

TOWN OF SOUTH THOMASTON MINERAL EXTRACTION ORDINANCE

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ARTICLE I - TITLE AND PURPOSE

§ 1 Title

This Ordinance shall be titled the Town of South Thomaston Surface and Subsurface Mineral Extraction Ordinance. It will be referred to herein as "this Ordinance". It may be cited by its full title or by its short title, the Town of South Thomaston Mineral Extraction Ordinance.

§ 2 Scope and Purpose

A. Regulation of mineral extraction operations (MEOs).

1. **Establishment of standards and procedures.** This Ordinance establishes minimum removal and reclamation standards for, and municipal procedures intended to regulate the removal, processing and storage of, minerals specified in paragraph 2.
2. **Minerals covered.** For purposes of this Ordinance, minerals include topsoil, loam, rock, flat rock, sand, gravel, or other similar materials, other than metallic materials.
3. **Metallic minerals.** Metallic mineral mining is prohibited, except that –
 - a. exploration for metallic minerals is permitted in accordance with Article III §1.B; and
 - b. extraction following exploration will be permitted only pursuant to an amendment to the Land Use Ordinance authorized by an Annual Town Meeting.

B. Purpose. The purpose of this Ordinance is to minimize the potential negative impacts of development while maximizing development's positive effects, by assessing and mitigating the impact of new development on the community, public health and safety, municipal facilities and services, and the natural environment, by:

1. **Compatibility.** Ensuring that mineral exploration and extraction activities are compatible with adjacent uses, taking into consideration whether the proposed MEO is in keeping with historic patterns of development and land use on the affected site, the importance of existing structures and land uses, and whether the MEO is likely to constitute a nuisance to neighboring residential or commercial users.
2. **Property values.** Preserving the value of the applicant's and neighbors' property and its future capacity to be an asset for the town and its residents.
3. **Surface and groundwater.** Preserving and protecting surface water and groundwater quality and quantity for current and future use of the town and/or its residents.
4. **Natural areas and wildlife.** Ensuring preservation of significant natural areas and protection of wildlife and wildlife habitat, including by taking into consideration the ecological value of potentially affected areas and potential impacts on native plant, animal, and fungal communities.
5. **Scenic quality.** Protecting the scenic quality of South Thomaston.

ARTICLE II - AUTHORITY, APPLICABILITY & ADMINISTRATION

§1 Authority

This Ordinance is adopted pursuant to and consistent with Title 30-A MRSA, §§3001 and 3015.

§2 Administration

The provisions of this Ordinance shall be administered by the Town of South Thomaston's Planning Board (PB) and enforced by the Town's Code Enforcement Officer (CEO) and Select Board.

§3 Effective Date

This Ordinance shall be effective immediately upon its adoption by vote of eligible voters of the Town of South Thomaston, Maine at a town meeting.

§4 Applicability; Scope; Rules for Certain MEOs.

- A. In general.** The provisions of this Ordinance apply to all MEOs within the Town of South Thomaston, Maine, of minerals described in Article 1§2.A.2, unless exempted in Article III.
- B. Inactive MEOs** shall not be considered MEOs for purposes of this Ordinance. Before an inactive MEO may resume mineral extraction activity, it must obtain a permit under this Ordinance, as a new MEO, for the entire affected area other than portions previously reclaimed.
- C. Adjoining MEOs under a common scheme of development.** MEOs under a common scheme of development on adjoining parcels may, in the discretion of the PB, be considered as a single MEO for purposes of this Ordinance.
- D. MEOs shall be permitted to operate** only in Rural District 1, as established by the Town of South Thomaston Land Use Ordinance.

§5 Accessory Uses Not Included

A permit granted under this Ordinance does not imply permission to undertake any accessory or non-extraction uses. Such uses shall be subject to Site Plan Review (if applicable) and all other applicable ordinances of the Town of South Thomaston.

ARTICLE III—ACTIVITIES EXEMPT FROM THIS ORDINANCE

§1 This Ordinance shall not apply to the following:

- A. Existing MEOs.** Active MEOs operating with valid State and PB permits on the effective date of this Ordinance, except to the extent provided in Article IV, §1.
- B. Mineral exploration.** Exploration whose sole purpose is the determination of the nature and/or extent of mineral resources, accompanied by hand-sampling, test boring, or other methods that create minimal disturbance. Test holes shall be filled in immediately after use.
- C. Small operations with minimal impact.** MEOs that disturb less than 5,000 square feet of surface area, and that remove or handle of less than 200 cubic yards of material in any 12-month period.
- D. Road maintenance stockpiles.** Storage or Stockpiles of winter abrasives (sand) used for the maintenance of private or public roads. This applies to the stockpile or storage area itself and not any associated mineral extraction activity or area.
- E. Work incidental to construction.** Removal or filling of material incidental to construction, alteration or repair of a structure, including plumbing, or in the landscaping incidental thereto;
- F. Farm and fire management.** Construction of farm and fire ponds, water management berms, and normal agricultural operations.
- G. Wall removal.** Removal of stone walls, rock walls, or foundation walls.
- H. Temporary stripping of topsoil.** Stripping of topsoil (loam) not part of an MEO to a depth no greater than one foot, provided **soil is restored and** the area so stripped is reseeded in the same growing season as the removal.

ARTICLE IV - APPLICATION

§ 1 Existing MEOs.

