EXTRACTIVE INDUSTRY
AND
LAND RECLAMATION ORDINANCE
OF THE TOWN OF WATERBORO
enacted March 11, 2000

Section 1. TITLE

This ordinance shall be known and may be cited as the "Extractive Industry and Land Reclamation Ordinance of the Town of Waterboro, Maine."

Section 2. PURPOSE AND INTERPRETATION

This ordinance regulates the operation of extractive industries and land reclamation projects; defines extractive industry and land reclamation; requires approval by the Planning Board of extractive industries and land reclamation projects before any work may commence, and establishes procedures for such approval; establishes the minimum standards for project design and operations; and prescribes penalties for the violation of its provisions. In interpreting and applying this Ordinance, the Planning Board shall construe the provisions of this ordinance as minimum requirements. Nothing in this ordinance shall prohibit the Planning Board from imposing stricter standards when deemed necessary to accomplish the purposes of the ordinance.

Section 3. DEFINITIONS

For the purpose of this ordinance, the following terms used herein are defined as follows:

Extractive Industry: The removal and/or processing of topsoil, rock, sand, gravel, and/or similar earth materials; except as is merely incidental to any other activity conducted pursuant to receipt of a permit issued by the Town of Waterboro.

Land Reclamation: Any action, which restores land to its natural state or allows full utility of land, except as is merely incidental to any other activity conducted pursuant to a permit issued by the Town of Waterboro.

Active Status: Active status for extractive industries shall mean the operation of an extractive industry for remuneration for at least six months per year for the three year period immediately preceding the effective date of this ordinance. The Planning Board shall require proof of such active status by evidence, which may include cash receipts, affidavits, verbal testimony, photographs, or other reliable information.

Rehabilitation Plans: Rehabilitation plans shall be plans that identify the intent of the owner of any extractive industry to rehabilitate the site of an extractive industry to a

natural state by landfill, landscaping, or other means acceptable to the Planning Board. Such plans shall conform to the requirements contained in this ordinance.

Section 4. EXTRACTIVE INDUSTRIES

4.1 Within sixty days from the effective date of this ordinance, all owners of extractive industries operating within the Town of Waterboro must formally declare to the Planning Board in writing whether they are in active status as defined in this ordinance. Failure to file such a declaration within the specified period shall constitute a declaration of inactive status. Substantiating evidence must accompany any claim of active status, and the Board shall in each instance determine whether active status has been demonstrated.

4.2 Any extractive industry that fails to establish active status as defined in this ordinance shall not resume active status, nor shall it be the site of a reclamation project until it has complied fully with this ordinance and all other state and local regulations.

4.3 Within ninety days after filing a claim of active status as described in Section 4.1 of this ordinance, the owner of any extractive industry shall file the necessary plans and reports to comply with the provisions of this ordinance for any expansion of existing operations.

4.4 The removal or deposit of any material at the site of an extractive industry that fails to prove its claim of active status as defined in this ordinance is strictly prohibited except in conformance with the terms of this ordinance.

Section 5. RECLAMATION PROJECTS

5.1 Reclamation projects may be undertaken only in conformance with this ordinance.

5.2 The reclamation of gravel pits that fail to demonstrate active status, for open space, tree farming, or conservation purposes which comply with the requirements of the Tree Growth Tax Law and/or Farm and Open Space Land Law, shall be encouraged, and no fee shall be charged to an applicant for such a project.

Section 6. ADMINISTRATION

6.1 The Planning Board of the Town of Waterboro, herein after called the Board, shall administer this ordinance.

6.2 Before any permit relating to an extractive industry and/or land reclamation project (sometimes herein after called "project") shall be granted, and before any utility installations, ditching, grading, construction of roads, or excavating shall be done in connection with or to facilitate any project, the proponent of such project must file a

plan that shall be in conformance with the standards and specifications as set forth in this ordinance.

6.3 As to any intended project, the owner shall prepare and formally submit to the Board both a preliminary plan for study (and modification where required), and a final plan. The final plan shall not be prepared until the owner has received from the Board written notice that a majority of the Board has approved the preliminary plan of such project.

6.4 The Planning Board shall approve no proposal for an extractive industry and/or reclamation project until after the Board has held a public hearing thereon. Public notice of the hearing shall be given at least ten (10) days prior to such hearing, and shall be advertised in at least two newspapers in general circulation in the Town.

