmental Protection (MeDEP) shall conform to MeDEP regulations.
- B. Mineral Extraction operations regulated by the Town of Windham shall follow the excavation regulations listed below:
 - 1. A buffer strip of 25 feet in which natural vegetation is retained shall be required at the boundaries of the existing parcel, except for existing exempted slopes and setbacks.
 - 2. Excavation, except for drainage ways, shall be at least two hundred (200) feet from any residence.
 - 3. Earth-moving or excavation shall be at least one hundred fifty (150) feet from any public or private roads, unless written permission is obtained from the owner(s) of abutting land, as defined in Section 300, and approved by the Planning Board.
 - 4. If written permission of the abutter is obtained, excavation less than twenty-five (25) feet from lot lines may be allowed. In the case of two (2) abutting, working mineral extraction operations, the buffer strip may be eliminated upon the recording of a covenant deed by both property owners.
 - 5. Excavation may not occur within two (2) feet of the seasonal high water table. If standing water already exists in an excavated area, no further excavation that would result in an increased area of standing water shall be allowed. However, excavation may extend to or below the water table, and an area of standing water may be increased through excavation, if the proposed excavation is approved by the Maine Department of Environmental Protection. The Planning Board may request additional information to ensure compliance with this provision.
 - 6. Sufficient topsoil shall be retained to comply with the approved rehabilitation plan.

607 Rehabilitation Requirements

- A. Any operation shall be deemed closed ninety (90) days after its permit expires or the operations cease for two (2) years. The site shall be rehabilitated in accordance with this section. The rehabilitation plan shall be completed within two (2) years of closing. Rehabilitation of continuing operations shall be conducted in phases. Upon completion or abandonment of an existing mineral extraction operation in existence on the effective date of this chapter, except for existing exempted slopes and setbacks, the area shall meet the following requirements:

1. Specific plans shall be established to avoid hazards from excessive slopes. Where an embankment remains after the completion of operations, it shall be graded at a slope not steeper than one foot vertical to two feet horizontal.
2. Seeding, planting and loaming, as approved in the rehabilitation plan, shall be accomplished so that exposed areas are stabilized and erosion is minimized. Retained topsoil shall be used as loam. These areas shall be guaranteed for eighteen (18) months during which time the performance guarantee, where required, shall remain in full force and effect.
3. The Board may require that trees be planted for a visual and acoustical buffer between the project and adjacent properties if a natural buffer does not exist.
4. Tree stumps and grubblings from the site may be used to stabilize the banks. The areas of pits with solid or broken ledge rock shall be trimmed of loose rock and the bottom of the pit graded to be compatible with the surroundings.
5. The pit shall be contoured so that sediment is not directed into streams or drainageways.
6. Grading and restoration shall be completed in such a manner that it will ensure natural drainage, prevent standing water and minimize erosion and sedimentation.
7. Existing pits may expand over five (5) acres without Planning Board approval if the area being worked remains no larger than five (5) acres and all the prior existing area has been rehabilitated in conformance with this section and has been inspected and verified by the Planning Department prior to any expansion.

608 Permit Dates

- A. After initial permit approval by the Planning Board, the applicant shall submit a report to the Planning Department every fifth year, two (2) months prior to the expiration of the permit. The applicant shall demonstrate that the operation is in conformance with the standards found in this section. Aerial photography may be required to demonstrate conformance with these standards. If the expansion is proposed beyond the original plan, the applicant must obtain a new permit from the Planning Board.
- B. Change of operator or owner requires application for a new permit from the Planning Department. The new owner or operator shall be required to demonstrate financial and technical capabilities required to operate a mineral extraction operation equal to those required of the original owner.

609 Performance Guarantee Requirements

- A. A surety bond issued by a commercial surety company authorized to do business within the State of Maine, or an interest bearing trust account made payable to the Town of Windham, or a letter of credit, cash, or a certified check payable to the Town of Windham, shall be posted by the owner(s) or operator(s) in an amount recommended by the Town Manager or his/her authorized agent, with the advice of the Soil Conservation Service and/or a Registered Maine Civil Engineer, as sufficient to guarantee conformity with the provisions of the permit approval for the rehabilitation of existing mineral extraction operations, new mineral extraction operations, and/or loam stripping operations.
- B. The amount of performance guarantee shall be sufficient to fund the costs of that rehabilitation which remains to be completed. The performance guarantee must remain in force until the Planning Department or designee certifies that the site has been rehabilitated according to the approved plan.

610 Loam Stripping Conditions

- A. The removal of loam, topsoil, or sod from the ground surface may be permitted in any zone and such material may be hauled away to other locations, either in or outside the Town of Windham. If the gross area of such removal exceeds one fourth (1/4) acre, the stripping may be done only after public hearing and approval by the Planning Board, subject to appropriate conditions and safeguards, such as, but not limited to the following:
 - B. Operations shall not adversely affect the health and general welfare of the Town.
 - C. The Planning Board shall require the filing of a development plan and the posting of a performance guarantee in an amount set by the Town but not less than five hundred dollars (\$500) per acre.

Section 600 Amendments

Order 10-023; Date 02-09-2010 Change to review procedure.
Order 10-061; Date 04-13-2010 Clarifications