MINERAL EXTRACTION ORDINANCE
July 27, 2020, Revised June 2, 2025

TOWN OF ORRINGTON, MAINE

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MINERAL EXTRACTION ORDINANCE

SECTION 1. PURPOSE

The purposes of this ordinance are to:

1. Define and regulate the excavation, extraction, processing, storage and transportation of sand, gravel, rock, soil and loam in the Town of Orrington in order to protect the public health, safety and welfare and to conserve the natural beauty of the Town.
2. Ensure soil stabilization to prevent wind or water erosion from causing on-site or off-site damage and improve the aesthetic appeal and ability of the site to support wildlife.

II. SECTION 2. AUTHORITY

This ordinance is adopted pursuant to and consistent with Title 30-A MRSA, Sections 3001 and 3105 and may be known and cited as the "Orrington Mineral Extraction Ordinance".

III. SECTION 3. EFFECTIVE DATE

The effective date of this Ordinance is **July 27, 2020**, revised **June 2, 2025**

IV. SECTION 4. VALIDITY AND SEVERABILITY

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decisions shall not invalidate any other sections or provisions of the Ordinance, and to this end the provisions of this Ordinance are hereby declared to be severable.

V. SECTION 5. CONFLICT WITH OTHER ORDINANCES

This Ordinance shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other rule, regulation, by-law, permit, or provision of law. Where this Ordinance imposes a higher standard for the promotion and protection of health, safety, and welfare, the provisions of this Ordinance shall prevail.

VI. SECTION 6. APPLICABILITY

This Ordinance shall apply to all proposed and/or operating mineral extraction pits and mineral extractions. A permit will be required for mineral extraction pits and mineral extraction operations where the area affected exceeds or will exceed one acre, or from which more than five hundred cubic yards of material has or will be removed.

VII. SECTION 7. ADMINISTRATION

1. Permit Required

After the effective date of this Ordinance, no person, firm or corporation shall engage in any mineral excavation or processing operation requiring a permit without the mineral pit owner first obtaining a permit from the Orrington Code Enforcement Officer.

2. Procedure

1. Fees.
2. An application for any permit required by this ordinance shall be accompanied by fee(s) as established by the Orrington Board of Selectmen. No action shall be taken on any application until the fee(s) have been received by the Town. The application fee(s) shall not be refundable. The fee(s) shall be paid to the Town of Orrington and shall accrue to the Code Enforcement Fund to be used for the administration and enforcement of this Town ordinance. A Schedule of Fees is located at the Town Office.
3. Timetables and Hearings

a. Within forty-five (45) days of receipt of a complete application for a new pit, the Board may hold a site visit and a public hearing.

b. Within forty-five (45) days of receipt of a complete application for renewal of a permit which has expired, the Board may hold both a site visit and a public hearing.

c. Within forty-five (45) days of receipt of a complete application for renewal of a permit not yet expired, the Board may hold a site visit and additionally may hold a public hearing.

d. Within seventy-five (75) days of the receipt of a complete application, unless an agreement is made between the applicant and the Planning Board to extend the time, the Planning Board shall, in writing, either approve, approve with conditions or disapprove the application.

3. Submission

The application for a permit shall be submitted to the Planning Board accompanied by the following information:

1. The name and current address of the record owner of the property involved.
2. The name and current address of the individual, firm or corporation working the site if different from the record owner.
3. A plot plan, mapped to scale, showing the location and boundaries of the site and the name(s) and location of abutting property owners.
4. The dimensions and specific area of the site to be excavated.

