

Town of Windham

Planning Department
8 School Road
Windham, ME 04062

voice 207.894.5960

fax 207.892.1916

MEMO

DATE: March 11, 2019

TO: Windham Town Council
THROUGH: Don Gerish, Interim Town Manager
FROM: Amanda Lessard, Planner *AL*
Cc: Mineral Extraction Committee

RE: Planning Board Recommendation - Ordinance Amendment – Sections 600 Mineral Extraction and 800 Site Plan Review, related to mineral extraction operations

Over the course of three (3) Planning Board meetings beginning on January 14, 2019 the Board reviewed the proposed ordinance revisions related to mineral extraction operations that were developed by the Mineral Extraction Committee (MEC).

The MEC was charged by the Council to review the town's zoning map and regulations with regard to mineral extraction operations and to make recommendations about changes to the map and/or regulations as to where the various types of mineral extraction operations may be conducted and under what conditions and standards. The MEC's proposed ordinance amendments are intended to make the town ordinance more consistent with State law and rules. These changes are applicable to all mineral extraction operations town wide. No changes are proposed to where mineral extraction is allowed in town. The Committee recommended that additional zoning changes should be addressed by the Town Council and the Long Range Planning Committee.

At the Planning Board's meeting on January 28, 2019, a public hearing was held on the proposed ordinance changes.

Sixteen members of the public addressed the Board. The public comments included requests that the vibration standard should be more restrictive, that there should be no excavation allowed below groundwater, blasting times should be changed to avoid school bus traffic, rehabilitation slopes should be more shallow, the CEO should inspect a pit more frequently, no new mineral extraction operations should be allowed in town, additional pre-blast water quality and quantity testing should be required, no new mineral extraction be allowed in certain zoned areas or aquifers, there should be further limitation on mineral extraction operations on private roads, or limitation based on a radius from a certain number of residences, and that the proposed ordinance doesn't do enough to address quality of life concerns related to noise, silica dust, traffic, blasting, and lake water quality from non-point source pollution. Other comments were that the mineral

extraction definition applied too broadly to small earthmoving practices and those that could be incidental to site plans or subdivisions and that the blasting time limits should not be further restricted beyond what was in the already proposed language.

Following the public hearing members of the Board commented that there was a fine balance between water and gravel pits as both had their purpose and were both needed and that residents were entitled to quality of living and being safe in their home and neighborhood.

On February 11, 2019 the Board further discussed the proposed changes at a workshop with the Mineral Extraction Committee that was also staffed by a geologist from the Town's consulting engineering firm. Members of the board commented that the existing exemption amount seemed small, the number of homes on a road seemed to be arbitrary and that additional work was necessary to determine where mineral extraction should be allowed in the community. The Board also commented that the Planning Board does have the ability to consider all the impacts a project may have and limit the use on a case by case basis, and these amendments would only apply to new or expanded operations.

Following discussion of the proposed changes, on February 11, 2019, David Douglass made a motion that the Planning Board recommend the proposed changes to the Town of Windham Land Use Ordinance, Chapter 140, Sections 600 Mineral Extraction and 800 Site Plan Review, related to mineral extraction operations, with the following recommendations:

- That zoning, with a focus on aquifer overlay and lakes most at risk, defined by the DEP, be part of that zoning.
- That the definition of applicability and how it was written be clarified by the town's attorney.
- That the amounts for exemptions be reconsidered by the Council.
- A change in language to 606.7 be from "residences" to "existing residences".

Second: Keith Elder.

Vote: All in favor.

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MEMO

DATE: January 23, 2019

TO: Windham Planning Board

FROM: Amanda Lessard, Planner *AL*

Cc: Mineral Extraction Committee

RE: Ordinance Amendment: Sections 600 Mineral Extraction and 800 Site Plan Review, related to mineral extraction operations
Planning Board Meeting & Public Hearing – January 28, 2019

The attached proposed ordinance revisions were developed by the Mineral Extraction Committee (MEC), who were charged by the Council to review the town's zoning map and regulations with regard to mineral extraction operations and to make recommendations about changes to the map and/or regulations as to where the various types of mineral extraction operations may be conducted and under what conditions and standards.

The MEC's proposed ordinance amendments are intended to make the town ordinance with regard to mineral extraction operation more consistent with State law and rules. These changes are applicable to all mineral extraction operations town wide. No changes are proposed to where mineral extraction is allowed in town. The MEC discussed concerns about mineral extraction operation's impacts on water quality and considered prohibitions on the use in certain lake watersheds most at risk from new development. However, the majority were not in favor of this approach. The MEC did have consensus that the places that may not be appropriate for various types of mineral extraction operations where on private roads with dense residential development. The attached language proposes standards to address that concern without any proposed zoning map changes.

