

TOWN OF MOUNT DESERT
QUARRYING LICENSE ORDINANCE

Enacted: July 25, 2013

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ARTICLE 1 – TITLE AND PURPOSE

1.1 Title

This Ordinance shall be known and may be cited as the Town of Mount Desert Quarrying Licensing Ordinance and will be referred to herein as “this Ordinance.”

1.2 Purpose

The purpose of this Ordinance is to put into law minimum removal and reclamation standards and municipal procedures to regulate the quarrying of rock or stone while at the same time respecting the rights of pre-existing operations. These standards and procedures are intended to protect the public health, safety, and general welfare; and to minimize the adverse impact of quarrying to the Town, abutting property owners, citizens of the Town, and wildlife and natural resources by:

- A. Preserving and protecting surface and groundwater quality and quantity for current and future use of the town and/or its residents.
- B. Preserving the Town’s natural resources, property value, and their future ability to be an asset to the Town and its residents.
- C. Controlling the amount of potential pollution which can be discharged into the Town’s environment.

ARTICLE 2 – AUTHORITY, APPLICABILITY AND ADMINISTRATION

2.1 Authority

This Ordinance is enacted pursuant to Home Rule Powers as provided for in Article VIII-A of the Constitution of the State of Maine and under the authority granted to the Town by the statutes of the State of Maine, Title 30-A M.R.S.A., § 3001.

2.2 Administration

The provisions of this Ordinance shall be administered by the Town of Mount Desert Planning Board and enforced by the Town of Mount Desert Code Enforcement Officer (CEO).

2.3 Effective Date

This Ordinance, which was adopted by the municipal legislative body on July 25, 2013, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be automatically approved.

Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Ordinance, or Ordinance Amendment, if the Ordinance, or Ordinance Amendment, is approved by the Commissioner.

2.4 Applicability

This Ordinance applies to all quarrying activities as defined as Quarrying in Article 10 (Definitions) of this Ordinance that occur within the boundaries of the Town of Mount Desert, Maine, except as provided in Article 3 of this Ordinance. Quarrying activities are herein after referred to as activities or the activity, and sites on which they occur are referred to as the site, sites, or activity sites.

This Ordinance applies to all quarrying activities including those which are:

1. New or proposed: activity occurring in areas where activities have not previously occurred.
2. Recurring: activities in areas where such activities had ceased (for more than 12 months) or were inactive and are now reoccurring.
3. Expansions of activity plans previously permitted by the Planning Board.
4. Existing quarrying activities

2.5 Quarrying License required.

All parties proposing to continue a quarrying operation, expand an existing quarrying operation, or propose the creation of a new quarrying operation, must receive a Quarrying License as set forth in this Ordinance.

2.6 Types of quarrying activities prohibited.

Any processing of quarry materials at the quarry site. Processing includes such activities as crushing and screening. No gravel pits or borrow pits are permitted.

2.7 Severability

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

2.8 Conflict with Other Ordinances

This Ordinance shall in no way impair or remove the necessity of compliance with any other rule, regulation, bylaw, permit or provision of law. It is anticipated that the application will be reviewed concurrently with this ordinance and the requirements of the Land Use Zoning Ordinance. Where this Ordinance imposes a greater restriction upon the use of the land, buildings or structures, than any other rule, regulation, bylaw, permit or provision of law, the provisions of this Ordinance shall prevail.

2.9 Availability

A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request.

ARTICLE 3 – EXEMPTIONS

3.1 This Ordinance shall not apply to the following:

- A. Removal or filling of rock or stone for all improvements incidental to permissible construction, alteration or repair of a structure, town or state roads, private roads or driveways, or in the landscaping incidental thereto.
- B. Removal of stone or rock walls or foundation walls.

- C. Removal of stone or rock from the quarry site if it has already been separated from the bedrock.
- D. Screening of stone or material for personal use.

Quarrying activities which are exempt from this ordinance may still require a conditional use permit under provisions of the Land Use Zoning Ordinance of the Town of Mount Desert, and must comply with other rules and regulations of the Town.

ARTICLE 4 – REVIEW PROCESS

4.1 Application Procedures

A. Application Submission and Completeness Review:

Applications for quarrying activity licenses shall be submitted to the Town. The CEO shall issue to the applicant a dated receipt. Within 45 days from the date of receipt, the Planning Board shall notify the applicant in writing either that the application is complete or, if the application is incomplete, the specific additional material needed to make a complete application. A determination by the Planning Board that the application is complete in no way commits or binds the Planning Board as to the adequacy of the application to meet the criteria of this Ordinance.

B. Public Hearing

The Planning Board shall hold a public hearing within 45 days of finding the application complete. Notice of the public hearing shall be advertised at least 10 days in advance in a local newspaper and posted in other places used for public notices. The notice shall contain a clear and concise summary of the application. At least 10 days before the public hearing, the Town, shall notify by mail the owners of properties within 500 feet of any boundary of the property for which application is being made. The owners of properties shall be considered to be persons listed on Town tax maps and lists.

C. Planning Board Decision on the Application

1. The Planning Board shall, within 45 days of holding a public hearing, or within such other time limit as may be mutually agreed to by said Planning Board and applicant, issue a decision approving, approving with conditions or denying the proposed activity. In all instances, the burden of proof shall be upon the applicant. The Planning Board shall make written findings regarding the criteria and standards contained in this Ordinance and conditions of any Quarry License.
2. Upon approval of the activity, a majority of the Board shall sign all copies of the final site plan. The original shall be recorded by the applicant with the Hancock County Registry of Deeds. One copy shall be retained by the Town. The Planning Board shall maintain a permanent record of their action on the activity. Any plan not recorded within 120 days after approval, with the Hancock County Registry of Deeds shall be null and void.
3. Approval by the Planning Board of an activity plan shall not be deemed to constitute or be evidence of any acceptance by the Town of Mount Desert, Maine of any road, easement, or other open space shown on such plan.

D. Application Fees: All applications shall be accompanied by an application fee as established by the Board of Selectmen, payable to the Town of Mount Desert. All costs related to the application and ordinance compliance will be paid by the applicant.

E. Operation Conditions and Limitations: Before final approval, the applicant shall apply for and receive all applicable permits or licenses as may be required by Town, state or federal regulations,

laws or ordinances. Any violation of other permits or licenses necessary for operation shall be considered a violation of this ordinance.

- F. **Plan Revisions after Approval:** Plan revisions after approval shall be made as further provided for in Article 7.4 of this Ordinance.
- G. **Transfer of Activity License:** The license holder shall not sell, lease, assign, or otherwise transfer the license, or cause or allow any other action where the purpose or consequence is to transfer any of the obligations of the license holder as incorporated in the license, except following the approval of the Planning Board. The Planning Board may approve the transfer of the license if it can be demonstrated that:
1. The terms and conditions of the license and all applicable laws can and will be met.
 2. The proposed transferee has the financial capacity and technical ability and intent to satisfy the terms of the license.
 3. The transfer of the license, or the activities it allows, shall not cause or contribute to a violation of the law. In determining whether transfer of the license will cause or contribute to a violation of the law, the Planning Board shall consider any prior violation, suspension, or revocation of a license issued to the proposed transferee; and any other environmental enforcement history of the proposed transferee. The Planning Board may require the proposed transferee to present evidence of changed conditions or circumstances sufficient, in the judgment of the Planning Board, to warrant transfer of the license notwithstanding any prior violation, suspension, or revocation. The applicant shall provide the Planning Board as part of the request, the information (unless otherwise specified by the Planning Board) on the proposed transferee as required in Article 4.1 of this Ordinance. Proposed changes to the terms of the license, including financial responsibility requirements, shall be considered a request for license modification and processed accordingly. At least 10 days before the Board meeting to review the transfer request (or public hearing if deemed necessary by the board), the applicant or his/her designee, shall notify by mail the owners of properties within 500 feet of any boundary of the property for which the license transfer is being requested. The owners of properties shall be considered to be persons listed on Town tax maps and lists. Escrow accounts shall also be transferred.

4.2 Waiver of Submission Requirements

The Planning Board, in its sole discretion, upon the written request of an applicant specifically stating the reasons therefor, may modify or waive any of the submission requirements for a quarrying license application when it determines that, because of the type or size of the project or circumstances of the site, such requirements would not be applicable or would be unnecessary to determine compliance with the approval standards and that such modification or waiver would not adversely affect properties in the vicinity or the general health, safety and welfare of the Town.