- A. Generally exempt.** An MEO that, on the effective date of this Ordinance, is operating under a Maine Department of Environmental Protection (DEP) permit and a PB permit, and the permits and applications for them are on file with the CEO, is exempt from this Ordinance, except that the PB may require additional information or submissions [specified in subsection B] not covered in those permits or applications.
- B. Information requirements.** The following information, if different from the information on file:
1. Name(es) and address(es) of the current owner and the operator, if any, and a copy of the deed or lease, if the operator is not the property owner.
 2. Names and addresses of abutting property owners.

§ 2 New and Expanded MEOs.

- A. 1. In general.** No new or expanded MEO shall operate before obtaining a permit under this Ordinance and any other applicable permits or approvals from the Town of South Thomaston and from DEP.
- 2. Site plan review.** Applications under this section shall be subject to the Town of South Thomaston Site Plan Review Ordinance. In the sole discretion of the PB, review of an application under this Ordinance and the Site Plan Review Ordinance may be combined in a single process. In case of conflict between the two Ordinances, the stricter provision shall apply. [See also Art. VIII §2.]
- 3. MEO expansion defined.** Expansion of an MEO existing on the effective date of this Ordinance includes any enlargement of site boundaries or permitted excavation area, and any increase in the frequency, hours, or intensity of operations, or the addition of a new type of operation, beyond the limits established in the DEP or PB permit currently in effect.
- B. Application contents.** The applicant for a new or expanded MEO shall submit the following to the PB:
- 1. Identification of owners and operators.**
 - a. A statement indicating whether the applicant is the owner or proposed operator of the MEO, or is both, and a copy of the deed or lease, if the operator is not the property owner.
 - b. The name, postal and email addresses, and telephone number –
 - i. of each applicant and, if different, each owner and/or proposed operator of the MEO, and

- ii. if the proposed operator is not a natural person, of the natural person(s) that will be responsible for management of the operation.
- 2. Identification and location of abutters.** The names and postal addresses of abutting property owners.
- 3. General description of operation.** A summary statement describing the proposed operation, including:
 - a. The type of mining planned.
 - b. Estimated duration of the project, including phasing.
 - c. Types and amounts of equipment to be used in the operation.
 - d. Proof of technical ability to complete the project as reasonably related to size and intensity of project.
 - e. For a proposed MEO, a narrative description of the present use of the site and of any property within 500 feet of the proposed mineral extraction activity.
- 4. Site plan and narrative.** A Development Plan and narrative, prepared in accordance with the Site Plan Review Ordinance and including in addition:
 - a. Boundaries/lot lines and total acreage of the subject property, and the nearest boundary line of any parcel within 1,000 feet from any boundary of the subject parcel. The PB shall require a survey of any proposed new or expanded MEO of 5 acres or more, and may require a survey if the boundaries are in question.
 - b. Existing and proposed excavation areas, including reclaimed and unreclaimed areas, and anticipated depth and height of final excavation.
- 5. Soils.**
 - a. Information and a map showing soils conditions on the site of the proposed MEO. For subsurface sewage disposal proposed, the information shall include evidence of soil suitability according to the standards established in Article VI. The map shall show the location of soil test areas.
 - b. Existing and proposed areas to be used for storage of topsoil and other overburden.
 - c. An erosion and sedimentation control plan, prepared in accordance with standards contained in the Maine Erosion and Sediment Control Handbook for Construction, Best Management Practices and federal requirements.
- 6. Ground and surface water.**
 - a. Location(s) of exposed ground water on the site.
 - b. A hydrogeological evaluation, prepared by a qualified professional, showing the depth of ground water throughout the site.
 - c. A narrative description of the surface water and ground water impacts, including protection plans and identification of any significant mapped aquifers.

- d. Location of existing natural drainage ways and proposed storm drainage facilities, including dimensions of culverts, pipes, etc. If any portion of the subject property is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the plan.

7. Blasting Plan. If blasting is proposed ---

- a. A blasting plan pursuant to Title 38 MRSA §490-Z (O).
- b. A commitment that before the initial blast the applicant will –
 - i. conduct a pre-blast survey of the surrounding areas to such a distance as the PB shall determine, but in no case less than 3,500 feet from the boundary line of the proposed blasting site; and
 - ii. furnish to the CEO a copy of the survey report.

8. Hazardous materials.

- a. Existing and proposed locations for storage, handling, and/or washdown of hazardous materials.
- b. A plan for safe storage of hazardous material.
- c. A Spill Prevention, Control & Containment (SPCC) Plan. (See Article V §2-C).

9. Nearby residences and wells. Location of all residences and wells –

- a. on the subject property,
- b. within 200 feet of any boundary of the subject property, or
- c. within 1,000 feet of the existing or proposed mineral extraction activity.

10. Roads and traffic.

- a. Location of public and private streets, parking areas, roadways and rights of way.
- b.. Location of existing or proposed access roads on or abutting the site.
- c. A traffic study that takes into consideration existing traffic conditions in the vicinity of the MEO and describes –
- d. the kinds of trucks and equipment which will be going into and out of the MEO,
- e. any existing or potential traffic hazards on roads serving the site, and the applicant's plans to address them, and
- f. the capacity of such roads physically to withstand the additional traffic generated by the site.

11. Environmental impact.

- a. Location of all conservation areas and protected natural resources on the site or within 1,000 feet of the site.
- b. An environmental assessment meeting the requirement of the National Environmental Policy Act (NEPA), prepared by a qualified professional.