5. **The Plan submittals and map scale.** The applicant shall submit three sets of all plans no larger than 24 inches by 36 inches drawn to a scale not smaller than one inch per forty (40) feet (1:480)

for sites less than or equal to ten (10) acres, or not smaller than one inch per one hundred (100) feet (1:1200) for sites greater than ten (10) acres but less than or equal to one hundred (100) acres, but no map or drawing shall be drawn at a scale larger than one inch per ten (10) feet (1:120), and nine (9) copies of all site plans, maps and drawings no larger than 11inches x 17 inches. No font size shall be smaller than 8 point. If the complete plat cannot be shown on one sheet, it may be shown on more than one sheet with an index map on a separate sheet of the same size. The Planning Board may, if project uniqueness warrants, permit plans for sites containing more than one hundred (100) acres to be drawn at a smaller scale, provided all necessary detail can easily be read or identified, unaided. Plans shall have a one inch margin outside the border along sides. All plans shall include the proposed project excavation area, the date, magnetic north arrow, graphic scale, Planning Board approval block, and the name, registration number and seal of the person who prepared the plan(s), if applicable.

All project area plans require a boundary survey which shall be submitted in both printed and digital forms. The digital files shall contain all of the lot lines as geometrically closed polygons and be geographically referenced with at least sub-meter GPS control. The digital files shall have no fewer than four non-linear (well dispersed across the project area) projected control points of at least sub-meter accuracy and shall be submitted as follows:

i) Projection: Universal Transverse Mercator (UTM), Zone19; or U. S. State Plane coordinate System Maine East 1983 Feet,
ii) Datum: North American Datum (NAD83)
iii) File Format: ESRI shape files, or MapInfo Tab files, or Global Mapper GMP files.

a) **Location map.** The applicant shall include a location map with a Graphic Scale Bar on the site plan or separate sheet, drawn at a scale that shows all features within 300 feet of the project boundary. The location map shall include the tax map and lot number of the parcel or parcels on which the project is located. No font shall be smaller than 8 point. All necessary detail shall be easily read or identified, unaided.

b) **Boundary survey.** Identify the bearings and length of all property lines of the property to be excavated and the source of the information including surveyor identification and the location of all required building setbacks, yards, and buffers and the boundaries of all contiguous property under the total or partial control of the owner or applicant regardless of whether all or part is being excavated at this time. The Planning Board may waive this requirement of a boundary survey when sufficient information is available to establish, on the ground, all property boundaries within three-hundred (300) feet of the proposed development.

6. The existing contours of the land within and extending beyond the above boundaries for 100 feet at intervals not to exceed 10 feet in elevation. The scale used in defining contours shall appear on the plot plan.

7. Maps

a) For renewal of a permit (see Section 7. B. Procedure above), a map which clearly indicates (by color coding or other method):

(i) The area included in the applicant's extraction operation for the three years immediately preceding this permit application

(ii) The area of intended extraction during the three years covered by this permit application,
(iii) Any areas of the pit which have been fully restored,
(iv) Any area of the pit from which no further extraction is anticipated (closed portion)

b) For a new permit (see Section 7.B. Procedure above), a map which clearly indicates (by color coding or other method):
(i) areas restored (if applicable) during the three years immediately preceding this permit application
(ii) areas anticipated to be restored during the three years covered by this permit application
(iii) any areas of the pit which have been fully restored

8. The location of all proposed access roads and temporary structures.

9. The proposed provisions for drainage and erosion control.

10. The estimated longevity of the site excavation activities.

11. A statement of the financial capacity of the applicant to carry out the necessary site restoration.

12. A detailed landscaping/vegetation plan defining the manner that the excavated area shall be restored to as near a natural state as is practical by grading, filling, draining and planting. The landscaping/vegetation plan shall contain a schedule for implementation of the restoration of the pit.

13. Prior to the October CEO annual inspection each operator shall provide a written statement to the CEO stating whether greater than 200 cubic yards were removed during the previous 1 October to 30 September 12 monthperiod.

14. Any other information the Planning Board may deem necessary to indicate the hydrology, the physical characteristics of the site, the extent of proposed operations, and compliance with the performance standards.

15. Plans for any anticipated washing operation, to include any proposal to use ground water extraction from the site to provide for same, demonstrating that the operation will not lower the ground water level at the boundaries of the property.

