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ARTICLE I — TITLE & PURPOSE

§1 Title

This Ordinance shall be known and may be cited as the Town of Prospect Surface and Subsurface Mineral Extraction Ordinance, or by its short title of Town of Prospect Mining Ordinance and will be referred to herein as "this Ordinance."

§2 Purpose

The purpose of this Ordinance is to put into law standards and procedures intended to regulate the removal, processing and storage of topsoil, loam, rock, flat rock, sand, gravel, or other similar materials. These standards and procedures are intended to protect the public health, safety, and general welfare, and to minimize the adverse impact of extraction to the Town, abutting property owners, citizens of the Town, and wildlife and natural resources by:

A. Preserving and protecting surface and groundwater quality and quantity for current and future use of the town and/or its residents.
B. Preserving the value of property and its future ability to be an asset to the town and its residents, including wildlife habitat and scenic qualities.

ARTICLE II — ACTIVITIES EXEMPT FROM THIS ORDINANCE

§1 This ordinance shall not apply to the following:

[NOTE: Mineral extraction activities which are exempt from this Ordinance may require approval pursuant to the Shoreland Zoning Ordinance and must comply with all other rules and regulations of the Town.]

A. Active extraction operations with valid State permits existing on the date of enactment are excluded.
B. Mineral extraction activities not exceeding 20,000 square feet of surface area, or the removal or handling of less than 1,000 cubic yards of material annually, if it is for the personal use of the property owner and not sold.
C. 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;

D. Removal or filling of material reasonably incidental to construction, alteration or repair of a structure, or in the landscaping incidental thereto;
E. Construction of farm and fire ponds and normal agricultural operations;
F. Inactive areas where previous mining last occurred at least 12 months prior to the adoption of this Ordinance;
G. Removal of stone walls, rock walls, or foundation walls; and
H. Stripping of topsoil (loam) not part of a mineral extraction operation to a depth no greater than one foot, provided the area so stripped is reseeded in the same growing season as removal;

ARTICLE III — AUTHORITY, APPLICABILITY & ADMINISTRATION

§1 Effective Date

This Ordinance shall be effective upon its adoption by vote of the eligible voters of the Town of Prospect, Maine in Town Meeting.

§2 Permit Required

A. The provisions of this Ordinance shall apply to all mineral extraction activities within the boundaries of the Town of Prospect, Maine, except as provided in Article II of this Ordinance. This applies to all extraction activities described in Article I which are:
   1. A resumption of extraction activities in inactive operations, or on parcels of land on which inactive operations are located, or on parcels of land that are under a common scheme of development with parcels of land on which inactive operations are located;
   2. Active Operations not permitted by the State;
   3. New or proposed; or,
   4. Expansions of the above, except as provided in Article II of this Ordinance.
B. Approval under this Ordinance shall be obtained as part of and concurrent with any other Planning Board and/or Site Plan review and approval applicable to the mineral extraction activity.
C. Any application submitted to the Planning Board for any portion of the affected area, shall be treated as if it includes all the previously exempt or non-permitted un-reclaimed inactive area.

§3 Permit To Be Recorded

No permit shall take effect or be valid unless it is recorded in the Waldo County Registry of Deeds together with the site plan, the reclamation plan and all other plans such as but not limited to the spill containment plan or blasting plan, and the survey, if required, within 90 days of the granting of said permit at the expense of and by the applicant.

§4 Types of Mineral Extraction Activities Prohibited

Any proposed mineral extraction activity not specifically described in this Ordinance shall be prohibited.

§5 Accessory Uses Not Included

It is the intent of this Ordinance that a permit granted hereunder 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 Prospect.

ARTICLE IV — MINERAL EXTRACTION APPLICATION REVIEW

§1 Application

Prior to the establishment or expansion of a mineral extraction activity, an applicant shall apply for and receive a mineral extraction permit pursuant to this Ordinance, as well as all other applicable town permits or approvals. In addition to any submissions required by other applicable town ordinances, the mineral extraction application shall contain the following information, where applicable, and any other information that may be required by Article VI of this Ordinance:

A. Site Plan, prepared by and bearing the seal of a land surveyor or engineer licensed to practice in the State of Maine, showing all information required by the Town of Prospect Site Plan Review Ordinance as well as the following:

1. Boundaries of the subject parcel, and of all lots with any boundary that is located within 1,000 feet from any boundary of the subject parcel. The Planning Board shall require a survey of the extraction area by a licensed surveyor ~~unless the area is less than 5 acres~~. The Planning Board may require a survey of the property by a licensed surveyor if the boundaries are in question.
2. Location of existing, inactive areas, reclaimed areas, and proposed mineral extraction activities and structures on the property.
3. Location and identification of existing public and private streets, roadways and rights-of-way on or abutting the property.
4. Location of proposed access road to the mineral extraction activity from public roadways.
5. Location of all conservation areas and protected natural resources.
6. Location and type of existing and proposed berms, fences, hedges, and tree lines.
7. Location of existing natural drainage ways and proposed storm drainage facilities, including dimensions of culverts, pipes, etc. If any portion of the mineral extraction activity 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.
8. Location of existing wells:
   a. all wells on the parcel itself; and,
   b. within ~~1,000~~2,640 feet of the proposed activity~~, if 5 acres or more; or,~~
   c. ~~within 500 feet of the proposed activity if less than 5 acres~~.
9. Location of proposed hazardous material storage areas including but not limited to fuel storage and handling, and washdown areas.

B. The name, address and telephone number and email of each applicant, and if the applicant is not a natural person, list of the names, titles, addresses and telephone numbers and email addresses and fax numbers of the natural persons that will be responsible for the management of the operation.