A summary of the proposed ordinance amendments is included in the attached October 18, 2018 memo.

A public hearing is scheduled for the Planning Board meeting on January 28, 2019. After the public hearing and discussion by the Board, the Planning Board may vote on a recommendation to the Town Council similar to the following:

MOTION: To (**recommend/recommend with comments/not recommend**) approval of the proposed amendment to Sections 600 and 800 of the Land Use Ordinance related to mineral extraction operations.

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MEMO

DATE: January 7, 2019

TO: Windham Planning Board

FROM: Amanda Lessard, Planner *AL*

Cc: Mineral Extraction Committee

RE: Ordinance Amendment: Sections 600 Mineral Extraction and 800 Site Plan Review, related to mineral extraction operations
Planning Board Meeting – January 14, 2019

At their meeting on December 4, 2018, the Town Council voted to forward the enclosed proposed ordinance changes to the Board for review and recommendation. The proposed ordinance revisions were developed by the Mineral Extraction Committee (MEC), who were charged by the Council to review the town's zoning map and regulations with regard to mineral extraction operations and to make recommendations about changes to the map and/or regulations as to where the various types of mineral extraction operations may be conducted and under what conditions and standards.

The MEC's proposed ordinance amendments are intended to make the town ordinance with regard to mineral extraction operation more consistent with State law and rules. These changes are applicable to all mineral extraction operations town wide. No changes are proposed to where mineral extraction is allowed in town. The MEC discussed concerns about mineral extraction operation's impacts on water quality and considered prohibitions on the use in certain lake watersheds most at risk from new development. However, the majority were not in favor of this approach. The MEC did have consensus that the places that may not be appropriate for various types of mineral extraction operations where on private roads with dense residential development. The attached language proposes standards to address that concern without any proposed zoning map changes.

A summary of the proposed ordinance amendments is included in the attached October 18, 2018 memo.

Zoning Amendment Process

The Planning Board must hold a public hearing prior to making a recommendation on this item to the Town Council. The Town Council will need to vote on the proposed changes to the Land Use Ordinance for the changes to be officially approved. A public hearing has been scheduled

for the Board meeting on January 28, 2019. After the public hearing and discussion by the Board, the Planning Board may vote on a recommendation to the Town Council.

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MEMO

DATE: October 18, 2018

TO: Windham Town Council
THROUGH: Don Gerrish, Town Manager
FROM: Amanda Lessard, Planner *ALL*
Cc: Mineral Extraction Committee (MEC)
Chris Hanson, Director of Code Enforcement

RE: Mineral Extraction Committee Recommendations: Proposed Amendments to
Chapter 140 Land Use Ordinance Sections 600 & 800

The Mineral Extraction Committee (MEC) was charged with reviewing the town's zoning map and regulations with regard to mineral extraction operations and to make recommendations about changes to the map and/or regulations as to where the various types of mineral extraction operations may be conducted and under what conditions and standards. Since June 2018 the Committee has reviewed State laws and rules, the Town's Land Use Ordinance and other relevant supporting information. The Committee received input and recommendations from experts at the Maine Department of Environmental Protection at a meeting on August 30, 2018 and held a public forum on September 20, 2018 to receive comments on draft recommendations.

At their meeting on September 27, 2018 the MEC voted unanimously 7-0 to recommend the attached amendments to Section 600 and Section 800 and that any other additional zoning changes should be addressed by the Town Council and the Long Range Planning Committee.

The MEC's proposed ordinance amendments are intended to make the town ordinance with regard to mineral extraction operation more consistent with State law and rules. These changes are applicable to all mineral extraction operations town wide. No changes are proposed to where mineral extraction is allowed in town. Over the last several months the MEC discussed concerns about mineral extraction operation's impacts on water quality and considered prohibitions on the use in certain lake watersheds most at risk from new development. However, the majority were not in favor of this approach. The MEC did have consensus that the places that may not be appropriate for various types of mineral extraction operations where on private roads with dense residential development. The attached language proposes standards to address that concern without any proposed zoning map changes.

Summary of Proposed Ordinance Amendments:

Section 600 – Mineral Extraction

- Section 606 - New Performance Standards
 - Solid Waste
 - Groundwater Protection: Standards related to drinking water wells, fueling operations, separation from seasonal high water table
 - Buffers
 - Natural Resource, Road, Property Boundary Setbacks
 - Erosion Control & Stormwater Management
 - Traffic: no mineral extraction on private roads > 100 dwellings
 - Noise
 - Dust: requiring paving of the access drive, covered trucks
 - Blasting: limited time for production blasting, notification requirements, preblast surveys required
- Section 608 – Annual Code Enforcement compliance inspections
- Section 609 – Performance Guarantee for replacement well