4.3 Waiver of Performance Standards

Where the Planning Board finds that unnecessary hardship will result from strict compliance with a performance standard, or where there are extraordinary circumstances of a particular plan, it may waive or modify the performance standard only to the extent necessary to relieve the hardship or address the circumstances, provided such a waiver or modification will not affect the general health, safety, or welfare of the Town, and provided further that the applicant has demonstrated that the approval standards themselves have been adequately met in the absence of the performance standards to the extent reasonably practical by the applicant.

4.4 Technical Review

The Planning Board may require the owner/operator or his authorized agent to deposit in escrow with the Town an amount of money sufficient to cover the costs for any professional review of the application that the Planning Board may feel is reasonably necessary to protect the general welfare of the Town. This escrow payment shall be made before the Planning Board engages any outside party to undertake this review and to make recommendations to the Planning Board. Any part of the escrow payment in excess of the final costs for the review shall be returned to the owner or his agent.

4.5 Appeals

Administrative Appeals and Requests for Variances shall follow the procures provided in the Town of Mount Desert Zoning Board of Appeals Reorganization Ordinance.

ARTICLE 5 – NEW OR EXPANDED QUARRYING ACTIVITIES

5.1 Application for New, Expanded, or Reoccurring Quarrying Activities

Prior to the establishment, reestablishment, or expansion of a quarrying activity, an applicant shall apply for a Quarrying License from the Town. The application for new activities, reoccurring, or expansions of existing activities shall contain the following information:

- A. Name, address and telephone number of the applicant, and the name, address and telephone number of the owner of the property, if different from the applicant.
- B. Name, address and telephone number of the operator of the quarry, if different from the applicant or owner. Name and contact information of the proposed manager of operations
- C. A copy of the current deed, lease, option or other evidence of title, right or interest to the subject property together with copies of all covenants, deed restriction easements, rights of way, or other encumbrances, including but not limited to liens and mortgages currently affecting the property.
- D. A Boundary Survey depicting the current boundary of the property prepared by a surveyor licensed in the State of Maine.
- E. A Site Plan of the property that shall include the following:
 - 1. The date the plan was prepared with the name, address and telephone number of the person or company that prepared such.
 - 2. Scale is to be no more than 100 feet per inch. All dimensions to be marked in feet or decimals of a foot, north arrow shown, and paper size 24" by 36".
 - 3. Contour lines showing elevations in relation to mean sea level at appropriate intervals and existing and proposed final contours as well as interim contours for projects having sufficient duration that the Planning Board deems such interim contours are necessary. Contour intervals shall be a maximum of 2 feet.
 - 4. Boundaries of the tract of land showing lot lines, abutting lots, the names of all such property owners, total acreage of the parcel(s), Town of Mount Desert Tax Assessor's map and lot number(s).
 - 5. Location of existing and proposed activities and structures on the property.

6. Approximate location of residences and structures on properties within 500 feet of the property lines of the parcel on which the quarry is located.
 7. Location and identification of existing public and private streets, roadways and rights of-way on or abutting the property.
 8. Location of proposed access road and/or driveway to the activity from public roadways.
 9. Location of all setbacks, buffers, conservation areas, and protected natural resources on the subject property including shoreland zone and district designations.
 10. Location and arrangement of proposed parking and loading areas and their appurtenant drives and maneuvering areas.
 11. Location of existing and proposed utilities and easements, such as sanitary sewage, water supply, and electricity on the property.
 12. Location, intensity, type, size and direction of all permanent or temporary outdoor lighting.
 13. Location, design, and size of signs and all permanent outdoor fixtures such as fences, gates, utility poles that may be visible from public roads or adjacent properties.
 14. Location of existing wetlands and vernal pools and required setbacks.
 15. Location, design, and type of existing and proposed berms, fences, hedges, and tree lines.
 16. Location of existing natural drainage ways and proposed storm drainage facilities and stormwater control measures, including dimensions of culverts, pipes, etc. If any portion of the activity is in a flood prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the plan.
 17. Location of existing wells: within 500 feet of the property line and all wells on the parcel itself.
 18. Location of proposed or existing fuel handling/storage, wash-down and hazardous material storage areas.
- F. A traffic impact narrative which includes an estimate of the average daily traffic during periods of operation, including peak hours, and projected to be generated by the activity.
- G. A narrative description of the surface and ground water impacts, including protection plans, prepared by a hydrogeologist, licensed in the State of Maine.
- H. Information and a map showing bedrock geology and soils conditions on the site of the proposed activity.
- I. A soil erosion and sedimentation control plan, prepared in accordance with the standards contained in the Maine Erosion & Sedimentation Control Handbook for Construction: Best Management Practices published by MDEP March 2004 or latest revision. If the project is located within the state mandated Shoreland Zone, the name and certification number of the person who will oversee activities causing or resulting in soil disturbance shall be included in the soil erosion and sedimentation control plan.
- J. Stormwater Management Plan and narrative prepared by a Licensed Professional Engineer detailing specific erosion control and Stormwater Management measures and showing pre- and post-development runoff patterns for the two (2), ten (10) and twenty-five (25) year, 24 hour duration storm event, a contour map of the watershed and proposed stormwater management measures including drainage ditches, conduits, catch basins, culverts and impoundment areas. The Management Plan should specify the source of water to be used for cooling of equipment and for other operations. The plan should specify the measures taken to manage any runoff from water used for cooling or other operations.

- K. Locations of identified local, state or federal historic or archeological sites and a description of such features.
- L. A closure plan including: an estimated amount of material to be excavated annually, estimated longevity of the operation, the maximum vertical faces and final grades, a re-vegetation plan, plans for future uses, timeline for closure, reclamation plans for inactive areas of quarry operations safety measures, phasing of the reclamation plan, and a cost estimate for closure site.
- M. A narrative description of the impact on the wildlife habitat, and the location of any deer yard or other significant wildlife habitat designated by Maine Dept. of Inland Fisheries and Wildlife, Maine Natural Areas Program, Maine DEP or other applicable state or federal agency, including any proposed mitigation, within 500 feet of the activity.
- N. A narrative description of the present use of the parcel and property within 500 feet of the property lines of the parcel on which the quarry is located.
- O. Proposed hours and days of operation.
- P. Types and amounts of equipment to be used in the operation, estimated levels of noise at the property line, and any measures to be used to control noise, dust, vibration, and pollution from the operation.
- Q. Proof of technical and financial capacity, and capacity to obtain a Performance Guarantee as specified in Article 6, payable to the Town of Mount Desert.
- R. A Spill Prevention, Control & Containment (SPCC) Plan.
- S. Blasting Plan, if any.
- T. Plan for landscaping, screening and buffering the quarrying activity from abutters and any public roads.
- U. Evidence of federal and state permits, if required.

5.2 Performance Standards for New, Expanded or Reoccurring Quarrying Activities

A. General Requirements

1. Quarrying activities shall conform to all applicable State laws and local ordinances and regulations.
2. The owner and operator of a quarrying activity shall be responsible, both jointly and severally, for ensuring the maintenance of all infrastructures, structures and their sites.
3. The Planning Board shall consider the financial capacity, technical ability and prior performance of the applicant to complete all proposed activities in approval of this license.
4. The Planning Board may deny, modify, or revoke its approval if the applicant or agent is not in compliance with other Town, State, or Federal permits.

5. In all cases, the applicant shall have the burden of proof that all requirements, standards, and conditions of this Ordinance and subsequent approval are met.
6. A copy of the license must be displayed on site at all times.
7. At no point shall the footprint of the active extraction area exceed three (3) acres and at no point shall the footprint of the entire operation exceed a total of five (5) acres.
 - a) The active extraction area must be reclaimed before next three (3) acres can be started.
 - b) Excavation may be done in 1 acre or other increments to ensure continuity of operation.
8. The maximum quantity of material that may be extracted per year is 2,500 cubic yards, not including overburden.

