

Moratorium Ordinance

Regarding Mineral Extraction

The **TOWN OF MOUNT DESERT** (Maine) adopts a Moratorium Ordinance as follows:

WHEREAS, areas of the Town of Mount Desert (hereinafter the “Town”) as having a potential for increased development pressure from the extraction of certain materials from the earth, especially the quarrying of granite in that part of the Town known as “Hall Quarry”; and

WHEREAS, this development pressure was unanticipated and has not been adequately provided for in the Town's current Land Use Zoning Ordinance (hereinafter “LUZO”), or in other ordinances of the Town; and

WHEREAS, in this Moratorium Ordinance the term “mineral extraction” has the same meaning as described in the current LUZO;

WHEREAS, there is a likelihood that some areas of the Town may be affected by this development pressure due to the arguable nonexistence of any enforceable regulations or restrictions on the location, nature and use of sites for mineral extraction, and the possible demand for permits for mineral extraction, or at least the grossly inadequate nature of the existing regulations; and

WHEREAS, specifically, there is significant ambiguity in the current LUZO regulations concerning mineral extraction regarding whether the Code Enforcement Officer or the Planning Board may impose conditions on mineral extraction; and

WHEREAS, permitting of such mineral extraction activities pursuant to the current LUZO could pose serious threats to the public health, safety and welfare of the residents of the Town by conducting such mineral extraction activities without adequate provisions for issues of safety, noise, vibration, dust, setback distances, land use compatibility, and screening; and

WHEREAS, after public hearing, there is strong support for this Moratorium Ordinance; and

WHEREAS, the Town will need at least one hundred eighty (180) days to develop and implement the necessary amendments to the LUZO, and possibly to other ordinances of the Town, to accommodate these development pressures; and

WHEREAS, amendments to the LUZO require a public hearing by each of the Planning Board and the Board of Selectmen, and then must be voted upon at a Town Meeting; and

WHEREAS, in the JUDGMENT of the Town, these facts require the following Moratorium Ordinance as needed within the meaning of Subsection 4356(1) of Title 30-A of the Maine Revised Statutes (30-A M.R.S. § 4356(1)) because the application of the existing Comprehensive Plan, Land Use Zoning Ordinance and other applicable Town ordinances are inadequate to prevent serious public harm from mineral extraction activities within the Town;

NOW, THEREFORE, the Town of Mount Desert hereby **ordains** that a **MORATORIUM** is hereby imposed for a period of one hundred eighty (180) days on any new mineral extraction, including but not limited to the quarrying of granite, that is not currently permitted (by written permit received from the Town), approved and/or under construction; and

BE IT FURTHER ORDAINED, that the Planning Board, Board of Appeals, the Building Inspector/C.E.O., all Town agencies and all Town employees shall neither accept nor approve applications, plans, permits, licenses, and/or fees for any new construction or uses governed by this Moratorium Ordinance for mineral extraction for the period of time described below; and

BE IT FURTHER ORDAINED, that any provisions of the Town's ordinances that are inconsistent or conflicting with the provisions of this Moratorium Ordinance are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained; and

BE IT FURTHER ORDAINED, that this Moratorium Ordinance may be extended by the Board of Selectmen of the Town of Mount Desert, after notice and hearing, for additional 180-day periods if the Board of Selectmen finds that:

1. the problem giving rise to the need for this Moratorium Ordinance still exists; and
2. reasonable progress is being made to alleviate the problem giving rise to the need for this Moratorium Ordinance.

SEVERABILITY CLAUSE:

To the extent any provision of this Moratorium Ordinance is deemed invalid by a court of competent jurisdiction, the balance of the Moratorium Ordinance shall remain valid.

EFFECTIVE DATE and RETROACTIVITY CLAUSE:

In view of the facts cited in the preamble, this Moratorium Ordinance shall take effect immediately and notwithstanding the provisions of 1 M.R.S. § 302, be applicable, to the maximum extent permitted by law and subject to the severability clause above, to all proceedings, applications and petitions not pending (within the meaning of 1 M.R.S.A. § 302) as of **August 6, 2012**, the date upon which this Moratorium Ordinance was first discussed by the members of the Mount Desert Board of Selectmen, until the effective date of the necessary amendments to the Land Use Zoning Ordinance and other applicable ordinances of the Town, or until **February 2, 2013**.

As enacted through *Article 2. Shall an ordinance entitled "Moratorium Ordinance Regarding Mineral Extraction" be enacted?* at the Special Town Meeting Referendum Election held November 6, 2012 with 749 Yes votes and 557 No votes.

Attest: A true copy.

Town Clerk

Date