Section 800 – Site Plan Review

- Section 803 - No Approval if Violation Exists
- Section 812.B – Traffic Performance Standard
 - Private ways must be improved to the applicable street standard to closest public street
- Section 812.E – Stormwater Management Performance Standard
 - Annual inspections of stormwater infrastructure & reporting to Town
- Section 812.N – Technical Capacity Performance Standard
 - Clarification of existing violations

SECTION 600 - MINERAL EXTRACTION

Sections

601	Purpose	6-1
602	Application <u>Applicability</u>	6-1
603	Exemptions	6-2
604	Permit Application Requirements	6-2
605	Plan Review	6-3
606	Excavation Regulations <u>Performance Standards</u>	6-5
607	Rehabilitation Requirements	6- 105
608	Permit Dates <u>& Inspections</u>	6- 116
609	Performance Guarantee Requirements	6- 117
610	Loam Stripping Conditions	6- 127

601 Purpose

- A. The purpose of this section is to regulate sand and gravel and other quarrying operations, including the removal, processing and storage of topsoil or loam, rock, sand, gravel and other earth materials (hereinafter "mineral extraction"). The Planning Board shall follow the site plan review requirements in Section 800 when more than 25,000 square feet of gross area is to be developed, as defined in Section 300. (See definition of "Development")
- B. The removal of stone, sand and gravel from banks or quarries and the processing of said materials shall not be permitted without the approval of the Planning Board. The removal of loam, topsoil or sod is permitted in any of the Town's zoning districts. Such material may be hauled away to other locations, either inside or outside the Town of Windham. The Planning Board may approve the removal and processing of such materials after public hearing thereon, and a finding that such removal and processing will be performed subject to the conditions and safeguards set forth in this section.
- C. These regulations are intended to protect the quality and quantity of the ground and surface waters, to control erosion, to provide for the reclamation and rehabilitation of mineral extraction sites so that future uses shall be compatible with the surrounding neighborhood, and to minimize any adverse impact of such pit operations on adjacent and nearby properties.

602 ~~Application~~Applicability

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

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

603 Exemptions

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

604 Permit Application Requirements

- A. All applicants shall submit an application to the Planning Department. The Planning Department shall verify that the application is complete prior to placing the applicant on an agenda to appear before the Planning Board. Approval from the Planning Board is required prior to the applicant initiating any phase for which the applicant seeks approval. This information is in addition to information provided as part of the site plan review criteria required under section 800 et seq. The following information shall be

submitted to the Planning Board when applying for a permit. All plans shall be drawn to a scale not greater than one inch equals one hundred feet (1"=100').

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

605 Plan Review

- A. The Planning Board may impose such conditions as are necessary to safeguard the health, safety and welfare of the community. Where considered necessary by the Planning Board, the plan required to accompany the application shall be prepared by a Registered Maine Civil Professional Engineer and/or Maine Certified Geologist at the applicant's expense. The plan review shall take into consideration at least the following:
1. Fencing, landscaped buffer strips, and other public safety and nuisance considerations for compliance with Sections 604(F) and 606(B).
 2. Signs and lighting for compliance with Section 604(F).
 3. Adequate parking spaces, loading and unloading areas for compliance with Section 812(C).
 4. Safe entrances and exits for compliance with Sections 604(E) and 812(B).
 5. Total estimated life of the pit for compliance with Section 608.
 6. Days and hours of normal operation for compliance with Section 604(I).
 7. Methods of operation, removal or processing for compliance with Sections 604(H) and 606(A).
 8. Area and depth of excavation for compliance with Sections 604(B), 604(H) and 606(A).
 9. Provision for temporary or permanent drainage and sedimentation control for compliance with Sections 604(H) and 606(A).
 10. Disposition of stumps, brush and boulders with Section 812(O) and 606(A).
 11. Type and location of temporary and permanent structures for compliance with applicable zoning requirements.
 12. Storage and containment of any materials (e.g., petroleum products, salt, hazardous materials, rubbish, treated timber) on the property for compliance with Sections 604(D), 606(A), 812(L) and (O).
 13. Complete rehabilitation proposals for compliance with Section 607.
 14. Noise levels for compliance with Section 812(S).
 15. Vibration levels in compliance with Sections 604(H) and 606(A).

16. Dust levels and measures for minimization in compliance with Sections 604(H) and 606(A).

606 ~~Excavation Regulations~~ Performance Standards

A. Mineral Extraction operations within the Town of Windham must comply with the applicable performance standards below unless a variance is first obtained from the Maine Department of Environmental Protection as set forth in Maine Statutes Title 38 Section 490.