B. Erosion Control

Sediment may not leave the parcel or enter a protected natural resource. Soil erosion and sedimentation of watercourses and water bodies must be minimized by an active erosion and sedimentation control program. Erosion control plans shall show the location and installation details, a description of the timing of installation, inspection and maintenance of erosion control measures. The erosion control program shall be based on industry Best Management Practices and guided by applicable specifications contained in "Maine Erosion and Sediment Control Best Management Practices", published by the Maine Department of Environmental Protection, and, as applicable, the Maine Department of Environmental Protection's general permit for construction activity, enacted as part of the Maine Pollutant Discharge Elimination System.

C. Stormwater Management

Adequate provisions must be made for the collection and disposal of all stormwater from the quarry site, roads, driveways, parking areas, roofs, and other surfaces, through a stormwater drainage system and maintenance plan. Adequate provisions shall be made for the collection and disposal of water used during the quarrying activities. Stormwater runoff and runoff from water used during quarrying activities must not have adverse impacts on abutting or downstream properties or resources. "Adequate provision" means that the plan effectively removes pollutants, prevents flooding, maintains the natural temperatures of receiving streams, and prevents the degradation of stream channels.

1. To the extent possible, the plan must retain stormwater and runoff from water used during quarrying activities on the site using the natural features of the site.
2. Stormwater runoff systems must detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate for the 2, 10, and 25-year, 24-hour duration storm event, provided that any system of detention for later discharge shall not cause significant stream channel erosion and destabilization from either the 2, 10, and 25-year, 24-hour duration storm or more frequent storms.
3. The applicant must demonstrate that on- and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, including, but not limited to, flooding and erosion of shoreland areas, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation.
4. All natural drainage ways must be preserved at their natural gradients and must not be filled or converted to a closed system unless approved by the Planning Board as part of this review.

5. The design of the stormwater drainage system must provide for the management of stormwater without damage to roads, driveways, adjacent properties, downstream properties, soils and vegetation.
6. The design of the storm drainage systems must be fully cognizant of upstream runoff that must pass over or through the site to be developed and provide for this movement.
7. The biological and chemical properties of the receiving waters must not be degraded by the stormwater runoff from the development site. The use of best management practices as prescribed in "Stormwater Management for Maine", published by the Maine Department of Environmental Protection, may be required.

D. Closure and Reclamation Plans

A quarry closure plan is required to be submitted with all license applications discussing and depicting the following:

1. Soil Stockpiling. Soil that is stripped or removed must be stockpiled for use in reclaiming disturbed land, unless it is demonstrated to the Planning Board that it is not needed for reclamation purposes. Soil stockpiles must be seeded, mulched, or otherwise stabilized. At least 4 inches of topsoil shall be used for final cover.
2. Highwalls, or quarry faces must be treated in such a manner as to leave them in a condition that minimizes the possibility of rock falls, slope failures and collapse. A highwall that is loose must be controlled by the use of blasting or scaling, the use of safety benches, the use of flatter slopes or reduced face heights or the use of benching near the top of the face or rounding the edge of the face.
3. The methods used to provide public safety for adjacent properties and provisions for fencing, signs, berms, or other site improvements reasonably necessary to assure safety at the site after quarrying activities are completed.
4. Vegetative cover. Vegetative cover must be established on all land being reclaimed except for quarry walls and flooded areas. Topsoil must be placed, seeded, and mulched within 30 days of final grading if it is within a current growing season or within thirty (30) days of the start of the next growing season.
 - a.) Vegetative material used in reclamation must consist of grasses, legumes, herbaceous, or woody plants or a mixture thereof. Plant material must be planted during the first growing season following the reclamation phase. Selection and use of vegetative cover must take into account ultimate height, maintenance requirements, soil and site characteristics such as drainage, pH, nutrient availability, and climate.
 - b.) The vegetative cover is acceptable if within one (1) growing season of seeding:
 - i. the planting of trees and shrubs results in a permanent stand, or regeneration and succession rate, sufficient to assure a 75% survival rate; and
 - ii. there are no obvious signs of erosion.
5. Structures and roads. All structures and access, haul, or other support roads must be reclaimed once no longer used, unless reserved for future productive use of the land, as described in the closure plan.
6. Timeline of closure and reclamation. Closure and reclamation activities shall commence within twelve (12) months following the completion of quarrying operations. Operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period.

7. Phased Closure. To the extent practicable, the area where quarrying operations has already occurred on the site shall be closed prior to the opening of any new on-site quarrying area, and reclamation procedures shall be carried out concurrently with quarrying operations. Standard closure shall commence in accordance with the timeline and phasing approved by the Planning Board. Standard performance guarantee requirements apply.

E. Petroleum Usage

If any petroleum products or other materials with potential to contaminate groundwater are to be stored on the site, a Spill Prevention Control, and Counter measures (SPCC) Plan shall be submitted. A SPCC Plan shall be developed in accordance with DEP regulations, Section 5A of Chapter 378 Performance Standards for the Storage of Petroleum Products (CMR 378), and shall be submitted with the application and kept with the license in the Town's records.

F. Buffering and Screening

The owner or operator shall provide and/or maintain effective year-round visual screening of the quarry operations. In those areas where fully effective visual screening is not feasible, the owner or operator shall make every reasonable effort, through screening, to minimize the visual impact of quarry activities to the neighbors. The design for such screening/buffering shall utilize existing land contours, artificially created berms, natural vegetation on site and plant material not presently on site, permanent fencing, walls or other techniques. All of the above shall be supplied and maintained by the owner or operator. The following provisions shall also apply:

1. Protected Natural Resources: Unless authorized pursuant to the Natural Resources Protection Act, Title 38, M.R.S.A., Section 480-C no part of any quarrying operation, including drainage and runoff control features shall be permitted within one hundred (100) feet, horizontal distance, of the normal high water line of a great pond, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. The Applicant must provide a sufficient benchmark on the property to indicate this setback.
2. New, expanded or reoccurring quarrying operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
3. All buffers must be preserved in their natural vegetative state as existed 6 months prior to an application for a new quarry, or for an expansion to an existing quarry, in the natural vegetative state that existed at time of initial licensing by the Town.
4. The Planning Board may require as a condition of approval the applicant to take specific actions to insure the long-term effectiveness of any buffers or buffer yards, including, but not limited to, the planting of trees and/or shrubs, placement of solid fences or creation of berms when the natural existing vegetation does not provide a sufficient visual screen. The design of any fences, walls, berms or other structural screening shall be submitted to the Planning Board as part of the application. The owner or operator shall maintain the buffers to ensure that the continue to function in an effective manner. Dead trees and shrubs that are intrinsic to the buffer yard shall be replaced within one (1) year after they have died.

5. The applicant may elect to increase the width of the natural buffer area in order to achieve an adequate visual screen.
6. The visual screening requirement for the buffers is not a complete visual barrier. The screening, to be adequate, must provide a substantial year round visual barrier so that the active extraction area is not clearly, or unobstructively, visible from an abutting property or public road by providing a continuous barrier which obstructs the view of the active extraction area by at least eighty (80) percent from all locations within one hundred fifty (150) feet from the active extraction area boundary.

G. Road and Driveway Design, Circulation and Traffic

1. Activity site shall be limited to 2 access/egress points.
 - a) Driveways and roads shall conform to the standards set forth in the Town of Mount Desert Land Use Zoning Ordinance, Subdivision Ordinance, and in the Public Right-of-Way Ordinance, as applicable. Driveways and Roads shall meet any additional requirements set forth in this ordinance and/or as required by Town of Mount Desert Public Works Director, or designee, and/or the Maine Department of Transportation, as applicable.
 - b) Driveways or roads leading to or from the quarry site to paved public ways shall be treated with suitable materials to reduce the production of dust and mud. The applicant shall include their choice of surface treatment in their permit application to the Planning Board.
 - c) The first 200 lineal feet from the intersection of the public road and the driveway or road leading to or from the quarry site shall have a bituminous pavement surface, an alternate hard surface or crushed rock/stone surface to limit the tracking of unsuitable material onto the public road. The Planning Board upon the recommendation of the Public Works Director may require a paved apron to be constructed along the width of the intersection of the quarry road/driveway and the public road that extends into the quarry road a minimum of five-feet.
2. Traffic impacts to be considered:
 - a) Where activity site traffic proposes to use town maintained roads, the activity scope must be suitable and appropriate to the projected daily traffic impacts as determined by the Code Enforcement Officer with assistance from the Public Works Director or respective designees.
 - b) The road giving access to the Quarrying Activity and neighboring roads which can be expected to carry traffic to and from the Quarrying Activity shall:
 - i. Have sufficient traffic carrying capacity as determined by the Code Enforcement Officer with assistance from the Public Works Director or respective designees.
 - ii. Have adequate base and pavement to support the loads generated by the activity as determined by the Code Enforcement Officer with assistance from the Public Works Director or respective designees.
 - c) If roads are found to be inadequate based on the above, the applicant may be required to improve the road to accommodate the amount and types of traffic generated by the proposed activity. In making this determination the following shall be considered:
 - i. No activity shall reduce the road's Level of Service to "D" or below.
 - ii. Where the road giving access to the Quarrying Activity enters an existing street, vehicular sight-distance shall conform to standards established by the Maine DOT as contained in their publication, Chapter 299, Highway Driveway and Entrances Rules and noted below for entrances with standard vehicles.