6.5 Owners of abutting and adjacent property shall be notified by the applicant via certified mail of the date, time, and purpose of the public hearing, a minimum of seven (7) days prior to the hearing. Return receipts documenting that notice shall be furnished to the Planning Board.

Section 7. GENERAL REQUIREMENTS

7.1 Any proposed project shall be in conformity with the comprehensive plan of the Town of Waterboro and with the provision of all-pertinent state and local codes and ordinances.

7.2 The Board shall review any proposed project with regard to its impact upon the natural environment. The project shall not adversely affect the ecological balance and/or natural resources of any area.

In order to approve an application, the Board must find based upon the information presented to it by the applicant and other interested parties, that the proposed project:

a. Will not result in unsafe or unhealthful conditions;
b. Will not result in erosion or sedimentation;
c. Will not result in water pollution;
d. Will conserve vegetation;
e. Will conserve natural beauty;
f. Will avoid problems associated with flood plain development and use;
g. Will avoid hazards due to steep slopes;
h. Will avoid problems due to standing water;
i. Will avoid problems due to gas generation;
j. Will not result in noise pollution;
k. Will not adversely affect the character of adjacent residential areas;
l. Will not adversely affect existing land uses in the vicinity of the proposed project;

m. Will not adversely affect existing transportation facilities in the vicinity of the proposed project;
n. Will satisfy al regulations and performance standards set forth in this ordinance.

The Planning Board may, at the owner's expense, engage a certified engineer of its choice to determine whether a proposed project complies with the provisions of this ordinance.

7.3 Any project proposal shall be accompanied by a report regarding anticipated types, quantities, and sources of wastes to be disposed of, site geology, hydrology, and soil conditions; source and pertinent engineering properties of waste and cover materials; types and number of equipment to be used for excavating, earth moving, spreading, compacting, and other purposes; persons responsible for the actual operation and maintenance of the site; proposed written operating procedures; and the ultimate plan and purposed use of the completed site.

7.4 Sufficient topsoil or loam shall be retained, or other provisions must be made, to cover to the Board's satisfaction all areas within proposed rehabilitation projects.

7.5 Provisions must be made to avoid hazards from excessive slopes and to avoid standing water.

7.6 Where an embankment must be left upon completion of operations at a location within the project, it shall be at a slope not steeper than 1 foot vertical to 4 feet horizontal.

7.7 The operation must be shielded from surrounding property with adequate screening and create no disturbance of water sources.

7.8 The operation when terminated shall not detract from the appearance or value of nearby property.

7.9 The edge of all workings shall be set back from the property lines a minimum of 200 feet, and 500 feet from an existing residence. When encroachment has been made within 200 feet of a property line or 500 feet of an existing residence the Board shall require corrective measures to protect adjacent properties.

7.10 No excavation shall be extended below the grade of adjacent streets unless two hundred feet from the street line.

7.11 The plan review by the Planning Board shall take into consideration, but is not limited to, the following items:

a. Fencing, landscaping, buffer strips, and public safety;
b. Advertising signs and lighting;
c. Parking space, loading and unloading areas;
d. Entrances and exits;

e. Time period for operation;
f. Hours and methods of operation;
g. Weight and loading limit of trucks;
h. Prevention of sand and gravel spillage upon public streets;
i. Rehabilitation plans (per Section 11 Below); and
j. Ecological and other natural considerations.

7.12 The Board shall impose such conditions, as it deems necessary to safeguard the health, safety, and welfare of the community.

Section 8. PRELIMINARY PLAN REQUIREMENTS AND PROCEDURES

8.1 A request for approval of any project shall be made to the Board in writing on forms provided by the Town, and shall be accompanied by a preliminary plan which shall be drawn at no smaller scale than 100 feet to the inch. A location map showing the relationship of the proposed to adjacent properties shall accompany the preliminary plan.

8.2 When practical, a standard sized sheet (24" x 35") shall e used for all plans. Plans shall contain at least the following information:

a. Name of project, owner(s), and engineer(s) or surveyor(s);
b. Graphic scale, date, and north point;
c. Boundaries and names of existing zoning districts;
d. Ownership and boundaries of abutting properties;
e. Type, location, profile, and cross section of all existing and/or proposed surface water impoundment's;
f. Location of all existing and/or proposed utilities (water, gas, electricity, and other);
g. Existing and proposed topography, at no less than five-foot contour intervals, unless otherwise prescribed by the Board;
h. Proposed use of property at completion of the project.