1. Solid waste. Solid waste, including stumps, wood waste and land clearing debris generate on the affected land must be disposed of in accordance with Maine Statutes Title 38 Chapter 13, including any rules adopted to implement those laws.
2. Groundwater protection.
 - a. A 200-foot separation must be maintained between any excavation and any private drinking water supply that is a point-driven or dug well and was in existence prior to that excavation.
 - b. A 100-foot separation must be maintained between any excavation and any private drinking water supply that is drilled into saturated bedrock and was in existence prior to that excavation.
 - c. Separation must be maintained between any affected land and any public drinking water source as follows:
 - i. For systems serving a population of 500 persons or less, the minimum separation must be 300 feet;
 - ii. For systems serving a population of 501 persons up to 1,000 persons, the separation must be 500 feet;
 - iii. (For systems serving a population of more than 1,000 persons, the separation must be 1,000 feet; and
 - iv. For any system that holds a valid filtration waiver in accordance with the federal Safe Drinking Water Act, the separation must be 1,000 feet.
 - d. Refueling operations, oil changes and other maintenance activities requiring the handling of fuels, petroleum products, hydraulic fluids, and other on-site activity involving the storage or use of products that, if spilled, may contaminate groundwater, must be conducted in accordance with the department's spill prevention, control and countermeasures plan. Petroleum products and other substances that may contaminate groundwater must be stored and handled over impervious surfaces that are designed to contain spills. The spill prevention, control and countermeasures plan must be posted at the site.
 - e. Excavation may not occur within 5 feet of the seasonal high water table unless the operator first obtains a variance from the Maine Department of Environmental Protection. A benchmark sufficient to verify the location of the seasonal high water table must be established and at least one test pit or monitoring well must be established on each 5 acres of unreclaimed land and maintained by the operator to demonstrate separation above groundwater.
 - f. In the event of excavation below the seasonal high water table, the operator of a mining activity that affects a public drinking water source or private drinking

water supply by excavation activities causing contamination, interruption or diminution must restore or replace the affected water supply with an alternate source of water, adequate in quantity and quality for the purpose served by the supply. This paragraph is not intended to replace any independent action that a person whose water supply is affected by a mining activity may have.

- g. In the event of excavation below the seasonal high water table, a 300-foot separation must be maintained between the permitted limit of excavation and any predevelopment private drinking water supply, and a 1,000-foot separation must be maintained between the permitted limit of excavation and any predevelopment public drinking water source or area previously designated for potential use as a public drinking water source by a municipality or private water company.

- 3. Protected natural resources. A natural buffer strip must be maintained between the working edge of an excavation and any protected natural resource as defined in the Comprehensive Plan and the Maine Department of Environmental Protection. Excavation activities conducted within 100 feet of a protected natural resource must comply with the applicable permit requirement of the Maine Department of Environmental Protection. The width requirements for natural buffer strips are as follows.

- a. A natural buffer strip at least 100 feet wide must be maintained between the working edge of the excavation and the normal high-water line of a great pond classified as GPA, a river flowing to a great pond classified as GPA.
- b. A natural buffer strip at least 75 feet wide must be maintained between the working edge of the excavation and any other water body, river, stream, brook, 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.

For purposes of this subsection, the width of a natural buffer strip is measured from the upland edge of floodplain wetlands; if no floodplain wetlands are present, the width of the natural buffer strip is measured from the normal high-water mark of a great pond, river, stream or brook or the upland edge of a freshwater wetland.

- 4. Natural buffer strip. Existing vegetation within a natural buffer strip may not be removed. If vegetation within the natural buffer strip has been removed or disturbed by the excavation or activities related to the excavation before submission of a notice of intent to comply, that vegetation must be reestablished as soon as practicable after filing the notice of intent to comply
- 5. Public and private roads. A natural buffer strip must be maintained between the working edge of an excavation and a road or right-of-way as follows.
 - a. A natural buffer strip at least 150 feet wide must be maintained between the working edge of an excavation and a road designated as a scenic highway by the Department of Transportation.

- b. At least 100 feet wide must be maintained between the working edge of an excavation and any public road not designated as a scenic highway by the Department of Transportation.
- c. A natural buffer strip at least 25 feet wide must be maintained between the working edge of a topsoil excavation and any public road not designated as a scenic highway by the Department of Transportation.
- d. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any public right-of-way that does not contain a road. The width of a natural buffer strip adjacent to a public road or right-of-way may be reduced if there is a public entity or entities with authority to grant permission and the applicant receives permission from each authority in writing.
- e. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any private road or right-of-way. If a private road is contained within a wider right-of-way, the buffer is measured from the edge of the right-of-way. The width of the natural buffer strip adjacent to a private road may be reduced if the applicant receives written permission from the person or persons having a right-of-way over the private road.

A distance specified in this subsection is measured from the outside edge of the shoulder of the road or edge of the right-of-way unless otherwise specifically provided. A variance from paragraph 5.b is available from the Maine Department of Environmental Protection.