C. A traffic impact narrative shall be provided if required pursuant to Article VI of this ordinance.

D. A narrative description of the surface and ground water impacts, including protection plans and the identification of any significant mapped aquifers.

E. Information and a map showing soils conditions on the site of the proposed mineral extraction activity. For subsurface sewage disposal proposed, the information shall include evidence of soil suitability according to the standards established in Article VI of this Ordinance. The Site Plan shall show the location of soil test areas.

F. A reclamation plan showing the final grades and re-vegetation plan, and any phasing of the plan, and which addresses the provisions of Article V, §2 and compliance with Maine Erosion and Sediment Control BMPS, Section I, 1.

G. A narrative description of the impact on the wildlife habitat, and the location of any deer yard or other significant wildlife habitat designated by Maine Dept. of Inland Fisheries and Wildlife, including any proposed mitigation plan.

H. A narrative description of the present use of the parcel and property within 500 feet of the activity.

I. Estimated duration of the operation, including phasing.

J. Types and amounts of equipment to be used in the operation.

K. A Spill Prevention, Control & Containment (SPCC) Plan. (See Article V §2-C).

L. Blasting Plan, if blasting is planned, all submission requirements set forth in the Town of Prospect Blasting Ordinance. ~~Upon preliminary~~ **~~review of the application, the Planning Board shall require that the Blasting Plan include an environmental impact~~ ~~study, a hydrogeologic study, and a pre blast survey of the surrounding areas to such a~~ ~~distance as the Planning Board shall determine, but in no case less than 2,000 feet from~~ ~~the property boundary line of the proposed blasting site.~~**

M. Plan for screening the excavation activity from abutters and any public roads.

N. All submissions made to any federal or state agency concerning the property.

O. Proof of technical ability to complete the project as reasonably related to size and intensity of project.

P. Type of mining planned.

Q. Other information the Planning Board may require to meet standards in Article VI.

R. Erosion control plan for all portions of the proposed operation which are not internally drained.

§2 Alternate Submissions

Activities that already have a valid DEP permit or a complete pending DEP application may submit the DEP application to the Planning Board subject to the authority of the Planning Board to request additional information or submissions above which are not covered by the DEP application.

§3 Exemptions from Submissions

An applicant may request waiver of any submission requirement, which waiver the Planning Board may grant upon a demonstration that it is unnecessary or unduly burdensome given the scope, scale, size, location or minimal likely impacts of the proposed operation.

§4 Application Procedures

A. Applications for mineral extraction permits shall be submitted to the Town Clerk or Chair of the Planning Board together with and as part of any other materials required to be submitted for Site Plan approval of the development. All application procedures set forth in the Town of Prospect Site Plan Review Ordinance shall apply to review of applications pursuant to this Ordinance.

1. Applications for mineral extraction activity permits shall be submitted to the Town Clerk or Chair of the Planning Board who shall issue to the applicant a dated receipt.
2. The application shall be accompanied by a fee in accordance with a fee schedule determined by the Board of Selectmen, with separate fees to be set for mineral extraction activity of ~~1~~ 0.5 to 5 acres, and for mineral extraction activity over 5 acres. The CEO shall advise the Planning Board regarding the classification of the proposed pit and application fee to be paid. Additional fees may be required by

the Prospect Planning Board to cover the cost of reviewing the application as specified in Article IV §1-C(4) and Article IV §5-H.

B. Public Hearing and Planning Board Decision

1. All mineral extraction activity larger than ~~1~~ 0.5 acre shall require a public hearing.
   Notice of and procedures for the public hearing shall be as set forth in the Town of Prospect Site Plan Review Ordinance.
2. Upon approval of the mineral extraction activity, the Planning Board Chair or designee shall sign all copies of the final site plan. The original shall be recorded by the applicant with the Waldo County Registry of Deeds. One copy shall be retained by the applicant, one copy shall be retained by the Planning Board, one copy shall be filed with the Tax Assessor, and one copy shall be filed with the Code Enforcement Officer. Recording fees shall be paid by the applicant. The Planning Board shall maintain a permanent record of its action on the mineral extraction activity. Any plan not recorded within 90 days after approval with the Waldo County Registry of Deeds shall he null and void.
3. Approval by the Planning Board of a mineral extraction activity plan shall not be deemed to constitute or be evidence of any legal acceptance by the Town of Prospect, Maine of any road, easement, or other open space shown on such plan.

C. Operation Conditions and Limitations

Before any mineral extraction activity begins, and as a condition of the permit, the applicant shall apply for and receive all applicable permits as may be required by Town, state or federal regulations, laws or ordinances regulating such developments, including but not limited to the Town of Prospect Site Plan Review Ordinance. Any violation of other permits necessary for operation and noted in the permit shall be considered a violation of this Ordinance.

D. Expiration of Approval

Mineral Extraction Activity permits shall automatically expire one year from the date of issuance unless the mineral extraction activity has been substantially commenced during that period.

E. Plan Revisions after Approval

Plan revisions after approval shall be made as further provided for in Article VI §4 of this Ordinance.

F. Expert Witnesses and Opinions

In the event that the Planning Board requires expert opinions, advice or testimony during the course of reviewing the application, it shall require the applicant to pay for such services, after giving notice to the applicant of the name of the expert, the area of qualification of the expert, and the purpose for which the expert is required, and the approximate cost of the expert. The applicant shall be provided with an opportunity to meet with the Planning Board to arrange a schedule for payment of the costs. The applicant shall deposit with the Town funds sufficient to cover the anticipated review costs and may be submitted in increments as approved by the Planning Board. Such funds shall be allocated to a sub-account to be maintained by the Town Treasurer and may not be spent for any other municipal purposes. If any funds remain in said sub-account after the completion of expert review, they shall be returned to the applicant within 45 days.