8.3 The Preliminary Plan Application shall be accompanied by an engineering opinion, in form and content satisfactory to the Planning Board, and other technical information required by the Board to make the necessary findings under Section 7.2. The cost of obtaining this information shall be borne by the owner. In addition, the Board may require the owner or others to undertake studies where it is deemed necessary or desirable by the Board. Said studies are to be undertaken at the owner's expense.

8.4 A complete application for approval of a Preliminary Plan shall be considered at a regular meeting of the Board within 30 days after such application is declared complete.

8.5 The final plan shall be submitted by the owner to the Board for review within 60 days from the granting of preliminary approval. Failure to do so shall constitute a withdrawal of the application.

Section 9. FINAL PLAN REQUIREMENTS AND PROCEDURE

9.1 A request for final approval of a project shall be made to the Board in writing on forms provided by the Town and shall be accompanied by a final plan of such project legibly drawn in black ink on permanent transparency material together with three dark lined copies. The plan shall be drawn at no smaller scale than 100 feet to the inch or as otherwise prescribed by the Board as being adequate to show all details clearly.

9.2 The plans shall be presented on one or more sheets of standard 24' x 36' size and shall contain the following information:

a. All information required in the Preliminary Plan and amendments thereto requested by the Board;
b. Existing and final proposed lines of streets, easements for utilities and drainage, and any areas to be dedicated to the public.
c. Sufficient data to determine and reproduce on the ground the exact location, direction, and length of every street line, easement, property line, and/or drainage facility.
d. Location of all permanent monuments existing and/or proposed wherever, in the opinion of the Board, such monuments are necessary to properly determine the location on the ground of any street line, easement, property line or drainage facility.
e. Designation of the location, size, planting, and landscaping of such areas as may be proposed or prescribed as necessary to the prevention of erosion or sedimentation, to provide appropriate visual screens or buffer strips, and/or to enhance the final appearance and utility of the site.
f. The seal of the registered engineer, surveyor, planner or other qualified professional person responsible for the preparation of the plans, application and supporting documentation.

9.3 The final plan shall be accompanied by certification from authorized local public officials and/or agencies and appropriate state officials and/or agencies, that the design of all facilities, drainage, streets, utilities, and the overall project conforms to the requirements of all-pertinent state and local codes and ordinances. The cost of certification and/or inspection shall be bore by the owner.

9.4 The Board shall consider a final plan at a regular meeting within 30 days of submission of a complete final plan.

9.5 The approval of a final plan shall be attested to on the original tracing cloth and three copies by the signature of a legal majority of the Board.

9.6 The Board shall retain a tracing of the final plan as approved. The owner shall record the approved final plan with the York County Registry of Deeds within 30 days of its approval by the Board; or else that plan shall be null and void.

Section 10. PERFORMANCE STANDARDS

In addition to the satisfying the foregoing provisions of this ordinance, all proposed and existing extractive industries and/or land reclamation projects shall comply with the following performance standards:

10.1 Excavation may not occur within 5 feet of the seasonal high water table. If standing water already exists in excavated areas, no further excavation that would result in an increased area of standing water shall be allowed. Notwithstanding the foregoing, the Town of Waterboro may allow excavation to extend to or below the water table and an area of standing water may be increase through excavation if the Maine Department of Environmental Protection (MDEP) approves such excavation.

10.2 At least one monitoring pit or monitoring well must be maintained on each 5 acres of excavation.

10.3 The following setbacks must be maintained between the excavation and any water supply in existence prior to the excavation:

1. Dug well or point-driven well	400 feet
2. Well drilled into saturated bedrock	200 feet
3. Public water supply serving 500 or fewer persons	600 feet
4. Public water supply serving more than 500 persons	1,500 feet

10.4 All fuels or hazardous materials must be stored within spill-proof secondary containment with sufficient capacity to contain 110% of the volume of the single largest container. Equipment refueling and oil changes must take place over impervious surfaces. Routine maintenance operations are allowed for fixed equipment such as screens, crushers, and wash facilities, provided that precautionary measures such as portable drip pans or vacuum devices are used.