6. Property boundary.

a. Excavations for borrow, clay, topsoil or silt

A natural buffer strip at least 50 feet wide must be maintained between any excavation and any property boundary. A natural buffer strip at least 25 feet wide must be maintained between any topsoil excavation and a property boundary. These distances may be reduced to not less than 10 feet with the written permission of the affected property owner or owners, except that the distance may not be reduced to less than 25 feet from the boundary of a cemetery or burial ground. The buffer strip between excavations owned by abutting owners may be eliminated with the abutter's written permission, provided the elimination of this buffer strip does not increase the runoff from either excavation across the property boundary. 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.

b. Quarries

A natural buffer strip at least 100 feet wide must be maintained between any excavation and any property boundary. These distances may be reduced to not less than 10 feet with the written permission of the affected property owner or owners, except that the distance may not be reduced to less than 25 feet from the boundary of a cemetery or burial ground. The buffer strip between excavations owned by abutting owners may be eliminated with the abutter's written permission, provided the elimination of this buffer strip does not increase the runoff from either excavation

- across the property boundary. 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.
7. Excavation, except for drainage ways, shall be at least two hundred (200) feet from any residence.
8. Erosion and sedimentation control. A working pit must be naturally internally drained at all times unless a variance is obtained from the Maine Department of Environmental Protection. In addition to Section 812.F the following standards apply:
- a. The area of a working pit shall not exceed 10 acres
 - b. Stockpiles consisting of topsoil to be used for reclamation must be seeded, mulched or otherwise temporarily stabilized.
 - c. Sediment may not leave the parcel or enter a protected natural resource.
 - d. Grubbed areas not internally drained must be stabilized.
 - e. Erosion and sedimentation control for access roads must be conducted in accordance with the department's best management practices for erosion and sedimentation control.
 - f. All areas other than a working pit area that are not naturally internally drained must meet the erosion and sedimentation control standards of section 420-C.
9. Water quality protection and storm water management. Surface water discharges from areas not required to be naturally internally drained may not be increased as a result of water runoff and shall comply with Section 812.E.
- ~~10.~~ Traffic.
- a. Any excavation activity that generates 100 or more passenger car equivalents at peak hour must comply with the applicable permit requirements under Title 23, section 704-A.b.
 - b. Existing streets expected to carry traffic generated by the development shall have a paved surface and have the capacity or be suitably improved to accommodate the traffic generated by the development.
 - c. No new mineral extraction operations shall be permitted to access a private road or private way that provides access to a public street to more than 100 dwelling units.
11. Noise. Noise levels may not exceed applicable noise limits in Section 812.S.
12. Dust.
- a. Dust generated by activities at the excavation site, including dust associated with traffic to and from the excavation site, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Except within the direct watershed of a lake most at risk from new development as designated in the Maine Department of Environmental Protection Chapter 502: Direct Watersheds of Lakes Most At Risk From New Development And Urban

Impaired Streams, dust control methods may include the application of calcium chloride, providing the manufacturer's labeling guidelines are followed.

- b. Access driveways shall be paved a minimum of 100 feet from the intersection with the public or private street.
- c. Loaded vehicles shall be suitably covered to prevent dust and contents from spilling or blowing from the load.

13. Blasting. The operator must ensure that blasting is conducted in accordance with Maine Statutes as set forth in Title 25, chapter 318.

- a. Production blasting may not occur in the period between 4:00 pm and 11:00 am. Production blasting is not allowed in the daytime on Sunday.
- b. On the day of the scheduled blast, or at a greater time requested by a person listed below, in advance of a scheduled blast the operator must notify:
 - i. The Office of Code Enforcement,
 - ii. The Fire Department,
 - iii. Property owners within a ½ mile from the blast site, and
 - iv. Any other property owners that have requested to be notified.
- c. A preblast survey is required for all production blasting and must extend a minimum radius of ½ mile from the blast site. The preblast survey must document any preexisting damage to structures and buildings and any other physical features within the survey radius that could reasonably be affected by blasting. Assessment of features such as pipes, cables, transmission lines and wells and other water supply systems must be limited to surface conditions and other readily available data, such as well yield and water quality. The preblast survey must be conducted prior to the initiation of blasting at the operation. The owner or operator shall retain a copy of all preblast surveys for at least one year from the date of the last blast on the development site.
 - i. The owner or operator is not required to conduct a preblast survey if the Planning Board determines that no protected natural resource within the limits of the otherwise required survey is likely to be affected by blasting and production blasting will not occur within 2,000 feet of any building not owned or under the control of the developer.
 - ii. The owner or operator is not required to conduct a preblast survey on properties for which the owner or operator documents the rejection of an offer by registered letter, return receipt requested, to conduct a preblast survey. Any person owning a building within a preblast survey radius may voluntarily waive the right to a survey.
- d. Detonation of misfires may occur outside of these times but must be reported to the Code Enforcement Office within 5 business days of the misfire detonation. Blasting may not occur more frequently than 2 times per day.
- e. Underground production blasting is prohibited unless the applicant receives a waiver from the Maine Department of Environmental Protection.