16. A plan for monitoring separation of excavation limits from the average seasonally high water table.

4. Approval of Permits

The Planning Board shall approve or deny those applications on which it is empowered to act as stated, in this Ordinance. The Planning Board shall, after the submission of a complete application including any additional information requested, and following a review of the most recent Code Enforcement Officer compliance report and any

other available enforcement information with respect to the excavation area in question, grant a permit if it makes a positive finding based on the information presented that the proposed operation:

1. Will not unreasonably result in unsafe or unhealthful conditions.
2. Will not unreasonably result in erosion or sedimentation.
3. Will not unreasonably result in water pollution, nor affect adversely existing ground water, springs, or ponds.
4. Will conserve natural beauty in keeping with the restoration provisions of this ordinance.
5. Will not adversely affect public ways.
6. Will not adversely affect surrounding properties.
7. Will not be inconsistent with the performance standards of Section 8.

5. Terms of Permit

No permit shall be issued for a period to exceed three years.

6. General Provisions

1. Waiver and Modification of this Ordinance.

   a. Where the Planning Board finds that extraordinary and unnecessary hardships may result from strict compliance with this Ordinance, or where there are special circumstances of a particular plan, it may waive any provision of this Ordinance provided that such waiver will not have the effect of nullifying the purpose of this Ordinance, the Comprehensive Plan, the Shoreland Land Use Ordinance, or any other ordinance.

   b. In granting any waiver, the Planning Board shall require such conditions as will, in its judgement, secure substantially the objectives of the requirements so waived.

7. Appeals

If the Planning Board shall deny an application for permit or grant approval with conditions that are objectionable to the applicant or when it is claimed that the provisions of this Ordinance do not apply, or that the true intent and meaning of this Ordinance have been misconstrued or wrongfully interpreted, the applicant may appeal in writing the decision of the Planning Board within 30 days to the Orrington Board of Appeals.

8. Enforcement

This Ordinance shall be administered by the Planning Board and enforced by the Code Enforcement Officer and the Select Board.

1. **Site Visit -** The Code Enforcement Officer shall make a site visit to observe site operations on an annual basis, usually during the month of October for the purpose of assessing compliance with the Ordinance. Documentation of his/her

inspection findings are required. Any violations noted will be reported to the Planning Board at the next regular meeting following the site visit.

2. **Right of Entry**-The Code Enforcement Officer in the performance of his/her duties requires site access for the purpose of monitoring compliance with the provisions of this Ordinance. In accepting a permit under the provisions of this Ordinance, permission shall be deemed to have been given by the landowners for the right of entry. If the landowner denies entry to the Code Enforcement Officer, the Code Enforcement Officer shall not enter the property without first obtaining an administrative warrant pursuant to the Maine Rules of Civil Procedure. Right of entry will also be granted to any person(s) that the Code Enforcement Officer deems necessary to visit the site for assistance in assessing ordinance compliance.

3. **Violations** - In all cases of violations of this Ordinance the Code Enforcement Officer shall notify in writing the owner and if applicable the lessee of the mineral extraction operation and the Board of Selectmen of the nature of the violation. Said notification shall be deemed to have been made when sent to the owner and if applicable to the lessee by certified or registered mail to the address supplied in the permit application or subsequent notice to the Planning Board.

4. **Prosecution** - The Select Board is charged with the prosecution of all violations of the provisions of this Ordinance. In case the owner or lessee does not take corrective action within 60 days after notification, the Select Board may make such complaints to the courts as in their judgement are proper or may institute such actions or proceedings at law or in equity as are proper to restrain, correct, remove or punish such violations. The permit may also be revoked if corrective action is not implemented promptly.

5. **Fines** - Any person, firm or corporation being the owner or having control or use of any mineral pit who shall violate any of the provisions of this Ordinance or fail to comply with any of the requirements thereof may be subject to fines under the following State Law: Title 30-A, Subsection 4452 (Civil Penalties). Violation of any of the standards or provisions of this Ordinance shall be deemed just cause for revoking the permit after reasonable notice and an opportunity for a hearing.