The applicant shall have the right to request a public hearing before the Board of Appeals to determine if the experts, as noticed by the Planning Board, are reasonably necessary to a determination of any issue properly before the Planning Board. It will be the applicant's burden to prove that the requested expert is unnecessary, or that the cost is excessive. The applicant shall request the hearing within 10 days of Planning Board's determination of the requirement for expert assistance.

~~G~~. ~~Transfer of Mineral Extraction Activity Permit.~~

~~Within thirty (30) days of the date of the transfer, by sale or otherwise, of land upon which a mineral extraction operation is situated, the new owner(s) or operator~~(s) ~~shall file with the Town~~

~~may subject the violator to any penalty, or combination of penalties, that may be imposed under the Ordinance.~~

2. ~~The transferee shall provide the Planning Board the information as required in Article IV §1-A, B, and D of this Ordinance.~~

3. ~~Proposed changes to the terms of the permit, including financial responsibility requirements, shall be considered a request for permit modification and processed accordingly.~~

4. ~~The Planning Board shall hold a public hearing and provide an opportunity for public comment on any substantive changes in the terms of the permit. Notice of that hearing shall be as specified in Article IV §4 C.~~

G. Transfer of Mineral Extraction Activity Permit.

Prior to the transfer, by sale, lease or otherwise, of a Mineral Extraction Site, or a change in operating entity, the new owner(s) or operator(s) shall file with the Planning Board an application for transfer.

1. **Failure to comply with this requirement shall be a violation of this Ordinance and may subject the violator to any penalty, or combination of penalties, that may be imposed under the Ordinance.**
2. **The transferee shall provide the Planning Board the information as required in Article IV §1-A, B, and D of this Ordinance.**
3. **Proposed changes to the terms of the permit, including financial responsibility requirements, shall be considered a request for permit modification and processed accordingly. For Mineral Extraction sites that hold no permit due to commencement of activities prior to this Ordinance, the applicant shall obtain any approval for any expected material change to the development or operation of the site.**
4. **The Planning Board shall hold a public hearing and provide an opportunity for public comment on the transfer. Notice of that hearing shall be as specified in Article IV §4-C.**

§5 Appeals

Any person aggrieved by the Planning Board's issuance or denial of a permit or approval required under this Ordinance shall have the right to file a written appeal by following the provisions set forth in the Town of Prospect Site Plan Review Ordinance.

ARTICLE V – MINIMUM DESIGN & PERFORMANCE STANDARDS

§1 General Requirements — All Operations

A. Mineral extraction activities shall conform to all applicable State laws and local ordinances or regulations.

B. The owner and/or permit holder of a mineral extraction activity shall be responsible, both jointly and severally, for ensuring the maintenance of all infrastructure, structures and

their sites in accordance with the terms of this Ordinance and any permits governing the activity.

C. The Planning Board shall consider the financial capacity, technical ability, and prior performance of the applicant to complete all proposed activities. The performance record shall include any prior violation, suspension, or revocation of a permit issued under this ordinance, or similar permit issued by any other agency of government, and any other environmental enforcement history.

D. The Planning Board may approve the application only if the applicant or agent is in compliance with all other Town of Prospect or State of Maine permits for Mineral Extraction Activity. The applicant or agent shall be deemed not in compliance if it is the owner or operator of a mineral extraction operation which has been issued a notice of violation of an applicable law, ordinance, regulation or permit, and has not brought the property or operation in full compliance with any order of the court.

E. In all cases, the applicant shall have the burden of proof that all requirements, standards, and conditions of this Ordinance and subsequent approval are met.

F. A copy of the permit must always be displayed on site.

§2 Performance Standards

A. Erosion, Sedimentation Control & Storm Water Management.

1. All projects.
   a. Sediment may not leave the parcel or enter a Protected Natural Resource.
   b. Topsoil stockpile must be stabilized and inspected as specified in Article V§2-B(1), below.
2. Internally Drained projects.
   a. Land shall be restored and stabilized according to the Reclamation Plan.
   b. For projects over 5 acres, a volume calculation shall be provided demonstrating that the area(s) will safely hold a volume of precipitation at least equal to that which may be expected in the area from the 25-year, 24-hour storm event for the region, per the U.S.D.A. Natural Resources Conservation Service.
3. Externally Drained Projects.
   a. If surface water flows out of and away from the proposed site during and after excavation activities, the following should be provided to assure proper erosion control and prevent siltation of downstream waters. Temporary erosion control measures shall be included in the project design, such as hay bale barriers, silt fencing, and riprap. Plans shall show the location and installation details and include a description of the timing of installation, inspection and maintenance of erosion control measures.
   b. ~~For projects over 5 acres, t~~The applicant shall submit, and the Planning Board shall review additional information including:
      i. A plan and narrative detailing specific erosion control measures; and,
      ii. 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.
   c. Sedimentation pond location and design, if any, shall be designed to the 25-year storm event and based on the U.S.D.A. Natural Resources

Conservation Service methodology. The location and construction details of the pond shall be shown on the site plans.

B. Reclamation Plan

The affected land must be restored to a physical state that is similar to that which existed prior to any development or encourages the productive use of the land. The Planning Board shall use discretion on reclamation of old pits if they have been reclaimed by natural processes and applying reclamation standards would destabilize an area.