H. Ground Water Impacts:

1. Water Supply buffer:

- a) A three hundred (300) foot buffer must be maintained between the edge of footprint of operation and any currently in use pre-existing private drinking water supply that is point driven or is a dug well. This buffer requirement does not apply when the well belongs to the owner of the excavation site.
 - b) A one hundred (100) foot buffer must be maintained between any active excavation area and any private drinking water well that is drilled in to saturated bedrock prior to the quarrying extraction activity.
 - c) A one thousand (1,000) foot buffer must be maintained between the edge of the active extraction area and any well or spring which qualifies as a public drinking water supply that was in use prior to the effective date of this division.
 - d) The Planning Board may require larger buffers from water supplies, if they find that a hazard is shown to exist due to the Quarrying Activity by a hydrogeologic study performed by a hydrogeologist licensed in the State of Maine. The hydrogeologic study will be paid for by the licensee if required by the Planning Board.
2. Excavation below the seasonal high water table is prohibited except if a Maine DEP variance is granted and a copy of the DEP variance approval is on file with the Town.
3. In the event of excavation below the seasonal high water table, the operator of a quarrying activity that affects a public drinking water source or a 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 quarrying activity may have.
4. In the event of excavation below the seasonal high water table, a three hundred (300) foot buffer must be maintained between the limit of excavation and any predevelopment private drinking water supply, and a one thousand (1,000) foot buffer must be maintained between the limit of excavation and any public drinking water source or area previously designated for potential use as a public drinking water source by a municipality or private water company. These separation distance requirements do not apply when the private water supply belongs to the owner of the excavation site.
5. Water Use: The use of groundwater for quarrying operations is prohibited.
6. Standards for Acceptable Ground Water Impacts
 - a.) No quarrying activity shall increase any contaminant concentration in the ground water to more than one half of the Federal Primary Drinking Water Standards at the property boundary. No quarrying activity shall increase any contaminant concentration in the ground water to more than the Federal Secondary Drinking Water Standards at the property boundary. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
 - b.) If ground water contains contaminants in excess of the primary standards, and the activity is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated, if necessary.

I. Preservation of Natural and Historic Features

The scenic, historic, or environmentally sensitive areas or any areas identified in the Comprehensive Plan, the Maine Historic Preservation Commission, or the Maine Natural Areas Program as an archeological, architectural, cultural, or rare and exemplary area shall be preserved.

J. Sanitary Standards

1. Sewage Disposal: All water carried sewage shall be disposed of by sewage systems meeting the requirements of the State of Maine Plumbing Code.
2. Solid Waste Disposal: No solid waste, including stumps and grubbings, shall be placed stored or disposed of in the activity site unless it meets the requirements of the rules and regulations of the Maine Department of Environmental Protection. The storage, collection and disposal of refuse at the activity site shall not create health hazards, rodent or insect breeding areas, accident or fire hazards, air pollution, or surface or ground water pollution.

K. Signs

Any signs must comply with the standards of other applicable ordinances.

L. Noise

The best practicable means of reducing noise shall be employed which may including the use of sound reduction equipment, acoustic enclosures or sheds, limiting on-site speeds to no more than 10 mph, or other best industry practices for noise attenuation, to the extent permitted by state and federal laws and regulations.

M. Hours of Operation

The hours of operation for any and all activities shall not be earlier than 7:00 AM and not later than 4:00 PM, Monday through Saturday. The hours of operation shall not be revised, waived or modified by the Planning Board. Nothing contained herein shall be deemed to prevent the emergency maintenance or repair of equipment.

N. Dust Control

Dust generated by activities at a quarry, including dust associated with traffic to and from a quarry, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Dust control methods may include calcium chloride as long as the manufacturers labeling guidelines are followed.

O. Blasting

For operations involving blasting, the owner or operator shall maintain records of the blasting operation, provide for supervision of the blasting activity by a person qualified, experienced and regularly engaged in such work, and provide the Town with prior notice of the drilling and blasting activity as required by the Planning Board. Blasting for quarrying activities shall follow industry Best Management Practices and procedures set forth in Title 38 M.R.S.A.,§ 490-Z.

P. Lighting

Lighting must be shielded away from adjacent road, driveways and residential areas. Lighting shall be in conformance with the standards set forth in the Town of Mount Desert Land Use Ordinance.

ARTICLE 6 – EXISTING QUARRYING ACTIVITIES

6.1 Application for Existing Quarrying Activities

The owner or operator of any active un-licensed quarry activity shall, within 180 days from the effective date of this ordinance, submit an application pursuant to this Ordinance. Any owner or operator of an active operation that has not applied for a license within 180 days from the effective date of this ordinance or received an extension for good cause from the Planning Board shall be in violation of this ordinance. The application for existing quarrying activities shall consist of the following submissions:

- A. Name, address and telephone number of the applicant, and the name, address and telephone number of the owner of the property, if different from the applicant.
- B. Name, address and telephone number of the operator of the quarry, if different from the applicant or owner. Name and contact information of the proposed manager of operations
- C. A copy of the current deed, lease, option or other evidence of title, right or interest to the subject property together with copies of all covenants, deed restriction easements, rights of way, or other encumbrances, including but not limited to liens and mortgages currently affecting the property.
- D. A Site Plan of the property that shall include the following:
 - 1. The date the plan was prepared with the name, address and telephone number of the person or company that prepared such.
 - 2. Scale is to be no more than 100 feet per inch. All dimensions to be marked in feet or decimals of a foot, north arrow shown, and paper size 24" by 36".
 - 3. Contour lines showing elevations in relation to mean sea level at appropriate intervals and existing and proposed final contours as well as interim contours for projects having sufficient duration that the Planning Board deems such interim contours are necessary. Contour intervals shall be a maximum of 2 feet.
 - 4. Boundaries of the tract of land showing lot lines, abutting lots, the names of all such property owners, total acreage of the parcel(s), Town of Mount Desert Tax Assessor's map and lot number(s).
 - 5. Location of existing activities and structures on the property.
 - 6. Footprint of the operation as of the effective date of this ordinance including the active extraction area, all areas with overburden removed, access routes within the quarry, and all reclaimed and unreclaimed areas.
 - 7. Approximate location of residences and structures on properties within 500 feet of the property lines of the parcel on which the quarry is located.
 - 8. Location and identification of existing public and private streets, roadways and rights of-way on or abutting the property.
 - 9. Location of existing access road and/or driveway to the activity from public roadways.
 - 10. Location of all setbacks, buffers, conservation areas, and protected natural resources on the subject property including shoreland zone and district designations.