VIII. SECTION 8. PERFORMANCE STANDARDS

All mineral extraction operations shall conform to the following applicable standards. The mineral pit owner is ultimately responsible for ensuring that these standards are met.

A. Excavation

A natural buffer strip of at least 50 feet wide must be maintained between any excavation and a property boundary. This distance may be reduced to not less than 25 feet with the written permission of the affected abutting property owner or owners, except that the distance may not be reduced to less than 50 feet from the boundary of a cemetery or burial ground. The buffer strip between adjacent borrow pits owned by abutting owners may be eliminated with the abutter's written permission, provided

elimination does not increase the runoff from either excavation across the property boundary. All property boundaries must be identified in the field by markings such as metal posts, stakes, flagging or blazed trees. A variance from this provision cannot be granted.

No mineral pit operation shall result in increased erosion or runoff that will adversely affect any adjoining properties.

B. Screening

All excavation operations shall be screened from view from adjacent public ways with fencing or vegetation. Screening shall be no less than six (6) feet in height.

C. Groundwater Protection

No excavation shall be worked at a level less than five (5) feet above the average seasonally high water table.

No substance or item harmful to groundwater quality, including but not limited to salt, creosoted timber, tree stumps, building waste, petroleum products, metal products or rubbish shall be dumped or stored in an excavation pit.

Petroleum products such as fuel and lubricants being used in the mineral extraction operation must be kept under cover and upon an impermeable spill proof base.

D. Restoration

Restoration shall be required for any pit or portion thereof which has been discontinued (e.g. that portion of an excavated pit which has reached its boundary limits may be deemed discontinued). Restoration shall be completed within one year of the date on which discontinuance occurred and within the time limits of the issued permit.

All mineral extraction operations shall be restored with perennial vegetation. (See Maine Erosion and Sediment Control BMP, 3/2003 and any subsequent amendments.) No restored slope shall have a steeper incline than a ratio of two point five (2.5) horizontal to one (1) vertical. A variance may be granted by the Planning Board if other inclines have demonstrable stability.

All slopes shall be capable of sustaining vegetation upon discontinuance of the mineral extraction operation. For two years from the restoration completion date the applicant shall guarantee that at least eighty-five (85) percent of planted vegetation thrives. If at the end of two years more than fifteen (15) percent of planted areas does not sustain vegetation, failed areas shall be replanted. (See Maine Erosion and Sediment Control BMP, 3/2003 and any subsequent amendments.)

If there is no restoration plan proposed with the State or bonds to ensure compensation for the duration of the permit, the applicant shall pay to the Town of Orrington an amount agreed by the Select Board Payments received by the Town will be held in an interest bearing escrow account for the restoration of the of the excavation area. Money may be withdrawn from the escrow account to perform excavation restoration on a schedule agreed by the Planning Board.

To insure that the excavation area will be restored as agreed to in the performance standards of Section 8, Subsection D, the owner/operator shall be required to record the restoration agreement with the Penobscot County Registry of Deeds on a completed agreement form provided by the Town of Orrington. Recording this restoration agreement with the deed to the property in which the excavation is located, will assure the Town of Orrington that the sale of the property to any other owner/operator for any reason, will cause the new owner/operator to comply with the terms of the restoration agreement within the time constraints of the agreement, or immediately if the present or new owner/operator does not continue the operation of the site.

E. Access

Access to mineral extraction areas shall be strictly controlled by the owner with locking gates or cables at the entrance of access roads. Gates or cables shall be closed and locked except during hours of operation. When the pit is inoperable, all vehicular entrances shall be made impassible.

F. Hours of Operation

The hours of operation for all Mineral Extraction, Processing, and Loading will be from 6 A.M. until 9 P.M. or sunset whichever is earlier; except on Sunday when all mineral operations are permitted from 9:00 A.M. to 4:00 P.M.

Upon request to and approved by the CEO in emergencies involving health and/or safety, hours of operation may be modified. When such permission is granted, the CEO will advise the Planning Board at the next scheduled Planning Board meeting. In emergency situations involving health and/or safety, expansion of operating hours may begin prior to the notification of the CEO.