A reclamation plan is required to be submitted with all permit applications according to the following specifications:

1. Topsoil Stockpiling
   Topsoil which is stripped or removed must be stockpiled in sufficient quantity for use in reclaiming disturbed land, unless it is demonstrated to the Planning Board 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.
2. Regrading
   Upon completion of the excavation, the side slopes must be regraded to a slope no steeper than 2.5 horizontal to 1 vertical.
3. Vegetative cover
   Vegetative cover shall be established on all affected land. 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.
   a. Vegetative material used in reclamation must consist of 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.
   b. The vegetative cover is acceptable if within one growing season of seeding:
      i. the planting of trees and shrubs results in a permanent stand, or regeneration and succession rate, sufficient to assure a 75% survival rate; and,
      ii. the planting results in 90% ground coverage.
4. Structures and roads
   All structures and access, haul, or other support roads must be reclaimed once no longer used, unless reserved for future productive use of the land, as described in the reclamation plan.
5. Phased Reclamation
   For projects over 5 acres, the site must be reclaimed in phases so that:
   a. the working pit does not exceed 10 acres at one time and the area being actively mined does not exceed 5 acres at any time.
   b. For guidance in planning and implementation of reclamation, see the most recent edition of Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices (Cumberland Cry. SWCD; 3/1991) for Pit Reclamation.
6. Timeline
   A timeline for reclamation shall be included with the reclamation plan. All reclamation shall begin within 6 months of completion of phasing, or the completion or abandonment of the project. The site shall be inspected when the

regrading and planting is completed and again at one year to ensure compliance with the reclamation plan.

7. Upon completion of reclamation or 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 Code Enforcement Officer at the expense of the applicant, certifying that the reclamation is in compliance with the approved plans.

   A Certification of Completion of Reclamation shall be issued by the Code Enforcement Officer only after the final inspection is made and is passed.

C. Petroleum Usage

1. Spill prevention, control, and countermeasures plan shall be required for all projects.
2. Any discharge or leak of petroleum or other hazardous liquids over 5 gallons shall be reported to the Code Enforcement Officer, 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 according to the spill containment and cleanup provisions of CMR 378, Section 511.
3. A copy of the Spill Prevention Control, and Countermeasures Plan shall be kept available on site at all times.

D. Buffers and Setbacks

Buffers and setbacks shall be provided and shown on the site plans as follows:

1. Property Boundaries.

   To minimize visual impacts and provide for wildlife, a ~~100~~200-foot buffer shall be maintained from property boundaries. This buffer may be reduced to 25 feet with written permission of an abutting landowner; or may be eliminated between abutting properties provided:

   a. written permission is obtained;
   b. Erosion & stormwater control standards on both properties are met;
   c. Elimination of the buffer does not increase the runoff from either excavation across the property boundary; and
   d. Any written permission to reduce a buffer must provide that it remains in effect until mining ceases and must be recorded in the Registry of Deeds. All property boundaries must be identified in the field by markings such as metal posts, stakes, flagging or blazed trees.

2. Existing Structures.

A 300-foot buffer from the closest edge of an existing residence or business, cemetery, or farm building used for livestock shall be maintained with all projects. This buffer may be reduced with written permission of the owner of the structure, provided that said agreement must be recorded in the Registry of Deeds.

3. Protected Natural Resources

   The following shall apply:

   a. A 100-foot horizontal distance undisturbed natural buffer shall be maintained from the Normal High Water Mark of all ponds, lakes, streams, brooks, rivers and marshes or any other permanent surface water body or wetland. A minimum 75-foot undisturbed natural buffer shall be maintained between the working edge of the excavation and any coastal wetland or significant wildlife habitat contained within a freshwater wetland or 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.

b. Where the slope is greater than 15%, a natural buffer of 75 feet plus 4 times the average slope percent in horizontal width shall be maintained between the affected land and the protected resource, e.g. if the slope is 15%, then the calculation would be 75 + (4 x 15) = 135 feet for the buffer.

4. Public Roads.
A 150-foot natural buffer from the closest edge of the shoulder of a public road shall be maintained with all projects. A 50-foot-wide undisturbed natural vegetated area, closest to any private road or right of way, shall be maintained, except for any access road entrance. Reduction of the 50-foot buffer from a private road or right of way is allowed with written permission of adjacent property owners.

5. Screening.
The Planning Board may at its discretion request the applicant to take specific actions to ~~insure~~ensure the effectiveness of any required buffer required, including, but not limited to, the planting of trees, placement of solid fence or creation of berm.

E. Road Design, Circulation and Traffic

1. The intersection of any road within the development area and an existing public road shall meet the following standards:
   a. The angle of intersection shall be 60 degrees to 90 degrees.
   b. The maximum permissible grade within 75 feet of the intersection shall be 3%.
   c. A minimum sight distance of 10 feet for every mile per hour of posted speed limit on the existing road shall be provided. Sight distances shall be measured from the driver's seat of a vehicle that is 10 feet behind the curb or edge of shoulder line with the height of the eye 3 1/2 feet above the pavement and the height of object 4 1/4 feet.
   d. The center line of any road within the project intersecting an existing public road shall be no less than 125 feet from the center line of any other road intersecting that public road.
   e. Turning lanes, traffic directional islands, frontage roads, and traffic controls shall be provided on public roads at the developer's expense, where necessary, in the opinion of the Planning Board, to safeguard against hazards to traffic or pedestrians, and/or to avoid traffic congestion.
   f. All access/egress roads leading to or from the extraction site to 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 200 feet from the public road.
2. Traffic impacts to be considered:
   a. Where mineral extraction activity traffic will use town-maintained roads, the proposed traffic volume and type must be suitable and appropriate to the type and condition of the existing road as determined by Section E(2)(b)(v), below. In determining this standard, the road condition survey must show not only the current capacity of the existing road but also the type, size and volume of existing traffic and compare this to the proposed traffic volume and type.
   b. The Planning Board has the authority to require the applicant to furnish a performance bond payable to the Town of Prospect issued by a surety company licensed to do business in the State of Maine, guaranteeing the current condition of Town owned or Town maintained roads.