- c. A narrative description of the impact on wildlife habitat, and the location of any deer yard or other significant wildlife habitat designated by the Maine Department of Inland Fisheries and Wildlife (DIFW), including any proposed mitigation plan.
- d. Location and type of existing and proposed berms, fences, hedges, and tree lines.

12. Reclamation. A reclamation plan pursuant to of Article V §2-13 that –

- a. shows the final grades and re-vegetation plan, and any phasing of the plan,
- b. addresses the provisions of Article V, and
- c. complies with Maine Erosion and Sediment Control BMPS, § I, 1.

13. Security. A plan for maintaining security at the site.

14. Other information.

- a. All submissions made to any federal or state agency concerning the property.
- b. Other information the PB may require to meet standards in Article VI.
- c. Such information as the Select Board may require to set fees and fines under Article VII §1.

§ 3. Alternative submissions; Waivers.

A. MEO expansion applications. An applicant seeking to expand an MEO operating under DEP and PB permits may satisfy any information requirement under §2 by reference to the corresponding information provided in applications for those permits, where that information remains unchanged.

B. Waivers. Subject to subsection C, the PB may waive portions of the submission requirements under §2 where it makes a written finding of special circumstances concerning a particular MEO, such as but not limited to –

- 1. Operations permitted by the DEP --
 - a. under Site Location of Development, MRSA Title 38, §§481 through 490, Performance Standards for Excavation for Borrow, Clay, Topsoil or Silt;
 - b. under MRSA Title 38, §§490-A through 490-N and Performance standards for quarries MRSA Title 38, §§490-W through 490 EE;
 - c. under any variances from the standards of the aforementioned articles thus approved by the DEP Commissioner.
- 2. Operations in MEOs that affect an area less than one acre.
- 3. Where the applicant demonstrates to the satisfaction of the PB, and the PB makes a written finding, that a requirement is unnecessary or unduly burdensome given the scope, scale, size, location or minimal likely impacts of the proposed operation.

C. Limitation on waivers. A waiver may not be granted under subsection B unless --

1. the public health, safety, and welfare are protected, and
2. the waiver does not have the effect of nullifying the intent and purpose of this Ordinance, the Site Plan Review Ordinance, or the Land Use Ordinance.

§ 4 Application, Review, and Approval Procedures.

A. Applicability of Site Plan Review Ordinance. Application procedures set forth in the Site Plan Review Ordinance shall apply to review of applications pursuant to this Ordinance.

B. Application.

1. Application forms for MEOs shall be provided by the Town of South Thomaston, and submitted to the CEO, who will submit them to the PB within 7 days.
2. Within 30 days of receiving the application, the PB shall notify the applicant whether the application is complete, or if incomplete, the additional material needed for completion. Determination of completeness by the PB in no way binds the Board as to the adequacy of the application to meet the criteria of the Ordinance.
3. The application shall be accompanied by a fee as listed in the Town of South Thomaston Fee Schedule.

C. Public Hearing

1. Applications for new MEOs larger than one acre shall require, and expansions of existing MEOs may require, a Public Hearing.
2. At the expense of the applicant the PB shall:
 - a. Advertise a Public Hearing 10 days in advance in a local newspaper (print and online, if available) and in notices posted in appropriate places.
 - b. Notify by certified mail at least 10 days in advance of the Public Hearing each owner of property within 500 feet of any boundary of the property for which application is being made.

D. PB Decision

1. Within 30 days after a Public Hearing, or where no Public Hearing is held within 60 days after receiving a complete application, the PB shall issue a decision –
 - a. that the various standards for MEOs have or have not been met,
 - b. granting or denying approval of the proposed MEO activity, or
 - c. approving, with conditions on such terms as it may deem advisable to satisfy this Ordinance.

In all instances, the burden of proof shall be on the applicant.

2. The final permit shall specify the inspections required under Art. VII §3.
 3. Upon approval of the MEO permit, at least a quorum of the PB shall sign all three copies of the permit and the final site plan. The copies shall be distributed to the applicant, the tax assessor, and the CEO. The PB shall prepare a record of its action on the MEO, and the CEO shall permanently maintain copies of the MEO application, the PB record of action, and the permit.
 4. Approval of an MEO by the PB is not evidence of acceptance, by the Town of South Thomaston, of any road, easement, or open space on such plan.
- E. Expert Consultants and Testimony.** In the event the CEO and/or PB require expert opinions, advice, or testimony in the course of reviewing the application, the charges for same shall be negotiated among the applicant, PB, and CEO, with the final decision vested in the PB.

ARTICLE V - PERFORMANCE STANDARDS

§ 1 General Requirements.

- A. Compliance with other legal requirements.** MEOs shall comply with all applicable State and local laws, regulations, ordinances and permits.

An applicant shall be deemed not in compliance with this Ordinance if it owns or operates an MEO that has been issued a notice of violation of an applicable law, regulation, ordinance or permit, and has not brought the property or operation into full compliance.

- B. Conflict of requirements.** See Article VIII §1.

- C. Considerations.** The PB shall consider the financial capacity, technical ability, and prior performance of the applicant, including any prior violation, suspension, or revocation of a permit issued under this ordinance, or by any other government agency, and any other environmental enforcement history.

§ 2 Performance Standards.

- A. In general.** MEOs with applications approved under Article IV shall comply with the performance standards detailed in this section.