10.5 Natural buffer strips must be maintained between the excavation and the following:

1. Great pond, river, or coastal wetland	200 feet
2. Stream, brook, or freshwater wetland	150 feet
3. Public road right-of-way	200 feet
4. Private road right-of-way	100 feet
5. Property boundary	200 feet
6. Existing residence	500 feet

10.6 Except for access roads and grubbed areas, all reclaimed and unreclaimed areas must be naturally internally drained unless the applicant prepares a storm water management plan that demonstrates to the satisfaction of the Planning Board that surface water discharges from areas that are not internally drained will not be increased as a result of storm water runoff from storms up to a level of intensity of a 25-year, 24-hour storm.

10.7 Topsoil stockpiles to be used for reclamation must be seeded, mulched, or stabilized. Grubbed areas must be stabilized and all disturbed portions of the subject parcel must be protected from erosion and sedimentation by a plan approved by the Planning Board and in conformance with the Maine Erosion and Sedimentation Control Handbook - Best Management Practices, March 1991.

10.8 Sufficient sight distance shall be provided at the intersection of the access road with a public or private road. At a minimum, sight distance shall be 10 feet for every mile per hour of posted speed limit on the public or private road. The access road and internal roadways shall be treated to control dust as necessary with water or calcium chloride. The access road leading from the excavation site to a public road shall be blacktopped to reduce road dust and mud for a distance of at least 100 feet from its intersection with the public road.

10.9 All abutting and adjacent landowners within 100 yards of the excavation site shall be notified 24 hours in advance of blasting to be done on site. Additionally the Code Enforcement Officer shall be notified 36 hours prior to any blasting.

10.10 Hours of operation shall not exceed 6:30 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 2:00 p.m. on Saturdays. No Sunday operations are permitted. The hours of operation may be further restricted by the Planning Board if it is determined that the above-listed hours of operation will unreasonably interfere with residential uses in existence at the time the application for an excavation permit is determined to be complete.

Section 11. REHABILITION PLANS

In addition to the satisfying the foregoing provisions of this ordinance, all proposed and existing extractive industries and/or land reclamation projects shall comply with the following performance standards.

All extractive industries that apply for and are granted active status as provided for in this ordinance, shall submit a rehabilitation plan to the Planning Board for approval. Such a rehabilitation plan may, with the Board's approval, be incorporated into the preliminary and final plans. The rehabilitation plans shall include, at a minimum, the following:

11.1 A vegetative erosion and sediment control plan, which shall meet the minimum requirement established by the Maine Soil and Water Conservation Commission as specified in the "Maine Erosion and Sediment Control, On Commercial, Industrial, Residential, Recreation, and Governmental Construction Sites Environmental Quality Handbook", dated June 1974.

11.2 All surface areas affected shall be graded, and slopes shall not be steeper than 1 foot vertical to 4 feet horizontal.

11.3 All grubbings shall be removed from the site or buried.

11.4 All loamed, seeded, and planted areas shall be guaranteed for eighteen months during which time the performance guarantee required under Section 12 shall remain in full force and effect.

11.5 Provisions must be made to provide trees for a visual and acoustical buffer between the project and adjacent properties. The Board shall approve the number and location of the areas.

11.6 All exposed slopes shall be graded and where practical, as determined by the Board, planted, loamed, seeded or otherwise landscaped. Sufficient topsoil or loam shall be retained to cover all areas or other provisions made to the Board's satisfaction within the rehabilitation plan. Such provisions shall be shown in the vegetative plan described in Section 11.1 above.

11.7 Where standing water is present the following requirements shall be met:

a. The water supply shall be from natural springs or natural streams, brooks or rivers but in no event from storm drains or intermittent surface drainage ditches;
b. All storm drains or intermittent surface drainage ditches shall be diverted away from areas rehabilitated by means of natural water fill;
c. An outlet may be required by the Board to assure a proper cycling of the water supply in the rehabilitated area;
d. The Board may require testing of the water in the rehabilitated area for the purpose of detecting unsanitary, unsightly, or odoriferous conditions. Should such conditions be detected the Board may require the owner to take appropriate corrective measures;
e. The owner shall file evidence of insurance with the Town Clerk annually against liability arising from the use of the extractive industry areas rehabilitated by means of natural water fill in an amount of not less than $1,000,000 for as long as the site remains a water filled area;
f. Grading and restoration shall be completed in such a manner that will insure proper natural drainage and prevent erosion; and

g. In instances where standing water is present, grades left under the high water level shall be at a slope not steeper than one-foot vertical to eight feet horizontal for the first ten feet (measured horizontally), and one-foot vertical to four feet horizontal for the next thirty feet (measured horizontally).