c. The road giving access to the Mineral Extraction Activity and neighboring roads which can be expected to carry traffic to and from the Mineral Extraction Activity:

i. shall have appropriate traffic carrying capacity;

ii. the surface shall, if a town or town-maintained road, be suitably improved if necessary, at the applicant's expense, and with the permission of the Selectmen and the Road Commissioner, to accommodate the amount and types of traffic generated by the proposed mineral extraction activity;

iii. shall not increase the volume to capacity of any town or town-maintained road above 80%; nor reduce the town road's Level of Service to MDOT rating "D" or below;

iv. shall have minimum travel surface width of 16 feet with 2-foot shoulders; and

v. shall require a road condition survey of the town or town-maintained road or, on operations larger than 5 acres, the Planning Board shall require an engineering impact study, at the expense of the applicant; and

vi. may require mitigation for adverse impacts on town or town-maintained roads, by decision of the Planning Board.

c. Projects that do not meet these standards shall not be approved.

3. Routing.
Where necessary to safeguard against hazards to pedestrians and to avoid traffic congestion or adverse impacts to Town roads, alternative routing may be required.

F. Groundwater Impacts

Water is a precious resource and the applicant must take measures to assure that the quality of the groundwater is protected. Prior to the initial blast or excavation activity, the applicant must conduct water quality tests on all non-applicant-owned wells within 52,000 2,640 feet (1/2 mile) of the mineral extraction site boundary lines, or as determined by the Planning Board for production blasting and Planning Board-approved projects. Water quality testing must also be done post-blast if requested by the property owner because of evidence of substantive change in water quality. Turbidity in wells tested shall be no greater than that which existed prior to the blasting as established in the pre-blast survey.

The following requirements apply to all projects unless otherwise noted.

1. Ground Water Quality.
The Mineral Extraction Activity shall not cause an adverse impact to ground water quality and quantity as they existed prior to the application..

2. Ground Water Buffer.
To provide an adequate buffer for ground water and allow for filtration of impurities from surface water, extraction shall not be any closer than 5 feet above the maximum seasonal high-water level. The applicant shall provide documentation of the groundwater table. The Planning Board may require monitoring of groundwater levels and quality to ensure there are no adverse impacts to any water supplies or wells within 500 feet of the site for non-blasting operations.

The Planning Board may require additional monitoring of drinking water wells and groundwater ~~for 2,000~~ within 2,640 (1/2 mile) feet of the mineral extraction site boundary lines, or within a greater distance if hydrogeologic studies conclude groundwater impacts may extend beyond that radius. ~~or within the boundaries of the Town~~ for blasting operations.

3. Water Supply Buffer.
A 300-foot separation must be maintained between the limit of excavation and any pre-existing private drinking water supply. A 1,000-foot separation must be maintained between the limit of excavation and any well or spring which qualifies as a public drinking water supply. The Planning Board shall require larger buffers from water supplies, if it finds that a hazard is shown to exist due to the Mineral Extraction Activity.

4. Water Use.
   a. A mineral extraction activity must not withdraw more than 5,000 gallons of ground water per day, unless a hydrogeologic study is submitted by a hydrogeologist that determines this will not represent an environmental hazard or threaten drinking water supplies.
   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 Code Enforcement Officer.

5. Standards for Acceptable Groundwater Impacts
   a. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
   b. No mineral extraction activity shall increase any contaminant concentration in the ground water to more than one half of the Primary Drinking Water Standards. No mineral extraction activity shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.
   c. If pre-existing ground water contains contaminants in excess of the primary standards, and the mineral extraction activity is to be served by on-site groundwater supplies, the applicant shall demonstrate how water quality will be improved or treated, if necessary.

G. Noise

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 but not limited to daily starting and ending times.

1. 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 project.

2. The maximum permissible sound pressure level of any continuous, regular or frequent source of sound shall be established by the time period and type of land use district as listed in Subsection 3, below. Both dB(A) and dB(C) scales shall be used, and a violation of either standard shall be deemed to constitute a violation of this Ordinance.
   Noise shall be measured as to the Site Plan Review Ordinance, but the following standards shall apply:

3. Sound from production blasting shall be limited as follows, provided a blasting plan has been approved by the Planning Board as a part of the permit:

All Districts	dB(A) 110	dB(C) 126

4. The noises of safety signals, warning devices, and emergency pressure relief valves and other emergency activity shall be exempt from the noise level regulations:

H. Blasting

If blasting will be conducted as part of a mineral extraction operation, the Planning Board shall review the project in accordance with the Town of Prospect Blasting Ordinance and issue a findings regarding compliance with its standards.

I. Mitigation of Effects on Neighboring Community

1. The project shall not operate on Sundays or the following holidays: New Year's, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.

2. 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 to permit approval:

Blasting	9am – 3pm	Monday - Friday
Crushing & Processing	7am – 7 pm	Monday - Friday
Drilling	7am – 7 pm	Monday - Friday
Loading	7am – 7 pm	Monday - Friday

An applicant may request extended hours of operation if sufficient noise abatement can be demonstrated at the discretion of the Planning Board. The Planning Board will require a noise study performed by a qualified licensed acoustical consultant.

~~I~~J. Additional Review Criteria

In addition to the standards contained in this section, the Planning Board shall review the project for compliance with all applicable review criteria contained in Title 38 M.R.S.A. Chapter 3, Subchapter 1, Article 7 Performance Standards for Excavations for Borrow, Clay, Topsoil, or Silt and Article 8-A Performance Standards for Quarries. Whenever the provisions of Title 38 come into conflict with other review criteria of this ordinance, the more restrictive shall apply.