- B. Significant wildlife habitat.** Affected land may not be located in a significant wildlife habitat as defined in MRSA Title 38, §480-B, or in an area listed pursuant to the Natural Areas Program, MRSA Title 12, §544.

- C. Solid waste disposal.** Solid waste, including stumps, wood waste, land-clearing debris and sewage generated on the affected land must be disposed of in accordance with DEP Regulations, Chapter 13, including any implementing rules.

D. Groundwater protection.

- 1. In general.** Measures must be taken to ensure that the quality of the groundwater is protected. The MEO shall not cause an adverse impact to ground water quality and quantity as they existed prior to the application.
- 2. Well testing pre- and post-MEO activity.** In the case of MEOs that conduct blasting activity:
 - a. Water quality tests meeting the requirements of this paragraph shall be performed by a qualified professional, and shall determine contaminant concentrations as measured against the Maine Primary and Secondary Drinking Water Standards in regulations promulgated pursuant to MRSA Title 22 Ch. 601 §2611.

- b. Water quality tests on all wells not owned by the applicant/MEO within 3,500 feet of the approved boundary line of the blasting site, or as determined by the PB, shall be performed at the applicant/MEO's expense in the following circumstances:
 - i. The applicant/MEO must offer to provide for such testing to be performed prior to the initial blast or excavation activity,
 - ii. Water quality testing must be done if requested by a property owner because of evidence of significant change in water quality at any time after the initial blast while the MEO continues in operation.
 - iii. The MEO must offer to provide for testing every 3 years while blasting continues.
 - iv. Water quality testing must be done annually on at least one well on the MEO property.
 - c. The applicant/MEO –
 - i. shall furnish to the CEO a copy of the report on each well test under this paragraph, and
 - ii. shall furnish a copy of the test report on a well on non-MEO owned property to the property owner.
- 3. Groundwater buffer.** To provide an adequate buffer for ground water and allow for filtration of impurities from surface water, excavation may not occur within 5 feet above the seasonal high-water table.
- a. A benchmark sufficient to verify the location of the seasonal high-water table must be established and at least one test pit or monitoring well must be established on each 5 acres of unreclaimed land.
 - b. A hydrogeologic evaluation must be performed by a qualified professional which shows the depth of groundwater throughout the site.
 - c. The CEO may require the applicant/MEO to provide for monitoring by a qualified professional of groundwater levels and quality to ensure there are no adverse impacts to any water supplies or wells—
 - i. within 500 feet of the site for non-blasting operations. and
 - ii. within 3,500 feet of the site for blasting operations.
- 4. Water supply buffer.** A 300-foot separation must be maintained between the limit of excavation and any pre-existing drinking water supply. The PB may require larger buffers from water supplies, if it finds in its review of the application that a hazard is shown to exist due to the MEO.

5. Water use by the MEO.

- a. Water drawn per day must not exceed the amount that a hydrogeologic study under paragraph 3 determines will not represent an environmental hazard or threaten drinking water supplies. The MEO's water use shall not deplete a natural aquifer or limit access to water on surrounding properties.
- b. Any water that is discharged from the site shall be routinely monitored for sediment, pH and other contaminants to ensure the discharge shall not adversely affect surface water quality. Records of such monitoring shall be provided upon request from the CEO.

6. Standards for Acceptable Groundwater Impact.

- a. Projections of groundwater quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
- b. No MEO shall increase any contaminant concentration in the ground water to more than—
 - i. one half of the Primary Drinking Water Standards, or
 - ii. the Secondary Drinking Water Standards, as established in regulations promulgated pursuant to MRSA Title 22 §2611.
- c. If pre-existing groundwater contains contaminants in excess of the primary standards, and the MEO is to be served by on-site groundwater supplies, the applicant/MEO shall demonstrate how water quality will be improved or treated, if necessary.

E. Use of petroleum and other contaminants. On-site activity involving the handling, storage, or use of petroleum or other products that, if spilled, may contaminate soils, surface water, or groundwater must be conducted in accordance with DEP's spill prevention, control, and countermeasures (SPCC) plan and follow Performance Standards for the Storage of Petroleum Products as provided in DEP's Code of Maine Rules (CMR) Chapter 378.

1. An SPCC Plan is required for all MEOs. A copy of the plan shall be provided to the CEO and kept available on-site at all times.
2. Products described in this subsection must be stored, handled, and used over impervious surfaces designed to contain spills. Routine maintenance operations are allowed for fixed equipment such as screeners, crushers and wash facilities provided that precautionary measures such as portable drip pans or vacuum devices are used.
3. Any discharge or leak of petroleum or other hazardous liquids over 5 gallons shall be reported to the Fire Chief, who shall prepare a report to be kept with the permit in the

Town's records. All discharges or leaks of any size shall be cleaned up promptly in compliance with the spill containment and cleanup provisions of CMR 378, §511.

F. Erosion and sedimentation control and stormwater management.

1. All MEOs.

- a. All erosion and sedimentation control must conform to standards outlined in the Maine Erosion and Sediment Control Handbook for Construction, Best Management Practices.
- b. The MEO design shall include temporary erosion control measures, such as hay bale barriers, silt fencing, and riprap. Plans shall show location and installation details and describe the timing of installation, maintenance, and inspection.
- c. MEOs must meet the Performance Standards for stormwater management and waste discharge in MRSA Title 38, §§490-D and 490-Z.
- d. Stockpiles consisting of topsoil to be used for reclamation must be seeded, mulched, or otherwise temporarily stabilized, and periodically inspected by the CEO.
- e. Sediment may not leave the parcel or enter a protected natural resource.
- f. Grubbed areas not internally drained must be stabilized.