11. Location and arrangement of existing parking and loading areas and their appurtenant drives and maneuvering areas.
 12. Location of existing and proposed utilities and easements, such as sanitary sewage, water supply, and electricity on the property.
 13. Location, intensity, type, size and direction of all permanent and temporary outdoor lighting.
 14. Location, design, and size of signs and all permanent outdoor fixtures such as fences, gates, utility poles that may be visible from public roads or adjacent properties.
 15. Location of existing wetlands and vernal pools and required setbacks.
 16. Location, design, and type of existing and proposed berms, fences, hedges, and tree lines.
 17. Location of existing natural drainage ways and proposed storm drainage facilities and stormwater control measures, including dimensions of culverts, pipes, etc. If any portion of the activity is in a flood prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the plan.
 18. Location of existing wells: within 500 feet of the property line and all wells on the parcel itself.
 19. Location of proposed or existing fuel handling/storage, wash-down and hazardous material storage areas.
- E. A traffic impact narrative which includes an estimate of the average daily traffic during periods of operation, including peak hours, and projected to be generated by the activity.
- F. A soil erosion and sedimentation control plan, prepared in accordance with the standards contained in the Maine Erosion & Sedimentation Control Handbook for Construction: Best Management Practices published by MDEP March 2004 or latest revision. If the project is located within the state mandated Shoreland Zone, the name and certification number of the person who will oversee activities causing or resulting in soil disturbance shall be included in the soil erosion and sedimentation control plan.
- G. A narrative description of the surface and ground water impacts, including protection plans, prepared by a hydrogeologist, licensed in the State of Maine.
- H. Stormwater Management Plan and narrative prepared by a Licensed Professional Engineer detailing specific erosion control and Stormwater Management measures and showing pre- and post-development runoff patterns for the two (2), ten (10) and twenty-five (25) year, 24 hour duration storm event, a contour map of the watershed and proposed Stormwater Management measures including drainage ditches, conduits, catch basins, culverts and impoundment areas. The Management Plan should specify the source of water to be used for cooling of equipment and for other operations. The plan should specify the measures taken to manage any runoff from water used for cooling or other operations.
- I. Proposed hours and days of operation.
- J. Types and amounts of equipment to be used in the operation, estimated levels of noise at the property line, and any measures to be used to control noise, dust, vibration, and pollution from the operation.
- K. A Spill Prevention, Control & Containment (SPCC) Plan.
- L. Blasting Plan, if any.

- M. A closure plan including: an estimated amount of material to be excavated annually, estimated longevity of the operation, the maximum vertical faces and final grades, a re-vegetation plan, plans for future uses, timeline for closure, reclamation plans for inactive areas of quarry operations safety measures, phasing of the reclamation plan, and a cost estimate for closure site.
- N. Plan for Landscaping, screening and buffering the quarrying activity from abutters and any public roads and any measures to be used to control noise, dust, vibration, and pollution from the operation. An estimated amount of material to be excavated annually.

6.2 Performance Standards for Existing Quarries

A. General Requirements

- 1. Quarrying activities shall conform to all applicable State laws and local ordinances and regulations.
- 2. The owner and operator of a quarrying activity shall be responsible, both jointly and severally, for ensuring the maintenance of all infrastructures, structures and their sites.
- 3. In all cases, the applicant shall have the burden of proof that all requirements, standards, and conditions of this Ordinance and subsequent approval are met.
- 4. A copy of the license must be displayed on site at all times.
- 5. At no point shall the footprint of the active extraction area exceed three (3) acres and at no point shall the footprint of the entire operation exceed a total of five (5) acres.
 - c) The active extraction area must be reclaimed before next three (3) acres can be started.
 - d) Excavation may be done in 1 acre or other increments to ensure continuity of operation.
- 6. The maximum quantity of material that may be extracted per year is 2,500 cubic yards, not including overburden.

B. Erosion Control

Sediment may not leave the parcel or enter a protected natural resource. Soil erosion and sedimentation of watercourses and water bodies must be minimized by an active erosion and sedimentation control program. Erosion control plans shall show the location and installation details, a description of the timing of installation, inspection and maintenance of erosion control measures. The erosion control program shall be based on industry Best Management Practices and guided by applicable specifications contained in "Maine Erosion and Sediment Control Best Management Practices", published by the Maine Department of Environmental Protection, and, as applicable, the Maine Department of Environmental Protection's general permit for construction activity, enacted as part of the Maine Pollutant Discharge Elimination System.

C. Stormwater Management

Adequate provisions must be made for the collection and disposal of all stormwater from the quarry site, roads, driveways, parking areas, roofs, and other surfaces, through a stormwater drainage system and maintenance plan. Adequate provisions shall be made for the collection and disposal of water used during the quarrying activities. Stormwater runoff and runoff from water used during quarrying activities must not have adverse impacts on abutting or downstream properties or resources. "Adequate provision" means that the plan

effectively removes pollutants, prevents flooding, maintains the natural temperatures of receiving streams, and prevents the degradation of stream channels.

1. To the extent possible, the plan must retain stormwater and runoff from water used during quarrying activities on the site using the natural features of the site.
2. Stormwater runoff systems must detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate for the 2, 10, and 25-year, 24-hour duration storm event, provided that any system of detention for later discharge shall not cause significant stream channel erosion and destabilization from either the 2, 10, and 25-year, 24-hour duration storm or more frequent storms.
3. The applicant must demonstrate that on- and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, including, but not limited to, flooding and erosion of shoreland areas, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation.
4. All natural drainage ways must be preserved at their natural gradients and must not be filled or converted to a closed system unless approved by the Planning Board as part of this review.
5. The design of the stormwater drainage system must provide for the management of stormwater without damage to roads, driveways, adjacent properties, downstream properties, soils and vegetation.
6. The design of the storm drainage systems must be fully cognizant of upstream runoff that must pass over or through the site to be developed and provide for this movement.
7. The biological and chemical properties of the receiving waters must not be degraded by the stormwater runoff from the development site. The use of best management practices as prescribed in "Stormwater Management for Maine", published by the Maine Department of Environmental Protection, may be required.

D. Closure and Reclamation Plans

A quarry closure plan is required to be submitted with all license applications discussing and depicting the following:

1. Soil Stockpiling. Soil that is stripped or removed must be stockpiled for use in reclaiming disturbed land, unless it is demonstrated to the Planning Board that it is not needed for reclamation purposes. Soil stockpiles must be seeded, mulched, or otherwise stabilized. At least 4 inches of topsoil shall be used for final cover.
2. Highwalls, or quarry faces must be treated in such a manner as to leave them in a condition that minimizes the possibility of rock falls, slope failures and collapse. A highwall that is loose must be controlled by the use of blasting or scaling, the use of safety benches, the use of flatter slopes or reduced face heights or the use of benching near the top of the face or rounding the edge of the face.
3. The methods used to provide public safety for adjacent properties and provisions for fencing, signs, berms, or other site improvements reasonably necessary to assure safety at the site after quarrying activities are completed.
4. Vegetative cover. Vegetative cover must be established on all land being reclaimed except for quarry walls and flooded areas. Topsoil must be placed, seeded, and mulched within 30 days of

final grading if it is within a current growing season or within thirty (30) days of the start of the next growing season.

- a.) Vegetative material used in reclamation must consist of grasses, legumes, herbaceous, or woody plants or a mixture thereof. Plant material must be planted during the first growing season following the reclamation phase. Selection and use of vegetative cover must take into account ultimate height, maintenance requirements, soil and site characteristics such as drainage, pH, nutrient availability, and climate.
 - b.) The vegetative cover is acceptable if within one (1) growing season of seeding:
 - i. the planting of trees and shrubs results in a permanent stand, or regeneration and succession rate, sufficient to assure a 75% survival rate; and
 - ii. there are no obvious signs of erosion.
5. Structures and roads. All structures and access, haul, or other support roads must be reclaimed once no longer used, unless reserved for future productive use of the land, as described in the closure plan.
 6. Timeline of closure and reclamation. Closure and reclamation activities shall commence within twelve (12) months following the completion of quarrying operations. Operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period.
 7. Phased Closure. To the extent practicable, the area where quarrying operations has already occurred on the site shall be closed prior to the opening of any new on-site quarrying area, and reclamation procedures shall be carried out concurrently with quarrying operations. Standard closure shall commence in accordance with the timeline and phasing approved by the Planning Board. Standard performance guarantee requirements apply.

E. Petroleum Usage

If any petroleum products or other materials with potential to contaminate groundwater are to be stored on the site, a Spill Prevention Control, and Counter measures (SPCC) Plan shall be submitted. A SPCC Plan shall be developed in accordance with DEP regulations, Section 5A of Chapter 378 Performance Standards for the Storage of Petroleum Products (CMR 378), and shall be submitted with the application and kept with the license in the Town's records.

F. Buffering and Screening

The owner or operator shall provide and/or maintain effective year-round visual screening of the quarry operations. In those areas where fully effective visual screening is not feasible, the owner or operator shall make every reasonable effort, through screening, to minimize the visual impact of quarry activities to the neighbors. The design for such screening/buffering shall utilize existing land contours, artificially created berms, natural vegetation on site and plant material not presently on site, permanent fencing, walls or other techniques. All of the above shall be supplied and maintained by the owner or operator. The following provisions shall also apply:

1. Protected Natural Resources: Unless authorized pursuant to the Natural Resources Protection Act, Title 38, M.R.S.A., Section 480-C no part of any quarrying operation, including drainage and runoff control features shall be permitted within one hundred (100) feet, horizontal distance, of the normal high water line of a great pond, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. The Applicant must provide a sufficient benchmark on the property to indicate this setback.