K. **Environmental Impact Statement**

This statement needs to meet the requirements for State ~~required~~ quarrying permit.

L. **Hydrogeologic Study**

A hydrogeological study submitted by a state licensed geologist that quantifies the potential impact upon water quality and quantity on the property and abutting properties.

ARTICLE VII — ENFORCEMENT AND INSPECTIONS.

§ 1 Annual Compliance Inspection

A. The annual compliance inspection fee, payable to the Town of Prospect, shall be in accordance with a fee schedule determined by the Board of Selectmen.

B. The Annual Compliance Inspection (ACI) shall be conducted by the CEO during the months of June through October. The CEO shall provide the selectmen, site owner, and

site operator with a report outlining any violations of this ordinance and remediation required.

C. It is the responsibility of the permit holder to ensure that the inspection is conducted as required by this section and to ensure payment of the annual mineral extraction inspection fee as established by the Board of Selectmen. Failure to pay the annual inspection fee may result in a "Stop Work Order" being issued.

D. In addition, the CEO shall inspect the gravel extraction or rock mining operation for compliance with all applicable standards contained in 38 M.R.S.A. Chapter 3, Subchapter 1, Article 7 Performance Standards for Excavations for Borrow, Clay, Topsoil, or Silt and Article 8-A Performance Standards for Quarries. Whenever the provisions of Title 38 M.R.S.A. come into conflict with other inspection requirements of this ordinance, the more restrictive shall apply.

E. The CEO shall have the right of entry onto any mineral extraction activity site at reasonable times and with reasonable notice for the purposes of making any inspection required by this Ordinance or of investigating any potential violations.

§2 5-Year Renewal

Every five (5) years an approved permit requires a review by the Planning Board. If a Five-Year Review application is filed at least thirty (30) days before the annual renewal deadline, mining activities may continue under the existing permit until the Planning Board review has been completed.

Upon receiving the review and approval request, the Planning Board shall schedule a public hearing regarding the request. The applicant shall provide at a minimum, an updated site plan prepared and stamped by a surveyor or engineer licensed in the State of Maine identifying the original footprint of the operation, the original active extraction area, the current extraction area, any reclaimed areas, and any changes to the site since the original approval. Additional data may be requested by the Planning Board as necessary to determine compliance with the standards of this ordinance.

The Planning Board may, as part of the renewal process, impose new conditions on the license or modify the license in any way necessary to assure compliance with the license being reviewed and the Ordinance as it is in effect at the time of renewal. If there has been a history of significant non-compliance, the Planning Board may deny the request for license renewal. A mining activity cannot be expanded beyond its original license area as part of the 5-year process. Any expansion not allowed in the original application must be processed as a separate application under the ordinance in effect at the time of the expansion application.

§3 Violations

A. A. No mineral extraction activity plan shall be recorded in the Waldo County Registry of Deeds until a Final Plan has been approved and signed by the Planning Board in accordance with this Ordinance.

B. No mineral extraction activity shall be conducted except in compliance with all applicable state laws and regulations, town ordinances, plans approved by the State or Town, or any terms and conditions of any state or Town permit or approval.

C. No person, corporation or other legal entity may conduct excavation activities or sell or offer to sell any materials in a mineral extraction activity site which has not been approved by the Planning Board and recorded in the Waldo County Registry of Deeds.

D. Any operation 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 approvals granted under this Ordinance, in that all other approvals are necessary for approvals under this ordinance to be valid.

§3 Mineral Extraction Plan Amendments after Approval

All activities shall be conducted as depicted on the approved plans. No changes, erasures, or modifications shall be made in a Final Plan after approval has been given by the Planning Board unless the plan is first resubmitted, and the Planning Board approves any modifications. The applicant is not required to go through the complete review process of an amendment to an existing mineral extraction activity, unless, in the judgment of the Planning Board the amendment substantially alters the character of the original mineral extraction activity, or unless the change constitutes a new mineral extraction activity. If an amended Final Plan is recorded without complying with this requirement, it shall be null and void. The Planning Board shall record a revocation of a previously recorded document in the Waldo County Registry of Deeds.

§4 Enforcement

A. The Code Enforcement Officer of the Town of Prospect, Maine, shall enforce this Ordinance and the Selectmen of the Town of Prospect, Maine are authorized to institute legal proceedings to enjoin violations of this Ordinance.

B. If the Code Enforcement Officer finds a violation of any provision of this Ordinance or failure to comply with any order, permit, approval, condition or other final decision or action of the Planning Board that constitutes a substantial and immediate danger to the health, safety or welfare of any person(s), or property or environment of the Town of Prospect, Maine, the Code Enforcement Officer may issue a Stop Work Order and the Town may initiate immediate proceedings to abate or correct such violations. Violations are subject to inspection as per §1 of this Article.

C. In any action to enforce any provision of this ordinance where the Town of Prospect prevails, said Town shall be awarded penalties, reasonable attorney fees, expert witness fees, costs and other remedies available pursuant to Title 30-A M.R.S.A. § 4452.

§5 Penalties

A. Any person, firm or corporation, being the owner or having control or use of any mineral extraction activity in violation of any of the provisions of this Ordinance or terms or conditions of any order, permit or approval or final decision of the Planning Board shall be subject to a civil penalty due and payable to the Town of Prospect, Maine of not less than one hundred dollars ($100.00) for each day said violation exists and not more than twenty-five hundred dollars ($2,500.00) for each day said violation exists or twice the economic benefit resulting from the violation, whichever is greater, not to exceed $25,000 per day. If the same person has been convicted of a violation of this ordinance within the previous two years, the maximum penalty is twenty-five thousand dollars ($25,000.00) for each day said violation exists.