2. Internally drained MEOs. For MEOs over 5 acres, the applicant shall provide a calculation demonstrating capacity to safely hold volume from a 50-year, 24-hour storm, as projected by USDA Natural Resources Conservation Service.

3. Externally drained MEOs. For MEOs over 5 acres, the applicant shall submit and the PB shall review additional information including:

- a. A plan and narrative detailing specific erosion control measures; and
- b. A site plan showing the pre-construction and post-construction contours, and if applicable, phased contours. The plan must show on- and off-site watershed boundaries and hydrologic surface water flow lines.

G. Buffers and setbacks.

1. General rules.

- a. A natural buffer strip at least 100 feet wide (quarries)) and 50 feet wide (excavations for borrow, clay, topsoil or silt) must be maintained between an excavation and any property boundary.

- b. Plants used to meet the requirements of this subsection shall be site-appropriate hardy native plants, and shall be introduced in accordance with a planting plan, a copy of which shall be given to the CEO.
 - c. The PB may require the applicant to take specific actions to ensure the effectiveness of any required buffer, including the planting of trees, placement of solid fence, or creation of berm.
 2. **Option to reduce buffer.** The required buffer between a property subject to this ordinance and an abutting property may be reduced to not less than 25 feet, provided that—
 - a. The abutting landowner grants written permission (which must provide that it remains in effect until mining ceases and must be recorded in the Registry of Deeds);
 - b. Property boundaries are marked in the field;
 - c. Erosion and stormwater control standards on both properties are met; and
 - d. Reduction of the buffer will not increase the runoff from either property across the boundary.
 3. **Natural buffer strips.** Existing vegetation within a natural buffer strip (other than invasive plants) may not be removed. If vegetation within the natural buffer strip has been removed or disturbed by the excavation or activities related to the MEO prior to submission, that vegetation must be reestablished, with site-appropriate hardy native plants, as soon as practical.
 4. **Existing Structures.** All MEOs shall maintain a 300-foot buffer from the closest edge of an existing residence or business, cemetery, or farm building used for livestock. This buffer may be reduced to not less than 25 feet in accordance with the requirements of paragraph 2.
 5. **Protected natural resources.** A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, great pond, coastal wetland or freshwater wetland as defined in Title 38 MRSA, §480-3. Unless greater set backs are required by other Federal, State or municipal rules, the width requirements for natural buffer strips are as follows:
 - a. A strip at least 100 feet wide must be maintained between the MEO and the normal high water line of a great pond classified as GPA, or a river flowing to a great pond classified as GPA.
 - b. A strip at least 100 feet wide must be maintained between the working edge of the excavation and any river, stream, brook, coastal wetland or significant wildlife habitat contained within a freshwater wetland consisting of or containing:

- i. Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds, or impoundments; or
- ii. Peat lands dominated by shrubs, sedges and sphagnum moss.

For purposes of this paragraph, the width of a natural buffer strip is measured from the upland edge of a floodplain wetland. If no floodplain or wetland is present, the width is measured from the upland edge of a freshwater coastal wetland, and from the normal high water mark of a river, stream, brook or great pond.

- 6. Public and private roads.** A natural buffer strip must be maintained between the working edge of an excavation and any public or private road or right-of-way. The width requirements are as follows:
 - a. 150 feet for a scenic highway, such as State Route 131;
 - b. 100 feet for any other public road or right-of-way; and
 - c. 50 feet for any private road or right-of-way.

H. Road design and traffic.

- 1. Intersections with public roads.** The intersection of any road within the boundaries of the MEO and an existing public road shall meet the following standards:
 - a. The angle of intersection shall be 60 to 90 degrees.
 - b. 3% maximum permissible grade within 75 ft of the intersection.
 - c. A minimum sight distance of 10 ft for every MPH of posted speed limit on the existing road.
 - d. Turning lanes, traffic directional islands, frontage roads, and traffic controls shall be provided on public roads at the applicant's/MEO's expense, where necessary, in the opinion of the PB, in coordination with the Maine Department of Transportation (MDOT), to safeguard against hazards to traffic or pedestrians, and/or to avoid traffic congestion.
 - e. All access/egress roads leading to or from public ways shall be treated with suitable materials to reduce dust and mud; and paved or otherwise hard surfaced for a distance of at least 100 feet from the public road.
- 2. Road and traffic impacts to be considered and addressed.** The PB or the CEO, as applicable, and in consultation with the Road Commissioner as appropriate, shall assess the impact of the proposed or operational MEO on traffic volume and road condition, and shall require remedial action, where appropriate, as a condition of permit approval or continuation. Specifically,—

- a. **Traffic carrying capacity.** The PB shall determine whether the roads expected to be used have adequate traffic carrying capacity, comparing current and projected traffic volume and type. The proposed increase shall not increase the volume to capacity ratio of any town-owned or town-maintained road above 80%; nor reduce the Level of Service to MDOT rating "D" or below.
- b. **Road width.** The PB shall determine whether the roads expected to be used are at least 20 feet wide, counting travel surface and shoulders.
- c. **Road condition assessment.** The PB shall require, for any town-owned or -maintained roads, at the applicant's expense, a road condition survey or, for MEOs larger than 5 acres, an engineering impact study.
- d. **Road maintenance.** The PB pre-approval or the CEO post-approval may require, if necessary, that the surface of a town-owned or town-maintained road be improved or repaired at the applicant's/MEO's expense.
- e. **Mitigation of adverse impacts.** The CEO may require post-approval mitigation of adverse impacts on town-owned or town-maintained roads at the MEO's expense; and
- f. **Performance guarantee.** The PB may require the applicant to furnish a performance bond or equivalent surety, in accordance with Article VI, guaranteeing the maintenance of town-owned or town-maintained roads in the condition equal to that at the time of permit approval.
- g. **Routing.** The PB or CEO may require alternative routing, where necessary to safeguard against hazards to pedestrians and to avoid traffic congestion or adverse impacts to Town roads.