2. Quarrying operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property. Any existing operation which is located less than fifty feet from the property line shall not be located any closer than the existing location without written permission from the adjacent property owner.
3. All buffers must be preserved in their natural vegetative state as existed 6 months prior to an application for a new quarry, or for an expansion to an existing quarry, in the natural vegetative state that existed at time of initial licensing by the Town.
4. The Planning Board may require as a condition of approval the applicant to take specific actions to insure the long-term effectiveness of any buffers or buffer yards, including, but not limited to, the planting of trees and/or shrubs, placement of solid fences or creation of berms when the natural existing vegetation does not provide a sufficient visual screen. The design of any fences, walls, berms or other structural screening shall be submitted to the Planning Board as part of the application. The owner or operator shall maintain the buffers to ensure that the continue to function in an effective manner. Dead trees and shrubs that are intrinsic to the buffer yard shall be replaced within one (1) year after they have died.
5. The applicant may elect to increase the width of the natural buffer area in order to achieve an adequate visual screen.
6. The visual screening requirement for the buffers is not a complete visual barrier. The screening, to be adequate, must provide a substantial year round visual barrier so that the active extraction area is not clearly, or unobstructively, visible from an abutting property or public road and by providing a continuous barrier which obstructs the view of the active extraction area by at least eighty (80) percent from all locations within one hundred fifty (150) feet from the active extraction area boundary.

G. Road and Driveway Design, Circulation and Traffic

1. Any new driveway or road shall conform to the standards set forth in the Town of Mount Desert Land Use Zoning Ordinance, Subdivision Ordinance, and in the Public Right-of-Way Ordinance, as applicable. Driveways or Access/egress roads leading to or from the quarry site to paved public ways shall be treated with suitable materials to reduce the production of dust and mud. The applicant shall include a choice of surface treatment in the permit application to the Planning Board.
2. The first 200 lineal feet from the intersection of the public road and the driveway or road leading to or from the quarry site to access/egress road along the access/egress road shall have a bituminous pavement surface, an alternate hard surface or crushed rock/stone surface to limit the tracking of unsuitable material onto the public road. The applicant shall include a choice of surface treatment in the permit application to the Planning Board.
3. The Planning Board upon the recommendation of the Public Works Director may require a paved apron to be constructed along the width of the intersection of the quarry road/driveway and the public road that extends into the quarry road a minimum of five-feet.

H. Ground Water Impacts:

1. Water Supply buffer:
 - a) A three hundred (300) foot buffer must be maintained between the edge of footprint of operation and any currently in use pre-existing private drinking water supply that is point

driven or is a dug well. This buffer requirement does not apply when the well belongs to the owner of the excavation site.

- b) A one hundred (100) foot buffer must be maintained between any active excavation area and any private drinking water well that is drilled in to saturated bedrock prior to the quarrying extraction activity.
 - c) A one thousand (1,000) foot buffer must be maintained between the edge of the active extraction area and any well or spring which qualifies as a public drinking water supply that was in use prior to the effective date of this division.
 - d) The Planning Board may require larger buffers from water supplies, if they find that a hazard is shown to exist due to the Quarrying Activity by a hydrogeologic study performed by a hydrogeologist licensed in the State of Maine. The hydrogeologic study will be paid for by the licensee if required by the Planning Board.
- 2. Excavation below the seasonal high water table is prohibited except if a Maine DEP variance is granted and a copy of the DEP variance approval is on file with the Town.
 - 3. In the event of excavation below the seasonal high water table, the operator of a quarrying activity that affects a public drinking water source or a 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 quarrying activity may have.
 - 4. In the event of excavation below the seasonal high water table, a three hundred (300) foot buffer must be maintained between the limit of excavation and any predevelopment private drinking water supply, and a one thousand (1,000) foot buffer must be maintained between the limit of excavation and any public drinking water source or area previously designated for potential use as a public drinking water source by a municipality or private water company. These separation distance requirements do not apply when the private water supply belongs to the owner of the excavation site.
 - 5. Water Use: The use of groundwater for quarrying operations is prohibited.
 - 6. Standards for Acceptable Ground Water Impacts
 - a.) No quarrying activity shall increase any contaminant concentration in the ground water to more than one half of the Federal Primary Drinking Water Standards at the property boundary. No quarrying activity shall increase any contaminant concentration in the ground water to more than the Federal Secondary Drinking Water Standards at the property boundary. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
 - b.) If ground water contains contaminants in excess of the primary standards, and the activity is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated, if necessary.

I. Signs

Any signs must comply with the standards of other applicable ordinances.

J. Noise

The best practicable means of reducing noise shall be employed which may including the use of sound reduction equipment, acoustic enclosures or sheds, limiting on-site speeds to no more than 10 mph, or other best industry practices for noise attenuation, to the extent permitted by state and federal laws and regulations.

K. Hours of Operation

The hours of operation for any and all activities shall not be earlier than 7:00 AM and not later than 4:00 PM, Monday through Saturday. The hours of operation shall not be revised, waived or modified by the planning board. Nothing contained herein shall be deemed to prevent the emergency maintenance or repair of equipment.

L. Dust Control

Dust generated by activities at a quarry, including dust associated with traffic to and from a quarry, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Dust control methods may include calcium chloride as long as the manufacturers labeling guidelines are followed.

M. Blasting

For operations involving blasting, the owner or operator shall maintain records of the blasting operation, provide for supervision of the blasting activity by a person qualified, experienced and regularly engaged in such work, and provide the Town with prior notice of the drilling and blasting activity as required by the Planning Board. Blasting for quarrying activities shall follow industry Best Management Practices and procedures set forth in Title 38 M.R.S.A., § 490-Z.

N. Lighting

Lighting must be shielded away from adjacent road, driveways and residential areas. Lighting shall be in conformance with the standards set forth in the Town of Mount Desert Land Use Ordinance.

ARTICLE 7 – PERFORMANCE GUARANTEES

7.1 Types of Guarantees

With submittal of the application for Final Plan approval, the applicant shall provide one of the following performance guarantees for an amount adequate to cover the total costs of all required closure plans, taking into account the time-span of phasing for reclamation, or closure schedule and the inflation rate for costs:

- A. Either a certified check payable to the Town or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account; or
- B. An irrevocable letter of credit from a financial institution establishing funding for the construction or closure plans of the activity, from which the Town may draw if closure, reclamation or construction is inadequate, approved by the Selectmen;

- C. The conditions and amount of the performance guarantee shall be determined by the Planning Board with the advice of a Licensed Professional Engineer, Code Enforcement Officer, Town Selectmen, and/or Town Attorney at the cost of the applicant if applicable.

7.2 Contents of Guarantee

The performance guarantee shall contain a closure and reclamation schedule, cost estimates for each major phase of the closure and reclamation process taking into account inflation, provisions for inspections of each phase of closure and reclamation process, provisions for the release of part or all of the performance guarantee to the license holder, and a date after which the license holder will be in default and the Town shall have access to the funds to finish closure activities and/or reclamation.

7.3 Escrow Account

For any account opened by the license holder, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the developer unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the developer and the amount withdrawn to complete the required improvements.

7.4 Letter of Credit

An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the complete closure and reclamation of the activity site and may not be used for any other project or loan.

7.5 Phasing of Development

The Board may approve phased performance guarantees, when an activity is approved in separate and distinct phase development.

7.6 Performance Guarantee Review

Any proof of financial capacity shall be reviewed no later than 60 days before the expiration of the guarantee, and adjusted if necessary. The applicant may also request adjustments in the guarantee.

7.7 Release of Guarantee

Prior to the release of any part of the performance guarantee, the Planning Board shall determine to its satisfaction, upon the report of a Licensed Professional Engineer and concurrence of the CEO and Board of Selectman, that the closure and reclamation meets or exceeds the design requirements for that phase of the closure or portion of the reclamation for which the release is requested.