G. Noise

Noise shall be required to be limited so as not to be objectionable due to intermittence, beat frequency, shrillness.

	Sound Pressure Level Limit	(500 to 10,000 Hz range)
Site operations	70dB	6:00 am – 9:00 pm

On a site abutting any residential use, construction activities shall be subject to the permissible sound level specified for industrial establishments.

H. Report Required

Prior to December 31of each year, the pit owner shall provide a written report to the CEO containing the following information:

1. Volume of materials removed from the pit, including truck logs, for the previous 12 month period.
2. Results of measurement of vertical separation between the excavation limits and the average seasonally high water table. Measurements shall be made and certified by a Maine licensed engineer or geologist.

3. Any restoration completed during the previous 12 month period.

IX. SECTION 9. DEFINITIONS

A. Mineral Extraction and Excavation

Any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and transports the product removed, away from the extraction site.

B. Mineral Processing

The term mineral processing shall mean the screening, sorting, crushing or other processing of geologic material extracted or excavated.

C. Mineral Storage

The term mineral storage shall mean the storage of sand, gravel, crushed stone, or soil stock piles or other forms.

D. Mineral Transportation

The term mineral transportation shall mean using the public roads in Orrington to haul sand, mineral, crushed stone or soil except for snow plowing and sanding operations.

E. Mineral Pit

The term mineral pit shall mean:

1. All of the land area used in the excavation, processing, or storage of sand, mineral, crushed stone or soil; and
2. All of the land area owned by the mineral pit owner that is contiguous to an excavated area unless the mineral pit owner can show that some portion of that land cannot or will not be used as a site for mineral extraction or excavation.

Mineral pits owned and/or operated by the same person, firm, or corporation, and separated by less than 100 horizontal feet of land shall be considered one and the same mineral pit.

Land which has been restored in accordance with Section 8.D. will no longer be considered as part of the mineral pit.

F. Mineral Pit Owner

Mineral pit owner shall mean the owner of the land where mineral is excavated, processed or stored. The responsibility to ensure restoration of the mineral pit shall be the obligation of the mineral pit owner.

G. Mineral Pit Restoration

The term means the stabilization of inactive borrow areas with herbaceous perennial plants

H. Discontinued Mineral Pit

Discontinued mineral pit shall mean a mineral pit from which less than 200

cubic yards have been removed within twelve (12) consecutive months.

TOWN OF ORRINGTON

A. MINERAL EXTRACTION ORDINANCE: PERMIT APPLICATION

Adopted: July 27, 2020, Revised June 2, 2025

(1) <u>PLEASE PROVIDE WRITTEN INFORMATION FOR ALL ITEMS LISTED.</u> CONSULT SECTION 7C OF THE MINERAL EXTRACTION ORDINANCE FOR DETAILS.

Map # _____ Lot # _____ Size (acres) _____ Fee: $_____

Date rec'd____/____/____

1. Owner of record and current address:

Name:_____

Address:_____

Phone: (home)_____(work)_____

2. Operator (if not owner)

Name:_____

Address:_____

Phone: (home)_____, (work)_____

Please **attach a plot plan drawn to scale.** It must clearly show and label:

3. The location and boundaries of the site and the name and location of all abutting property owners including the owners across street;

a) The applicant shall be required to submit the list of addresses of all properties within 1,000 feet of the project, if blasting is associated with the proposed development. The town of Orrington shall notify said owners.
b) The operator is required to notify the Town of Orrington 10 days prior to a blasting event. Fees for notification to all properties within 1,000 feet will be borne by the applicant.