I. Dust- and Air Pollution.

1. **State requirements.** All air pollution control shall comply with minimum State requirements and all applicable equipment must have a current DEP Air Emissions License.
2. **On-site dust control.** Dust generated by activities at the MEO site, including dust associated with traffic to and from the MEO site, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions.

Dust control methods may include the application of calcium chloride, provided 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.

3. **Dust control on access/egress roads.** All access/egress roads leading to or from the extraction site to public ways shall be treated to reduce dust and mud for a distance of at least 100 feet from such public ways, as needed.
4. **Dust control on vehicles.** Loaded vehicles shall comply with all State laws and regulations and be suitably covered to prevent dust and contents from spilling or blowing from the vehicle. Spillage of extracted materials on public roads shall be the joint and several responsibility of the vehicle owner and operator.

J. Noise.

1. **Hours of operation.** Normal operation times shall be specified in the application and permit and shall be limited so as not to constitute a nuisance to residents in the neighborhood, including daily starting and ending times.
2. **Noise mitigation.** Noise shall be required to be mitigated so as not to be objectionable due to intermittence, beat frequency, shrillness, or volume outside of the boundaries of the MEO.
3. **Noise level limits in general.** Noise levels may not exceed applicable noise limits in rules adopted by DEP in CMR 06-096 Chapter 375. dB(A) scale shall be used, and a violation of this standard shall constitute a violation of this Ordinance.
4. **Noise level limit - production blasting.** Sound from production blasting conducted under a blasting plan approved by the PB as part of an MEO permit shall not exceed this limit: All Districts dB(A) 110.
5. **Exception for emergencies.** The noises of safety signals, warning devices, and emergency pressure relief valves and other emergency activity shall be exempt from noise level limitations.

K. Blasting.

1. **Performance standards; blasting plan.** Blasting must be conducted in accordance with Performance Standards for Quarries, M RSA Title 38, § 490-Z (14). A copy of the blasting plan as required under those performance standards shall be submitted to the Town, and a copy shall be posted on-site.
2. **Notice to the CEO and surrounding property owners.**
 - i. The MEO shall provide advance notice of a planned blast in accordance with this paragraph to the CEO and to owners (and occupants, if known) of property within 3,500 feet of the blasting site.

- ii. The MEO shall maintain a list of the owners and, if different, the occupants of property described in clause i., and a record of their preferred physical or electronic address for receiving notice. Owners, occupants, and the CEO may elect to receive notice by certified postal mail, email, or text message.
- iii. Notice shall be given one week (in the case of certified postal mail) or 48 hours (in the case of electronic notice) before the date of the planned blast. The MEO shall maintain a record of the notice provided to each property owner or occupant.
- iv. Notice must be received by the CEO before blasting may occur.

L. Hours of Operation: Mitigation of Effects on Neighboring Community.

- 1. **Operations prohibited.** The MEO shall not operate at night, on Sundays, or on the following holidays: New Year's, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.
- 2. **Operations permitted.** Hours of Operation for specified stone quarrying activities (excluding sand, gravel, topsoil and loam) shall be as follows, unless more restrictive hours of operation are required as a condition of permit approval:

Blasting	9 am - 3 pm	Mon-Fri
Drilling	8 am - 5 pm	Mon-Fri
Crushing & Processing	8 am - 5 pm	Mon-Fri
Loading	7 am - 7 pm	Mon-Fri
Loading Only	9 am - 3 pm	Saturday

- 3. **Exceptions for emergencies or extenuating circumstances.** Limitations on days and hours of operation may be waived—
 - a. upon emergency requests from public safety officials for sand or gravel; or
 - b. upon request from an MEO owner or operator to the CEO in case of emergency or extenuating circumstances.

M. Safety and security.

- 1. The MEO shall have a safety and security plan. Copies shall be provided to the town and posted on-site.
- 2. Access to the MEO shall be controlled with locking gates.

N. Signs and lighting.

- 1. Signs and lighting must comply with other applicable ordinances for the Town of South Thomaston.

2. Lighting on the premises shall be fully shielded and downward-facing to prevent light trespass across property boundaries and to protect dark skies. Lighting shall be timer-controlled; 24-hour lighting is prohibited.

O. Reclamation.

1. In general.

- a. **Restoration required.** The affected land must be restored to an ecological condition similar to that which existed prior to any development or, where that is not possible, to a state that encourages the productive use of the land.
- b. **Certain old pits.** The Town shall have discretion to waive or modify reclamation requirements for old pits, if (or to the extent that) they have been reclaimed by natural processes and applying reclamation standards would destabilize an area.
- c. **DEP standards.** Reclamation shall be conducted in accordance with the DEP's best management practices for erosion and sedimentation control and must follow Performance Standards for excavation for borrow, clay, topsoil or silt (MRSA) Title 38, §490-D (14), or Performance standards for quarries (MRSA) Title 38, §490-Z (13).