7.8 Default

If upon inspection, CEO or other inspecting official finds that any of the required closure activities or reclamation has not been performed in accordance with the approved plans and specifications, he/she shall so report in writing to the Municipal Officers, the Planning Board, and the license holder and guarantor. The license holder shall have 30 days unless otherwise specified by the CEO, to remedy any insufficiency noted. Thereafter, Municipal Officers shall take any steps necessary to enforce the guarantee and remedy the insufficiencies.

7.9 Improvement Guarantees

Performance guarantees may be required for all offsite improvements required by this Ordinance, when the Board finds that the scale of the improvements warrants.

ARTICLE 8 – ENFORCEMENT AND INSPECTIONS

8.1 Closure and Reclamation Certification

Upon completion of the site closure, reclamation or a reclamation phase, the landowner/applicant shall, at his/her own expense, have a Licensed Professional Engineer provide to the CEO a written certification that the closure or reclamation is in compliance with the approved plans. The CEO shall report the findings to the Planning Board at the next regularly scheduled board meeting.

8.2 Annual Compliance Inspections

An annual compliance Inspection shall be conducted by the CEO prior to the anniversary date of the license. The CEO shall issue a Report of Inspection Compliance, provided he/she determines that the license holder has not deviated from the approved plan. If the CEO determines that the license holder has deviated from the approved plan, the CEO shall issue a Report of Inspection Non-compliance. An annual compliance inspection fee shall be as determined by the Board of Selectman in the Town of Mount Desert fee schedule. Reports shall be provided to the Planning Board, the Selectmen, and license holder.

8.3 Expiration of Approval

Activity licenses for new quarries shall expire three (3) years from the date of issuance unless the activity is started.

8.4 Renewal of License

All Quarrying Licenses shall be renewed annually by the CEO, prior to the original permit approval date obtained from the Planning Board, provided that they are in compliance with their original approvals. Discontinued or reoccurring quarrying activities require new permits to resume operations.

8.5 Five Year Review Process

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

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

The Planning Board may, as part of the renewal process, impose new conditions on the license or modify the license in any way necessary to assure compliance with the license being reviewed and

the Ordinance as it is in effect at the time of renewal. If there has been a history of significant non-compliance, the Planning Board may deny the request for license renewal. A quarrying activity cannot be expanded beyond its original license area as part of the 5-year review process. Any expansion not allowed in the initial application must be processed as a separate application under the ordinance in effect at the time of expansion application.

8.6 Violations

- A. No quarrying plan shall be recorded in the Registry of Deeds until a Final Plan has been approved and signed by the Planning Board in accordance with this Ordinance.
- B. No person, corporation or other legal entity may sell or offer to sell any materials in a Quarry site which has not been approved by the Planning Board and recorded in the Registry of Deeds.
- C. No public utility shall serve any quarry activity site for which a final Plan has not been approved by the Planning Board and recorded in the Registry of Deeds.
- D. No development of the infrastructure of a quarry site may begin until Final Plan approval by the Planning Board and recording in the Registry of Deeds. Development includes the grading and construction of roads, utility installations, and construction of buildings or structures.
- E. The Code Enforcement Officer may, after notice and hearing, withhold approval or revoke any previous approvals, given to any applicant, owner or operator who is found in violation of this ordinance, until the violations are corrected.
- F. Any operation that is in violation of other approvals (such as DEP Intent to Comply or DEP permits) covering the same operation shall be deemed in violation of approvals granted under this ordinance.

8.7 Quarrying Plan Amendments After Approval

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

8.8 Enforcement

- A. The Code Enforcement Officer of the Town of Mount Desert, Maine, shall enforce this Ordinance and is authorized to institute legal proceedings with the approval of the Town's Board of Selectmen to enjoin violations of this Ordinance. In the absence of a CEO, enforcement actions would fall to the Board of Selectmen of the Town of Mount Desert.
- B. If the Code Enforcement Officer finds violation of any provision of this ordinance or failure to comply with any order, permit, approval, condition or other final decision or action of the Planning Board that constitutes a substantial and immediate danger to the health, safety or welfare of any person(s), or property or environment of the Town of Mount Desert, Maine, said Town may initiate immediate injunction proceedings to abate or correct such violations.
- C. In any action to enforce any provision of this Ordinance where the Town of Mount Desert, Maine is the prevailing party, the Town shall be awarded reasonable attorney fees, expert witness fees, and costs unless the court finds that special circumstances make the award of these fees and costs unjust. If the defendant is the prevailing party, the defendant may be awarded reasonable attorney fees, expert witness fees, and costs provided by court rule.

8.9 Penalties

- A. Any person, firm or corporation, being the owner or having control or use of any activity in violation of any of the provisions of this Ordinance or terms or conditions of any order, permit or approval or final decision of the Planning Board shall be subject to a civil penalty due and payable to the Town of Mount Desert, Maine in accordance with 30-A M.R.S.A. §4425.
- B. Payment of any penalty shall be made in cash or by certified check drawn on a recognized financial institution, made payable to the Town of Mount Desert, Maine in an amount equal to the full amount of the penalty unless otherwise determined by order of the court.

ARTICLE 9 – AMENDMENTS OF THIS ORDINANCE

9.1 Initiation of Amendment

An amendment to this Ordinance may be initiated by:

- A. The Planning Board on their own initiative, provided that a majority of the Board has so voted; or
- B. Request of the Board of Selectmen to the Planning Board; or
- C. Written petition to the Selectmen bearing signatures of registered voters of the Town of Mount Desert, Maine numbering at least ten percent (10%) of the number who voted in the last gubernatorial election in accordance with the provisions of the Town Charter.

9.2 Adoption of Amendment

All proposed amendments to this Ordinance shall be referred to the Planning Board for their recommendation. The Planning Board may hold a public hearing on any proposed amendment. Within forty five days of receiving a proposed amendment, the Planning Board shall make known their recommendation to the Board of Selectmen. After receiving the recommendation of the Planning Board and approved by the Board of Selectmen, the amendment shall be voted on by the voters of the Town of Mount Desert, Maine at a Town Meeting, a majority vote being required for adoption. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

ARTICLE 10 – OTHER PROVISIONS

10.1 Adjoining Quarrying activities under common scheme of development

Adjoining activity under common scheme of development separated by less than 500 feet of unaffected land shall be required to fulfill all the requirements as established in this ordinance for the total size of the extraction area, including the adjoining site. The CEO shall have the right of entry onto any activity site at reasonable times and with reasonable notice.

ARTICLE 11 – DEFINITIONS AND REFERENCES.

For the purposes of this Ordinance, the following terms, words, and phrases shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings. Words used in the present tense shall include the future tense. Words used in the singular shall include the plural. Where so indicated by the text, these definitions also include substantive regulations. Where reference is made to Town or State laws, ordinances, or regulations, each reference to a particular law, regulation, or section shall include all amendments and successor sections. Where there is a conflict between the language contained in this ordinance and any other town ordinances, the stricter language shall apply for purposes of this division.

11.2 References to the town.

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

11.3 References to other documents.

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

11.4 Definitions.

Abandonment. Failure to make application for license renewal within one (1) year of license revocation or expiration.

Abutting Property. Any lot which is physically contiguous with the subject lot even if only at a point and any lot which is located directly across a street or right-of-way from the subject lot such that the extension of the side lot lines of the subject lot would touch or enclose the abutting property.

Active Extraction Area. The quarry itself, the actual hole in the ground, including side slopes and adjoining areas with overburden removed, excluding roads, structures, stockpiles, etc., which is being worked to produce stone and/or that is yet to be reclaimed.

Aquifer. An underground bed or stratum of earth, gravel or porous stone that contains water.

Average Daily Traffic (ADT). The average number of vehicles per day that enter and exit a premises or travel over a specific section of road.

Bedrock. The solid rock that underlies loose material, such as soil, sand, clay, or gravel.

Blasting. The use of explosives to break up or otherwise aid in the extraction or removal of rock or other consolidated natural formation.

Blasting plan. A required written outline of all procedures and policies regarding blasting where such activity is proposed to be used. Performance standards for such plan are set forth in section 6-73(8) of this division.

Borrow pit. A development undertaken for the primary purpose of excavating sand, gravel or fill. This does not include any excavation for rock or clay.

Buffer. A natural, undisturbed area or belt of land that contains vegetation. A buffer area may be larger than specified in this division. Includes, but is not limited to earthen berms planted with vegetation.