11.8 Access to the site of the project shall be controlled by the installation of gates and signs. Gates shall be located on all access roads and driveways, and shall be closed and locked whenever the owner or his authorized agents are not present on the premises. Signs shall be posted advising that the property is the site of a rehabilitate extractive industry and trespassers may encounter hazards.

11.9 The owner shall be responsible for the continued maintenance of the area and compliance with the rehabilitation plans.

Section 12. PERFORMANCE GUARANTEE

12.1 In order to insure completion of the project in conformance with the approved plans the owner shall furnish to the Town Treasurer at the time of submission of the final plan, a Performance Guarantee. Said performance guarantee may be in the form of cash; certified check payable to the Town of Waterboro; or a performance bond, naming the Town of Waterboro as obligee, issued by a corporate surety licensed to do business within the State of Maine. In no instance shall the amount of the guarantee be less than 125% of the estimated cost of rehabilitation. All proceeds of forfeited bonds or other security shall be expended by the Town for reclamation of the area for which the security was posted, and any remainder shall be returned to the operator or owner.

The performance guarantee shall remain in force until the Code Enforcement Officer certifies that the site has been rehabilitated in conformance with the approved plan.

12.2 The Board may grant an extension not to exceed 12 months beyond the guaranteed performance period when the owner can demonstrate, to the satisfaction of the Board, good cause for such extension; provided however, that the performance guarantee shall remain in full force and effect during any such extension.

12.3 Before the owner may be released from any obligation required by his guarantee of performance, the Board shall require certification from the various departments and agencies concerned to the effect that all improvements have been satisfactorily completed in accordance with all applicable standards, state and local codes and ordinances.

12.4 Any project, which is proposed to operate for a period of time in excess of five years, shall be designed to operate in phases. The applicant shall provide a performance guarantee for each phase of the work.

No work shall commence on additional phases until the Planning Board has been satisfied that the completed phase conforms fully to the approved plans, and a new performance guarantee is presented.

Section 13. INSPECTIONS

The Code Enforcement Officer, or his/her designee, shall conduct an annual compliance inspection prior to the anniversary date of the original permit to determine whether the permit holder has complied with, or deviated from the approved plan.

Section 14. FEES

Prior to the submission of a preliminary plan the applicant shall pay to the Town Treasurer a fee for the review of the plan. Said fee shall be non-refundable and shall be computed as follows:

A fee as specified in the Schedule of Offense, Permit and Application Fees established by the Town Council shall be paid.

No fee shall be charged for projects enumerated under Section 5.2.

Section 15. VALIDITY AND CONFLICT OF ORDINANCES

15.1 In the event that any section, subsection, portion, or requirement of this ordinance shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection, portion, or requirement.

15.2 In the event that any provision of this ordinance is in conflict with any other federal, state, or local statute, ordinance or regulations, the provision that establishes the most stringent requirement shall govern.

Section 16. EXEMPTIONS

16.1 The provisions of this ordinance do not apply to individuals reclaiming lands where the volume to be filled or reclaimed is less than five hundred (500) cubic yards. Further, the provisions of this ordinance shall not apply to extraction or filling incidental to or associated with activities in conformance with and undertaken pursuant to a valid permit issued by the Town of Waterboro.

16.2 Owners of extractive industries existing at the effective date of this ordinance who apply for and are granted active status shall be exempt from the provisions of Section 7, 8 and 9 of this Ordinance. **NOTE**: Owners of existing extractive industries who apply for approval under this provision **shall** notify abutting and adjacent landowners via certified mail at the time of application.

16.3 The provisions of this ordinance do not apply to projects undertaken by the Town of Waterboro for the disposal of other than prohibited wastes.

16.4 The Board of Selectmen may suspend the provisions o this ordinance in the event of a request from public safety officials for sand and gravel due to emergency situations.

Section 17. EFFECTIVE DATE

This ordinance shall take effect and be in force from and after the date of its official adoption by the Town of Waterboro.

Section 18. PENALTIES

18.1 Any person, firm or corporation being the owner of or having control or use of any building or premises who violation any of the provisions hereof, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than $500.00 or more than $5,000.00 each thereof shall constitute a separate offense. All fines collected hereunder shall inure to the Town of Waterboro.

18.2 As in additional remedy, any violation of this ordinance, or any of the provisions or regulations incorporated herein, shall be deemed an dare declared to be a nuisance and may be subject to abatement by restraining order or injunction issued by a court competent jurisdiction.