2. **Performance guarantee.** The Town may require a performance bond or other surety, in accordance with the provisions of Article VI, to secure compliance with the reclamation requirements of this subsection.

3. **Reclamation plan.** A reclamation plan meeting the following specifications shall be submitted with all permit applications:

- a. **Topsoil.** Topsoil which is stripped or removed must be stockpiled in sufficient quantity for use in reclaiming disturbed land, unless it is demonstrated to the PB that it is not needed for reclamation purposes, Topsoil stockpiles must be seeded, mulched, or otherwise stabilized. At least 4 inches of topsoil shall be used for final cover.
- b. **Regrading.** Upon completion of the excavation, the side slopes must be regraded to a slope no steeper than 2.5 horizontal to 1 vertical.
- c. **Structures and Roads.** All structures and support roads must be reclaimed once no longer used, unless reserved for future productive use of the land.
- d. **Vegetative cover.** Vegetative cover shall be established on all affected land.
 - i. Topsoil must be placed, seeded, and mulched within 30 days of final grading if it is within a current growing season or within 30 days of the start of the next growing season.

- ii. Vegetative material used must consist of site-appropriate hardy native plants, including grasses, legumes, herbaceous or woody plants, or a mixture thereof. Plant material must be planted during the first growing season following the reclamation phase. Selection and use of vegetative cover must take into account soil and site characteristics such as drainage, pH, nutrient availability, and climate to ensure permanent growth in the vegetative cover is acceptable if, within two growing seasons of seeding, the planting of trees and shrubs results in a permanent stand, or regeneration and succession rate, sufficient to assure a 75% survival rate; and, the planting results in 90% ground coverage.
- e. **Phased Reclamation.** For projects over 5 acres, the site must be reclaimed in phases so that the working area does not exceed 10 acres at one time and the area actively mined does not exceed 5 acres at any time. For guidance, see Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices for Pit Reclamation.
- f. **Timeline.** A timeline shall be included with the reclamation plan.
 - i. Final reclamation shall commence within 6 months of completion of phasing, or the completion or abandonment of the project, and shall be completed within one year after commencement (or, in the case of vegetative cover, within the period specified in subparagraph d.) The CEO shall have discretion to extend these deadlines, upon a satisfactory showing of need.
 - ii. An inspection of the site shall be conducted when the regrading and planting is completed and a subsequent inspection at two years to ensure compliance with the reclamation plan.
- g. **Certification of Completion.**
 - i. Upon completion of reclamation, or of a reclamation phase for operations over 5 acres, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the CEO, certifying that the reclamation is in compliance with the approved plans.
 - ii. The CEO shall issue a certification of completion of reclamation only after the final inspection is made and is passed.
- P. **Additional Review Criteria.** In addition to the standards in this section, the PB shall review the project for compliance with all applicable requirements contained in Title 38 MRSA ... Performance Standards for Excavations for Borrow, Clay, Topsoil, or Silt and Performance Standards for Quarries.

ARTICLE VI - PERFORMANCE GUARANTEES

§ 1 Types and Contents of Guarantees.

- A. Purposes.** The Town may require a bond payable to the Town of South Thomaston, or such other surety as the PB may find adequate, to secure compliance with applicable requirements under Article V, specifically including requirements for road maintenance and for reclamation.
- B. Types of guarantees.** In addition to a bond, other security may include a security deposit with the town, an escrow account and agreement, insurance or an irrevocable trust.
- C. Amount of reclamation guarantee.** In determining the amount of the bond or security for reclamation, the PB—
1. shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of grading and reclamation required;
 2. may require the reclamation costs to be estimated, at the applicant's expense, by a qualified expert acceptable to both the Town and the applicant; and
 3. shall not require a bond or other surety to the extent that it would duplicate a guarantee already held with the State of Maine for the same land, but may require additional surety for reclamation requirements exceeding the requirements of the DEP.
- D. Use of proceeds.** All proceeds of forfeited bonds or other security must be expended by the town for the purpose for which the performance guarantee was provided and any remainder returned to the MEO operator or other person or persons providing the guarantee.

§ 2 Release of Guarantees.

- A. For reclamation.** Prior to the release of a Performance Guarantee for Reclamation, the PB shall determine, after consultation with the CEO or a certified engineer or other expert(s), that the reclamation meets the requirements of that portion of the project requested.
- B. For road repair/maintenance.** The PB shall release a Performance Guarantee for Road Repair and Maintenance only after quarry operations have ceased, reclamation has been completed and the Performance Guarantee for Reclamation released, and a qualified engineer has certified that any repairs to the roads required to be performed by the owner/operator under Article V, §2. H. have been satisfactorily completed.

ARTICLE VII - IMPLEMENTATION AND ENFORCEMENT

§ 1 Fees and Fines

The Select Board shall establish, publish, and from time to time revise a schedule of fees and fines for activities under this Ordinance, including fees for permit applications and for annual compliance inspections.