~~A. A Mineral Extraction operation within the Town of Windham that is regulated by the Maine Department of Environmental Protection (MeDEP) shall conform to MeDEP regulations.~~

~~B. Mineral Extraction operations regulated by the Town of Windham shall follow the excavation regulations listed below:~~

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

607 Rehabilitation Requirements

- A. Any operation shall be deemed closed ninety (90) days after its permit expires or the operations cease for two (2) years. The site shall be rehabilitated in accordance with this section. The rehabilitation plan shall be completed within two (2) years of closing. Rehabilitation of continuing operations shall be conducted in phases. Upon completion or abandonment of an existing mineral extraction operation in existence on the effective date of this chapter, except for existing exempted slopes and setbacks, the area shall meet the following requirements:
1. Specific plans shall be established to avoid hazards from excessive slopes. Where an embankment remains after the completion of operations, it shall be graded at a slope not steeper than one foot vertical to two feet horizontal.
 2. Seeding, planting and loaming, as approved in the rehabilitation plan, shall be accomplished so that exposed areas are stabilized and erosion is minimized. Retained topsoil shall be used as loam. These areas shall be guaranteed for eighteen (18)

- months during which time the performance guarantee, where required, shall remain in full force and effect.
3. The Board may require that trees be planted for a visual and acoustical buffer between the project and adjacent properties if a natural buffer does not exist.
 4. Tree stumps and grubblings from the site may be used to stabilize the banks. The areas of pits with solid or broken ledge rock shall be trimmed of loose rock and the bottom of the pit graded to be compatible with the surroundings.
 5. The pit shall be contoured so that sediment is not directed into streams or drainage ways.
 6. Grading and restoration shall be completed in such a manner that it will ensure natural drainage, prevent standing water and minimize erosion and sedimentation.
 7. Existing pits may expand over five (5) acres without Planning Board approval if the area being worked remains no larger than five (5) acres and all the prior existing area has been rehabilitated in conformance with this section and has been inspected and verified by the Planning Department prior to any expansion.

608 Permit ~~Datess~~ & Inspections

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

609 Performance Guarantee Requirements

- A. A surety bond issued by a commercial surety company authorized to do business within the State of Maine, or an interest bearing trust account made payable to the Town of Windham, or a letter of credit, cash, or a certified check payable to the Town of Windham, shall be posted by the owner(s) or operator(s) in an amount recommended by the Town Manager or his/her authorized agent, with the advice of the Soil Conservation Service and/or a Registered Maine Civil Engineer, as sufficient to

guarantee conformity with the provisions of the permit approval for the rehabilitation of existing mineral extraction operations, new mineral extraction operations, and/or loam stripping operations. The performance guarantee shall also include the cost to replace any private drinking water supply within three hundred (300) feet of the property boundary of the mineral extraction operation.

- B. The amount of performance guarantee shall be sufficient to fund the costs of that rehabilitation which remains to be completed. The performance guarantee must remain in force until the Planning Department or designee certifies that the site has been rehabilitated according to the approved plan.

610 Loam Stripping Conditions

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

Section 600 Amendments

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

6. The construction of a residential building containing three (3) or more dwelling units.
 7. The modification or expansion of an existing residential structure that increases the number of dwelling units in the structure by three (3) or more in any five (5) year period.
 8. The conversion of an existing nonresidential building or structure, in whole or in part, into three (3) or more dwelling units within a five (5) year period.
 9. The cumulative Development of an area equal to, or greater than, one (1) acre within any three (3) year period. The applicability of this section does not include the construction of streets that are reviewed as part of a subdivision application under the standards of Section 900 of this Ordinance. *For Developments of less than one (1) acre, the standards of Chapter 142 Surface Water Protection Ordinance may apply.*
- B. The following activities shall not require site plan approval. Certain of these activities will, however, require the owner to obtain a building permit, plumbing permit or other state or local approvals:
1. The construction, alteration, or enlargement of a single family or two-family dwelling, including accessory buildings and structures.
 2. The placement, alteration, or enlargement of a single manufactured housing or mobile home dwelling, including accessory buildings and structures on individually owned lots.
 3. Agricultural activities, including agricultural buildings and structures.
 4. Timber harvesting and forest management activities.
 5. The establishment and modification of home occupations.
 6. Activities involving nonresidential buildings or activities that are specifically excluded from review by the provisions of this section.