Bufferyard. An area that contains a belt of natural vertical vegetation tall enough and thick enough to visually screen the proposed activities from the adjacent area.

Building. A roofed structure.

CEO. Code Enforcement Officer.

Coastal Wetland. All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service Association. Coastal wetlands may include portions of coastal sand dunes.

Common Scheme of Development. The process whereby contiguous parcels with existing or proposed quarrying operations where the applicant or property owner has at least a 30% share in ownership or where quarrying operations owned by a relative (as defined herein) are reviewed as a single license application.

Compliance inspection. An examination by the code enforcement officer done on a recurring basis that shall check for compliance of the operations with the conditions and requirements of the license.

Constructed. Includes built, erected, altered, reconstructed, moved upon, or any physical operations on the premises, which are required for construction. Excavation, fill, drainage, and the like, shall be considered a part of construction.

Deemed Complete. Deemed Complete shall mean that the quarry activity sufficiently meets the section and plan requirements outlined in the permit or license issued by the planning board, or when less than one hundred (100) cubic yards of material are removed in any consecutive twelve (12) month period.

Development. A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

Driveway. A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, serving not more than two lots.

Emergency Operations. Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

Environmentally sensitive areas. Wetlands, swamps, wildlife habitat areas delineated by the Department of Inland Fisheries and Wildlife (IF&W), prime agricultural areas, areas with steep slopes, areas with poorly drained soils, and flood plain areas (subject to a 100-year flood). Also to include protected natural resources. Environmentally sensitive areas shall specifically include all areas within

the resource protection district, as defined in the Town of Mount Desert Land Use Ordinance.

Expansion of operation. Excavation operations that exceed the approved footprint of operation.

Fence/Wall, Solid. Any fence or wall in which the individual solid portions visually exceed the open portions. The individual solid portions shall not exceed twelve (12) inches in width.

Flood Plain. Flood- Plain Or Floodplain. The lands adjacent to a body of water which have been or may be covered by a regional flood. (See Flood Plain Ordinance)

Footprint of operation. The uppermost, and outermost continuous edge, or rim, or outline (drawn on a plan and physically staked on the ground), around the approved "active extraction area(s)", "unreclaimed area(s)" and "stockpile(s)", and all land upon which stumps, spoil, or other solid waste will be or has been deposited; and any storage area that will be or has been used in connection with the development, except a natural buffer strip. The footprint of operation shall be the footprint so identified on a site plan approved by the Planning Board.

Forested Wetland: A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.

Foundation. The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick or similar material.

Freshwater Wetland. Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

1. Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
2. Inundated or saturated by surface or ground water at a frequency and for duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

Guarantee. An irrevocable letter of credit issued by a financial institution or a performance bond.

Gravel Pit. A mining operation undertaken primarily to extract and remove sand, fill or gravel.

Great Pond. Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner,

Groundwater. The water beneath the surface of the ground, consisting largely of surface water that has seeped down; the source of water in springs and wells.

Edge of footprint. The outermost boundary of the "footprint of operation".

High Water, High-Water, Or Highwater: See Normal High-Water Line.

Inactive. Quarrying that has ceased for twelve (12) consecutive months prior to the passage of this ordinance, in any areas where quarrying activity had previously occurred.

Lot (Tract). A parcel of land described on a deed, plot, or similar legal document, and is all contiguous land within the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate parcel or tract of land unless such road was established by the owner of land on both sides of the road thereof after September 22, 1971.

Maximum seasonal high groundwater level. The upper level at which the groundwater table normally is located during the season of the year when such levels are at their highest. In order to determine such level, a test pit reviewed by a soil analyst or groundwater data for a minimum of one year must be gathered and analyzed. Adjustments may be made by the Planning Board for extreme seasonal variations.

M.R.S.A. (Maine Revised Statutes Annotated) Maine State Law

Noise Attenuation. A reduction in the level of a noise source using substance, materials or surface, such as an earthen berm and/or dense wall.

Normal High-Water (High Water Or Highwater) Line (Non-Tidal Waters). That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the great pond during the period of normal high-water are considered part of the great pond.

Overburden. The material (soil, rock, etc.) which overlies good stone in a quarry. Overburden does not include the material that remains after economically valuable stone has been extracted.

Phasing of operations. A plan of completion of the operations in separate and distinct sequences that have a complete beginning and ending for predetermined areas. In the context of this ordinance, all phases must be structured so that they stand on their own, shall be inspected for completeness at the end of each phase and have reclamation of area completed at the end of each phase.

Pit. See active extraction area.

Preblast survey. Documentation prior to the initiation of blasting of the condition of buildings, structures, wells or other infrastructures and of protected natural resources, historic sites and unusual natural areas.

Processing. Any washing, crushing, or similar processing of on-site material that does not inherently change the nature of the product.

Projections of groundwater quality. An analysis of the potential changes to existing groundwater quality by examining the processes, chemical byproducts and outflow of a proposed operation.

Property (Premises): A lot together with any structures and other physical facilities which are located on it.

Protected natural resource. Wetlands, Great Ponds, significant wildlife habitat, fragile mountain areas, freshwater wetlands, bog, marsh, rivers, streams or brooks, as the terms are defined in applicable Town or state law.

Quarry. A place where rock or large stone is separated from the bedrock. The term does not include gravel pits or borrow pits.

Quarrying. The act of separation of rock or large stone from the bedrock.

Reclaimed area. Land within the footprint of operation that has already been reclaimed.

Reclamation area. Land within the footprint of the Quarry area that was previously excavated or mined, and is now being prepared, or available, for reclamation.

Reclamation. The rehabilitation of the area of land affected by quarrying, including, but not limited to the stabilization of slopes and creation of safety benches, the planting of forests, the seeding of grasses, legumes, or crops for harvest, or the enhancement of wildlife and aquatic resources, and the development of the site for permitted residential, commercial, or recreational uses.

Reclamation plan. A plan which depicts how the project area will be reclaimed after excavation is complete. Such a plan shall include final grading and re-vegetation plans and conceptual redevelopment plans, if any, of any given phase.

Relative. Relative means a spouse, parent, grandparent, brother, sister, child, aunt, uncle, cousin, domestic co-habitant or grandchild related by blood, marriage or adoption, or other individuals where the intent is to circumvent the ordinance.

Road. A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

Rock. A hard nonmetallic material that required cutting, blasting or similar methods of forces extraction.

Screening: (1) A method of visually shielding or buffering one abutting or nearby structure or use from another by fencing, berms, walls, or densely planted vegetation; (2) removal of relatively coarse floating and or suspended solids by straining through racks or screens.

Setback. The horizontal distance measured in a straight line from any property line, shoreline, road (or edge of legally established right-of-way if no road exists) abutting a lot or property to the nearest part of a structure or other regulated object or area. Setback shall apply to all sides of a lot having shore frontage or road frontage, unless stated otherwise within this Ordinance. For the purpose of setback requirements, fences, walls, signs, roads, parking areas & driveways shall not be considered structures, except that walls roads, parking areas, and driveways must meet shoreline setbacks. Where the setback is from a private right-of-way, the setback shall be equal to the property line setback requirements of the district in which the property is located.

Shoreland Zone. The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line

of a stream. The Shoreland Zone, as defined in the preceding sentence, shall also include the area of any lot up to where the zone designation changes as indicated on the Zoning Map.

Stockpile(s). Area(s) where either man-made or natural materials are being piled up temporarily, either undercover or exposed to the elements, for future processing. These piles are only for materials that are necessary for quarrying activities and associated uses which have been approved by the Planning Board.

Stop work order. An order from the Town of Mount Desert to cease a specified activity.

Street. See Road.

Stream. A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water flows to another water body or wetland within the shoreland area.

Topsoil. The top layer of soil that is predominantly fertile and ordinarily moved in tillage or the equivalent of such a layer in uncultivated soils.

Tributary Stream: A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

Unreclaimed area. Land within the footprint of operations of the gravel pit that has been excavated or mined and has not been reclaimed.

Upland Edge Of A Wetland. The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) feet) tall or taller.

Vegetation. All live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level.

Water Body, Waterbody: Any great pond, or stream.

Water table. The upper surface of groundwater, or that level below which the soil is seasonally saturated with water.

Wetland. a freshwater or coastal wetland.