B. In setting the penalties, the Court shall consider but is not limited to the following:
   1. Prior violations by the same person;
   2. The degree of environmental damage that cannot be abated or corrected;
   3. The extent to which the violation continued following an order to stop;
   4. The extent to which the Town of Prospect, Maine contributed to the violation by providing incorrect information or failing to take timely action; and

5. Whether penalties have been imposed by another governmental agency for the same incident(s).

C. If the maximum penalty amount of Article VII §6-A of this ordinance is held void or invalid it is the intent of the Town of Prospect, Maine that provisions of Title 30-A, M.R.S.A. Section 4452 be given full force and effect and that the maximum penalty amounts authorized by such provision apply to violations of any order, permit, approval or final decision of the Planning Board, or any provision of this ordinance.

ARTICLE VIII — SEVERABILITY & CONFLICT

§ 1 Severability

Should any section of this Ordinance be declared by the courts of the State of Maine or by the courts of the United States to be invalid, such decisions shall not invalidate any other section or provision of this Ordinance.

§2 Conflict with other Ordinances

This Ordinance shall in no way impair or remove the necessity of compliance with any other rule, regulation, bylaw, permit or provision of law. Where this Ordinance imposes a greater restriction upon the use of the land, buildings or structures, than any other rule, regulation, bylaw, permit or provision of law, the provisions of this Ordinance shall prevail.

ARTICLE ~~VIII~~IX- AMENDMENTS TO THE ORDINANCE

§ 1 Initiation of Amendment

An amendment to this ordinance may be initiated by:

A. The Planning Board (provided that a majority of the Board has so voted), or,

B. Request of the Select Board to the Planning Board, or,

C. Written petition to the Select Board bearing signatures of registered voters of the Town of Prospect, Maine numbering at least 10% of the number who voted in the last gubernatorial election.

§ 2. Adoption of Amendment

All proposed amendments to this ordinance shall be referred to the Planning Board for their recommendation. The Planning Board may hold a public hearing on any proposed amendment. Within 30 days of receiving a proposed amendment or within 30 days of the public hearing, if one is held, the Planning Board shall make known their recommendation to the Select Board and the Town. After receiving the recommendation of the Planning Board, the amendment shall be voted on by the voters of the Town of Prospect, Maine at a Town Meeting, a simple majority vote being required for adoption.

ARTICLE ~~I~~X —REFERENCES & DEFINITIONS

§1 Construction of Language

In general, all words and terms used in this Ordinance, if not defined herein, shall have their customary dictionary meanings, unless such word or term is otherwise defined in Title 38 M.R.S.A. Section 490-A or its successor. More specifically, certain words and terms shall be described below.

§2 Relationship to Other Town Ordinances

This Ordinance shall be applied as part of the site plan review and approval process as set forth in the Town of Prospect Site Plan Review Ordinance. All substantive and procedural provisions of the Site Plan Review Ordinance shall apply to review of mineral extraction activities covered by this Ordinance. Where there is a conflict between the language contained in this Ordinance and the Site Plan Review Ordinance any other Town ordinances, the stricter or more specific language shall apply.

§3 References to the Town

All references in this ordinance to "Town," "the Town," "the Town of Prospect," and to any board, official or officer, unless clearly defined otherwise, shall be construed to be references to The Town of Prospect, Maine, an incorporated municipality in the County of Waldo, State of Maine and its municipal boards, officials and officers.

§4 References to Other Documents

All references in this Ordinance to any statute, regulation, document, chapter, handbook, or other external reference, shall be construed to be references to said documents and their successor documents, as they may be amended or replaced from time to time by other materials.

§5 Definitions

Abandonment: Failure to complete the Annual Compliance Inspection; or to cease operations without completing the reclamation plan.
Affected land: The land area from which the overburden will be or is being removed or has been removed and not reclaimed; land where flat rocks are picked up from the surface or are mined; land upon which stumps, spoil, or other solid waste will be or has been deposited; and any storage area that will be or has been used in connection with the development, except a natural buffer strip.
Annual Compliance Inspection: An examination by the Code Enforcement Officer done on an annual basis that shall check for compliance of the operations with the conditions and requirements of the permit.
Aquifer: An underground bed or stratum of earth, gravel or porous stone that contains water.
Average Daily Traffic (ADT): The average number of vehicles per day that enter and exit a premises or travel over a specific section of road.
Blasting: The use of explosives to break up or otherwise aid in the extraction or removal of rock or other consolidated natural formation.
Blasting Plan: A required written outline of all procedures and policies regarding blasting where such activity is proposed to be used.
Borrow Pit: A development undertaken for the primary purpose of excavating sand, gravel or fill. This does not include any excavation for rock or clay.
Buffer: A natural, undisturbed area or belt of land that contains vegetation. A buffer area may be larger than specified in this ordinance.
Common Scheme of Development: Separate, but similar or coordinated, land use activities being conducted on either a single parcel of land or on multiple contiguous parcels of land that are either under common ownership or common management.
Disposal: The placing or storing of materials that are not going to be used in any process or production in conjunction with the extraction activity.
Duration: A specified length of time.
Expansion of operation: Excavation operations that exceed the approved area or footprint.
Flat Rock Mining: Extraction with the primary purpose of the removal of solid rock strata using low velocity blasting or mechanical means.