803 Review and Approval Authority

- A. Application Classification. The review and approval authority for site plans shall depend on the classification of the project:
1. Major Developments. The Planning Board is authorized to review and act on all site plans for major developments. In considering site plans under this section, the Planning Board may act to approve, disapprove, or approve the project with such conditions as are authorized by this section.
 2. Minor Developments. The Staff Review Committee is authorized to review all site plans for minor developments and may approve, disapprove, or approve the project with such conditions as are authorized by this Section. In addition, the Committee may reclassify a minor development as a major development, due to the scope or anticipated impacts of a project, and forward it to the Planning Board with its

recommendations for Planning Board action. (*See Sec. 805 Classification of Projects*)

- B. Staff Review Committee Established. There is hereby created a Staff Review Committee. The Staff Review Committee shall consist of the Director of Planning (Planner), Director of Code Enforcement, Fire Chief, Director of Public Works, or their designees, and a designee of the Town Manager.
- C. Operation of the Staff Review Committee. The Planner shall serve as Chair of the Staff Review Committee and shall be responsible for calling meetings of the Committee, presiding at its meetings, and maintaining the records of the Committee. In the absence of the Planner or his/her designee, the Director of Code Enforcement shall serve as chair pro tem.
 - 1. Attendance. If any member of the Staff Review Committee is unable to attend any meeting of the Committee, he/she shall designate another member of that department to serve in his/her place. Such designation shall be in writing and shall apply only to that meeting. This designee shall have the same power and authority as the member.
 - 2. Meeting Dates. The Staff Review Committee shall meet once each month as needed. The Committee may schedule additional meetings, as needed.
 - 3. Advertisement. Meetings of the Committee shall be advertised in the same manner as those of other Town committees and shall be open to the public.
 - 4. Vacancy. If a vacancy exists in any of the positions serving on the Committee, the Town Manager shall name an interim committee member with appropriate expertise in the respective department, until such vacancy is filled.
 - 5. Quorum. A quorum is necessary to conduct any official meeting of the Committee, and a quorum shall consist of at least three (3) members.
 - 6. Voting. A majority vote of the quorum is required to constitute an action (passage or denial) on any motion before the Committee. Should a Committee member need to be recused due to a conflict once a quorum is established and a meeting is in session, the meeting may proceed and the Committee may take action on any motion before the Committee with less than three (3) voting members present. In this event, the applicant shall have the right to have a vote postponed to the next Committee meeting.
 - 7. Minutes. The Staff Review Committee shall keep a record of its proceedings.
- D. Attendance of Applicant. The Planning Board or Staff Review Committee shall not review any site plan application unless the applicant, or his duly authorized representative, attends the meetings for which the application has been placed on the agenda. Should the applicant or applicant's representative fail to attend, the Planning Board or Staff Review Committee shall reschedule the review of the application to its next available meeting.

E. No Vote if Violation Exists. No site plan shall be approved by the Planning Board or Staff Review Committee as long as the applicant is in violation of the provisions of a previously approved site plan within the municipality.

804 Joint Application and Hearing

- A. If an application requires any combination of site plan review, subdivision review, or conditional use approval, the procedures for all applicable application reviews shall be met in order to initiate the fair hearing process. The procedures for the applicable reviews may occur simultaneously.

805 Classification of Projects

- A. The Planner shall classify each project as a major or minor development. Minor developments are smaller scale projects for which a minor review process is adequate to protect the Town's interest. Major developments are larger, more complex projects for which a more detailed review process and additional information are necessary. The following thresholds shall be used by the Planner in classifying each project. However, the Planner may, due to the scope or anticipated impacts of a project, classify any project as a major development.
1. Minor developments shall include those projects involving:
 - (a) The cumulative construction or addition of fewer than five thousand (5,000) square feet of gross nonresidential floor area.
 - (b) Any individual or cumulative construction or addition of five thousand (5,000) square feet or more of gross nonresidential floor area within an approved subdivision.
 - (c) The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the Development of more than twenty-five thousand (25,000) square feet but less than one (1) acre of land.
 2. Major developments shall include projects involving:
 - (a) The individual or cumulative construction or addition of five thousand (5,000) or more square feet of gross nonresidential floor area on a lot that is not part of an approved subdivision,
 - (b) Projects involving the creation of five (5) or more dwelling units in a five (5) year period,
 - (c) The individual or cumulative Development of one (1) acre or more land, unless the Development is part of a site plan application in an approved subdivision (see Section 805 A.1.b. above.)
 - (d) Projects that also require subdivision (*see Sec. 900*) or conditional use approval (*See. Sec. 500*), or

appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

B. Vehicular Traffic

1. Adequacy of Road System. Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development. ~~Intersections on arterial streets within a half (0.5) mile of any entrance road which are functioning at a Level of Service of D or better prior to the development shall function at a minimum at Level of Service D after development. If any such intersection is functioning at a Level of Service E or lower prior to the development, the project shall not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.~~
 - (a) Intersections on arterial streets within a half (0.5) mile of any entrance road which are functioning at a Level of Service of D or better prior to the development shall function at a minimum at Level of Service D after development. If any such intersection is functioning at a Level of Service E or lower prior to the development, the project shall not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety. A development not meeting this requirement may be approved if the applicant demonstrates that:
 - (1) A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard, or
 - (2) The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.
 - (b) Existing streets and intersections that can be expected to carry traffic generated by the development shall have the capacity or be suitably improved to accommodate that traffic. For the purposes of this section, suitably improved shall mean that all of the existing private ways in the road network back to the closest public street shall meet the applicable Street Construction Standard (See Section 300 Street Classification and Appendix B Street Design and Construction Standards).

- (d) The design of the stormwater drainage system shall provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.
- (e) The design of the storm drainage systems shall be fully cognizant of upstream runoff which shall pass over or through the site to be developed and provide for this movement.
- (f) Major site plans, regardless of size, shall submit a stormwater management plan that complies with Section 4C(2) and Section 4C(3) of the General Standards of the DEP Chapter 500 Stormwater Management, as amended.
- (g) Major and minor site plan projects located within the Highland Lake watershed shall also meet the following standards:

(1) Projects in the Highland Lake watershed must include a stormwater plan designed to meet the standards of DEP Chapter 500, Section 4D, Phosphorous standards. The option to pay the compensation fee for exceeding the parcel's phosphorus allocation is not allowed in this watershed. Notwithstanding 1 M.R.S. §302, this amendment shall be applicable to and shall govern any application for site plan approval that did not receive lawful final approval by, and so was pending on or at any time after, September 5, 2017 regardless of whether that application was a "pending proceeding" under 1 M.R.S. §302.

~~(1)~~(2)

2. Mineral Extraction Stormwater Management Plan Compliance

(a) Any person owning, operating, leasing or having control over stormwater management facilities required by a stormwater management plan approved as part of a mineral extraction operation in accordance with Section 600 of this Ordinance shall demonstrate compliance with that plan as follows.

(1) A qualified third-party inspector hired by that person, shall, at least annually, inspect the stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved stormwater management plan.

(2) If the stormwater management facilities require maintenance to function as intended by the approved stormwater management plan, that person shall take corrective action(s) to address the deficiency or deficiencies.

(3) A qualified third-party inspector hired by that person, shall, on or by May 1 of each year, provide a completed and signed certification to the enforcement authority in a form provided by the Town of Windham, certifying that the person has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by approved stormwater management plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater management facilities and, if the stormwater management facilities require maintenance or repair of deficiencies in order to function as intended by approved stormwater management plan, the person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.

F. Erosion Control

1. All building, site, and roadway designs and layouts shall harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible, such that filling, excavation and earth moving activity shall be kept to a minimum. Parking lots on sloped sites should be terraced to avoid undue cut and fill, and/or the need for retaining walls. Natural vegetation shall be preserved and protected wherever possible.
2. Soil erosion and sedimentation of watercourses and water bodies shall be minimized by an active program meeting the requirements of the “Maine Erosion and Sediment Control BMPS” (Maine Department of Environmental Protection), dated March 2003, or other construction management practices system approved by the Planning Board or Development Review Committee, as appropriate.
 - (a) Applicants are encouraged to utilize contractors who are certified in erosion control through the Maine Department of Environmental Protection’s Voluntary Contractor Certification Program.
3. The plan shall meet the standards of the Town of Windham’s Surface Water Protection Ordinance; where applicable. (*See Chapter 142 Surface Water Protection Ordinance*)

G. Water Supply Provisions

1. The development shall be provided with a system of water supply that provides each use with an adequate supply of water.
2. If the project is to be served by a public water supply, the applicant shall secure and submit a written statement from the Portland Water District that the proposed water

L. Hazardous, Special, and Radioactive Materials

1. The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive shall be done in accordance with the standards of these agencies.
2. No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of underground storage. All materials shall be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations.

M. Shoreland Relationship

1. The development shall not adversely affect the water quality or shoreline of any adjacent water body.
2. The plan shall meet the requirements of the Town of Windham's shoreland zoning ordinance; where applicable. (*See Chapter 199 Shoreland Zoning*)

N. Technical and Financial Capacity

1. Financial Capacity. The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the standards of these regulations. In making its determination the Planning Board or Development Review Committee shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development.
2. Technical Capacity. The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed site plan.
 - (a) In determining the applicant's technical ability the Planning Board or Development Review Committee shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant. A violation for the purposes of this section includes any order, consent decree or consent agreement with which the applicant, owner or proposed operator of the facility is not currently in full compliance.

O. Solid Waste Management