4. The existing contours of the land within the boundaries and extending beyond the

boundaries for 100 feet; the contours must be shown at no more than 10 foot intervals. The scale used to define the contours must be included on theplan;

5. Maps clearly outlining (preferably in colors) the information required in Section 7C5 (see pages 3-4 of Mineral Extraction Ordinance) with the following legend:
   - 7.C.5.A.i Extraction area active during previous three years
   - 7.C.5.A.ii Area of intended extraction next three years
   - 7.C.5.A.iii Area of existing pit fullyrestored
   - 7.C.5.A.iv Area where no further extraction anticipated (closed portion)
   - 7.C.5.B.i Areas restored last three years
   - 7.C.5.B.ii Areas to be restored next three years
   - 7.C.5.B.iii Area fully restored

For items 6-14, Please consult the Mineral Extraction Ordinance and provide the following information on this form or attached to this form (Please indicate here where each attachment can be found, i.e. page numbers, section numbers, etc. and provide a short response on this form for each submission item).

6. The location of all existing or proposed access roads and of any existing or proposed permanent or temporary structures._____

7. Attach a description of the proposed provisions for drainage and erosion control.
_____

8. What is the estimated longevity of this pit, based on the removal rate *over* the 12 months immediately past? ___,___,____

(For a new pit, give your best estimate)_____

9. Provide proof of your financial ability to carry out restoration required by the Mineral Extraction Ordinance.

10. Attach a detailed landscaping and vegetation plan defining how you will restore the pit to as nearly a natural state as is practical by grading, filling, draining and/or planting.

11. Attach copies of your annual statements to the Code Enforcement Officer stating whether 200 cubic yards or more were removed from the pit during each yearly period from October 1 through September 30. One statement per year is required.

12. At the request of the Planning Board, you may need to provide information that indicates any or all of the following: the hydrology, the physical characteristics of the site, the extent of your proposed operations, and compliance with the performance standards of Section 8 of the Mineral Extraction Ordinance.

13. If a washing operation is proposed, include any proposal to use ground water extraction from the site to provide for the washing, with a demonstration that

the water extraction will not lower the ground water level at the boundaries of the area.

14. Attach a plan for monitoring separation of excavation limits from the average seasonally high water table.

CERTIFICATION

The undersigned applicant (and the owner, if the applicant is not the owner) hereby certifies:

- that the information provided in this application is accurate;
- that the estimates made herein are in good faith after a review of the records of the operation; and
- that the undersigned has read and will comply with the Performance Standards set out in Section 8 of the Orrington Mineral Extraction Ordinance.

_____ _____

(Date) (Signature of applicant)

_____

(Signature of owner, if not applicant)

FOR USE BY PLANNING BOARD ONLY

Date Received at Town Office: ___/___/_____

Date Found Complete by Planning Board:__/____/____

Date of Final Disposition by Planning Board:__/____/_____

Disposition Approved

Approved with Conditions (list below or on separate page)

Denied (list reasons below or on separate page)

Conditions for approval:_____

_____

_____

_____

Reason(s) for denial:_____

_____

_____

TOWN OF ORRINGTON
(2) ORRINGTON PLANNING BOARD
1 Municipal Way
Orrington, ME 04474

B. NOTICE OF INTENT TO RESTORE A MINERAL PITOR MINE

Date:_____

(1) Owner's Name:

First_____Last_____

(2) Property Location

Town/City_____Street/Road_____

Lot#_____Map#_____Book#_____Page#_____

The Excavation Restoration Plan specified on the attached plan has been designed to restore the land areas to their pre- existing condition, or a condition which is in compliance with the Maine State Department of Environmental Protection and the Town of Orrington's Mineral Extraction Ordinance

The restoration plan is in accordance with Section 8, Performance Standards, Subsection D, Restoration, Items a., b., c., and d. of the Orrington Mineral Extraction Ordinance and the State of Maine's Chapter 38 MRSA § 490-D Sec. 14A, B, C, and D.
Upon sale or transfer of property, the new owners will comply with the recorded Plan if the Mineral Pit or Mining Operations are continued. Otherwise, the new owners will restore the land in compliance with the Plan recorded within 60 (sixty) days of ownership.

_____ _____
Land owner's Name (printed) Land owner's signature

_____ _____
Date
State of Maine (county)

Subscribed and sworn to by the above named _____

This_____day of _____ at_____Maine.

Before me, _____