Ground water: The water beneath the surface of the ground, consisting largely of surface water that has seeped down; the source of water in springs and wells.
Handling: Any aggregate screening, mixing or storage of sand, gravel, stone, rock, clay, or topsoil; to include any mining of material.
Inactive: Mineral extraction that has ceased for 12 consecutive months prior to the passage of this Ordinance, in any areas where mining extraction activity had previously occurred.
Infrastructure: Structures, roads or utility facilities that are a necessary part of the development of an operation. Immediate Family: The husband, wife or children of a specific individual.
Lake or Pond: Any inland impoundment, natural or man-made, which collects and stores surface water.
Low Velocity: Blasting using explosive materials that are characterized by deflagration or a low rate of reaction and the development of low pressure.
Maximum Seasonal High Groundwater Level: The upper level at which the ground water table normally is located during the season of the year when such levels are at their highest. In order to determine such level, a test pit reviewed by a soil analyst or groundwater data for a minimum of one year must be gathered and analyzed. Adjustments may be made by the Planning Board for extreme seasonal variations.
Mineral extraction activity: Any excavation or removal, handling or storage of on-site extracted sand, gravel, borrow, rock, clay, minerals, or topsoil to include, but is not limited to, sand or gravel pits, clay pits, borrow pits, quarries, mines, and topsoil mining or removal.
Mineral Extraction Site or Area: All of the land area disturbed or otherwise developed for the extraction, removal, processing, or storage of sand, gravel, clay, minerals, stone, rock, or topsoil; including any access roads and cleared areas adjacent to a pit or excavated area
Normal High-Water Mark of inland Waters: That line of the shores and banks of nontidal water which is apparent because of the different character of the soil or the vegetation due, or to the prolonged action of the water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial (by way of illustration, aquatic vegetation includes but is not limited to the following plant and plant groups: water lily, pond lily, pickerel weed, cattail, wild rice, sedges, rushes, and marsh grasses, and terrestrial vegetation includes but is not limited to the following plants and plant groups, upland grasses, aster, lady slipper, wintergreen, partridgeberry, sarsaparilla, pines, cedars, oaks, ash, alders, elms, and maples). In places where the shore or bank is of such character the high-water mark shall be estimated from places where it can be determined by the above method.
Objectionable Noise: Sounds occurring on a frequent or regular basis that are uncomfortable to hear due to intermittence, beat frequency, shrillness, or volume outside of the boundaries of the project.
Personal use: Non-commercial uses for personal or immediate family needs.
Phasing of Operations: A plan of completion of the operations in separate and distinct sequences that have a complete beginning and ending for predetermined areas. In the context of this ordinance, all phases must be structured so that they stand on their own, shall be inspected for completeness at the end of each phase and have reclamation of area completed at the end of each phase.
Picked Up From The Surface: A rock harvesting method that does not involve blasting and only utilizes hand tools and small scale mechanized equipment. It is the intent of this ordinance that this method shall be conducted with a minimum of soil disturbance and is utilized to remove rock that can be seen on the surface.
Pond: See "Lake"
Preblast Survey: Documentation prior to the initiation of blasting of the condition of buildings, structures, wells or other infrastructures and of protected natural resources, historic sites and unusual natural areas.
Processing: Any washing, crushing, or similar processing of on-site material that does not inherently change the nature of the product.
Production Blasting: A blasting operation carried out on a regular basis for the purpose of production of material.

Projections of Groundwater Quality: An analysis of the potential changes to existing groundwater quality by examining the processes, chemical byproducts and outflow of a proposed operation.
Protected Natural Resource: Wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, bog, marsh, rivers, streams or brooks, as the terms are defined in applicable Town of Prospect ordinances or state law.
Quarrying Operations: The removal, processing and storage of rock, stone and flat rock, or other similar materials.
Reclamation: The restoration to conditions similar to what existed prior to the operation or that will be compatible with what existed prior to the operation on the area of land affected by mining under a reclamation plan. This may include but is not limited to, grading and shaping of the land, the planting of forests, the seeding of grasses, legumes, or crops for harvest, or the enhancement of wildlife and aquatic resources.
Reclamation Plan: A plan which depicts how the project area will be restored, or altered for the productive use of the land, after excavation is complete. Such a plan shall include final grading and re-vegetation plans, of any given phase.
River or Stream: A free flowing drainage outlet, with a defined channel lacking terrestrial vegetation, and flowing water for more than three months during the year.
Road: Public and private owned ways such as alleys, avenues, boulevards, highways, roads, streets, lanes and other rights-of-way, as well as areas on mineral extraction activity plans designated for vehicular traffic.
Rock: A hard, nonmetallic mineral that requires cutting, blasting or similar methods of forced extraction.
Screening: Includes, but is not limited to, the planting of trees, placement of solid fence or creation of berm in order to prevent a direct view of an operation or a part of an operation from public ways and other properties.
Setback: The horizontal distance from a lot line or referred location to the nearest part of a structure or activity.
Setback from Water: The horizontal distance from the normal high-water mark to the nearest part of a structure or activity.
Stream: See “River.”
Surface Water Body: Any water flowing on the surface, either channelized or by sheet flow including, but not limited to, rivers, streams, brooks, ponds, lakes and any swamp, marsh, bog or other contiguous lowland where water is periodically ponded on the surface.
Topsoil: The top layer of soil that is predominantly fertile and ordinarily moved in tillage or the equivalent of such a layer in uncultivated soils.
Water Table: The upper surface of groundwater, or that level below which the soil is seasonally saturated with water.
Working pit or area: The extraction area including side slopes and adjoining areas with overburden removed, excluding roads, structures, stockpiles, etc. not part of the active mineral extraction area. For the purposes of this ordinance, reclaimed land is not included.
END OF PROSPECT MINING ORDINANCE