§ 2 Annual Compliance Inspection

- A. In general.** An MEO with a permit under this Ordinance shall be subject to an annual inspection to determine compliance with or deviation from its permit, this Ordinance and, as applicable, for compliance with 38 MRSA -- Performance Standards for Excavations for Borrow, Clay, Topsoil. or Silt, or Performance Standards for Quarries.
- B. Fee.** Prior to such inspection, the permit holder shall pay to the Town of South Thomaston the fee established under §1.
- C. CEO's responsibility.** The CEO, or his/her designee, shall conduct such inspection annually, and shall provide to the PB, the Select Board, and the permit holder a report on determinations from such inspection, identifying any violations of the permit or this Ordinance and remediation required.
- D. CEO's sanction authority.** If the CEO finds noncompliance, or the permit holder fails to pay the inspection fee, the CEO may issue an ORDER TO STOP WORK, EXCEPT FOR REMEDIAL ACTION, until such time as the fee is paid or compliance is achieved.

§3 CEO's Right of Entry onto the Land

- A. Entry right and purpose.** The CEO shall have the right of entry onto any MEO site, at reasonable times, for the purposes of monitoring compliance, making any inspection required by this Ordinance, or investigating any potential violations.
- B. Penalty for interference.** If the operator, or its employee or agent, interferes with an inspection by the CEO, the CEO may seek an administrative search warrant pursuant to court rule 80E, and the operator shall pay the town a civil penalty of \$500.00 plus any legal fees incurred in obtaining that warrant.
- C. Other CEO authority.** The authority under this section is in addition to other enforcement actions and fines available to the CEO.

§4 5-Year Renewal

A. Renewal requirement. An MEO permit under this Ordinance must be reviewed and approved by the PB every 5 years.

B. Permit holder's application for review.

1. The application for review shall provide, at a minimum, an updated site plan prepared and stamped by a surveyor or engineer licensed in the State of Maine identifying --
 - a. the original and current footprint of the operation,
 - b. the original and current active extraction area,
 - c. any reclaimed areas, and
 - d. any changes to the site since the original approval.
2. If the application is filed at least 30 days before the renewal deadline, mining activities may continue under the existing permit until the PB review has been completed.

C. PB review and decision.

1. Upon receiving the renewal request, the PB may schedule a public hearing.
2. The PB may request additional data as necessary to determine compliance with the permit and this Ordinance.
3. The PB may, as part of the renewal process, impose new conditions on or modify the permit as necessary to ensure compliance with the permit and with the Ordinance as in effect at the time of renewal.
4. If there has been a history of significant non-compliance, the PB may deny the renewal request.

D. Expansion cannot be included in renewal. An MEO cannot be expanded beyond its original scope in the 5-year renewal process. Any expansion beyond the scope of the original permit must be processed as a separate application under the Ordinance as in effect at the time of the expansion application.

§5 Unapproved and Noncompliant Activity Prohibited

A. Compliance required. No MEO shall operate except in compliance with this Ordinance and all other applicable state laws and regulations, town ordinances, plans approved by the State or Town, and any terms and conditions of any state or Town permit or approval.

B. Violations of other approvals. Any MEO that is in violation of other approvals (such as DEP Intent to Comply for Pits or for Quarries or DEP permits) covering the same

operation shall be deemed in violation of this Ordinance and any permit granted hereunder.

C. No MEO activity before permit issued.

No new or expanded (as applicable) mineral extraction activity shall commence before the applicant has obtained all applicable permits required by town, state, or federal regulations, laws, or ordinances regulating such developments.

D. Unapproved activity. Before a PB permit has been granted to an MEO subject to this Ordinance—

1. No material from the MEO may be extracted, and
2. Development of the infrastructure of the MEO is not permitted, including buildings, roads, and utility installations.

§6 Amendment after Approval

A, Resubmittal required. No modifications shall be made in an approved Final Plan unless they have been resubmitted to and approved by the PB.

B. PB review process.

1. The complete MEO permit application and review process under Article IV need not be required unless, in the judgment of the PB—
 - a. the amendment substantially alters the character of the original MEO, or
 - b. the change constitutes a new MEO.
2. The PB, in its sole discretion, shall determine the scope of the review required, taking into consideration the extent and complexity of the proposed alterations.

§7 Appeals. Appeals of final PB decisions under this Ordinance shall be filed and adjudicated pursuant to the provisions of the Land Use Ordinance.

§8 Inactive MEO permit expiration. An MEO permit issued under this Ordinance shall expire one year from the date of issuance, unless mineral extraction activity has substantially commenced.

§9 Transfer of MEO Permit. When an MEO owner or permit holder changes, within 30 days:

1. the transferor shall notify the PB of the transfer,
2. the transferee shall file a Notice of Intent to Comply similar to that required by the DEP - 38 M.R.S.A. 490 -C (borrow, clay, topsoil, or silt excavations) and 490-Y (quarries), and
3. the transferee shall provide a performance guarantee pursuant to Article VI §1

ARTICLE VIII - SEVERABILITY; CONFLICT; AMENDMENT

§1 Severability

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

§2 Conflict with other legal requirements

This Ordinance shall in no way impair or remove the necessity of compliance with any other ordinance, rule, regulation, bylaw, permit or provision of law. Whenever the requirements of this Ordinance are in conflict with the requirements of any other lawfully adopted rule, regulation, or ordinance, that imposing the more restrictive or higher standard shall govern. (See also Art IV §2A.2.).

§3 Amendment

The procedures for amending this Ordinance shall be in accordance with the provisions of §2G of the Land Use Ordinance and 30-A MRSA §4352.

ARTICLE IX – DEFINITIONS.