

Town of Dixmont, Maine

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DRAFT of proposed
Dixmont Mining Ordinance 2023

Attest: A True Copy

Julie Bonin, Town Clerk

Dixmont Mining Ordinance

SECTION I. PURPOSE

Aggregate, Topsoil, and Metallic Mineral Mining:

To define and regulate the excavation, extraction, processing, storage and transportation of sand, gravel, crushed stone, rock, topsoil, borrow, and metallic minerals in the Town of Dixmont, such that said activities are so defined and regulated to:

- A. protect the health, safety and welfare of the public;
- B. preserve and protect the quality and quantity of surface water and ground water, and the aquifer in which the ground water is contained, for current and future use of the residents of the Town;
- C. minimize adverse impacts, such as noise, traffic, dust, etc. on neighboring properties and the quality of life of the residents of the Town and to protect the public roads from degradation;
- D. minimize adverse impacts on wildlife, existing natural features and historic areas within the Town thereby preserving the town's rural character;
- E. preserve the usefulness of the land and its capacity to be an asset to the Town and its residents;
- F. to prohibit industrial-scale metallic mineral mining operations and establish an orderly review process for community-scale metallic mineral mining operations.

SECTION II. DEFINITIONS

It is the legislative intent of the voters of the Town, in adopting this Ordinance, that all provisions of this Ordinance be liberally construed to protect the health, safety, and welfare of the inhabitants of the Town. In the construction of this Ordinance, the word "including" means "including, but not limited to" and references to Maine statutes and Maine state department or agency rules include any amendments and successor provisions. In addition, the following definitions apply:

Aggregate and Topsoil Mining: For the purposes of this Ordinance, Aggregate and Topsoil Mining shall include mining for sand, gravel, crushed stone, rock, topsoil, loam, and borrow.

Applicant: A person with sufficient right, title, or interest to submit an application for a permit pursuant to this Ordinance, and includes any duly authorized designee or agent of the applicant.

Beneficiation: The treatment of ore to liberate or concentrate its valuable constituents, including crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining, and roasting in preparation for leaching to produce a final or intermediate product that does not undergo further processing.

Bulk Sampling: The removal of samples for the purpose of testing to determine the feasibility, method, or manner of extraction or processing of metallic minerals. "Bulk sampling" includes drilling and boring, digging of shafts and tunnels, and digging of pits and trenches.

Discontinued Mining Pit: The term 'Discontinued Mining Pit' shall mean a Mining Pit which is no longer permitted by the Dixmont Planning Board. A Mining Pit may be designated as discontinued due to either expiration of or revocation of

an existing permit. A permit may be revoked as set forth in Section VIII.H or Section IX.D.1.e.1). A discontinued Mining Pit shall be restored according to the provisions set forth in Section IX.D.

Exploration or Exploration Activity: Any bulk sampling or exploratory activity associated with a metallic mineral mining operation.

Groundwater: 'Groundwater' shall mean all water found beneath the surface of the ground. For the purposes of aquifer protection, this term refers to the slowly moving subsurface water present in the aquifers and recharge areas.

Hydraulic mining: A form of mining that uses high-pressure jets of water to dislodge rock material or move sediment.

Maine Metallic Mineral Mining Rules: Title 38, Sections 490-LL et seq. of the Maine Revised Statutes Annotated, and the MDEP rules promulgated thereunder, including 96 C.M.R. Ch. 200.

MDEP: The Maine Department of Environmental Protection and any successor agency.

Metallic Mineral: Any ore or material to be excavated from the natural deposits on or in the earth for its metallic mineral content to be used for commercial or industrial purposes. "Metallic mineral" does not include ores of thorium or uranium.

Metallic Mineral Mining Operation: The extraction of metallic mineral for commercial sale, by any person or persons acting in concert, and any associated exploration activities. A metallic mineral mining operation is classified as "community-scale" or "industrial-scale" as follows:

A. Community-Scale Metallic Mineral Mining Operation: Any metallic mineral mining operation which:

1. extracts less than 10,000 tons of mine waste per calendar year, regardless of the number of extraction sources, sites, or facilities used; and
2. has a mining area of less than three acres; and
3. extracts less than an aggregate of 10,000 tons of bulk sampling material within a 10-year period as part of any exploration activity. A community-scale metallic mineral mining operation is allowed with a permit, subject to the requirements of this Ordinance.

B. Industrial-scale Metallic Mineral Mining Operation: Any metallic mineral mining operation which:

1. extracts 10,000 or more tons of mine waste per calendar year, regardless of the number of extraction sources, sites, or facilities used; or
2. has a mining area of three acres or greater;
3. or extracts an aggregate of 10,000 or more tons of bulk sampling material within a 10-year period as part of any exploration activity. Industrial-scale metallic mineral mining operations are prohibited.

Mine Waste: All material, including overburden, rock, ore, tailings, and other mining-related materials, that has been exposed or removed from the earth during exploration or mining activities.

Mining: 'Mining' shall be an inclusive term referring to the excavation of the following materials: sand, gravel, crushed stone, soil, loam, and metallic minerals which are excavated, extracted, processed, stored and transported in Mining Operations.

Mining Area: The aggregate land area devoted to mining and exploration activities, including: (i) land from which earth material is removed in connection with mining and exploration activities, (ii) land on which material from mining is stored or deposited, (iii) land on which beneficiating or treatment facilities (including groundwater and surface water management treatment systems) are located, and (iv) land on which water reservoirs used in a mining operation are located.

Mining Extraction and Excavation: The terms 'Mining Extraction' and 'Mining Excavation' shall mean the removal of sand and gravel, bedrock, soil, or metallic minerals from their natural site of geologic deposition or formation.

Mining, Mining Operation, or Mining Activity: Any activities, facilities, or processes necessary for the extraction or removal of metallic minerals or overburden or for the preparation, washing, cleaning or other treatment of metallic minerals. "Mining" includes the bulk sampling, exploration, extraction, or beneficiation of metallic minerals, as well as waste storage and other stockpiles and reclamation activities.

Mining Pit: The term 'Mining Pit', also referred to as 'Pit', shall mean the portion(s) of a Parcel used in the excavation, extraction, processing, or storage of sand, gravel, crushed stone, soil, or metallic minerals for which a permit is required and issued. Acreage previously excavated which has been restored in accordance with Section IX.D. will not be counted as part of the Mining Pit in determining pit size for application fee purposes.

Mining Processing: The term 'Mining Processing' shall mean the screening, sorting, crushing or other processing of geologic material extracted or excavated.

Mining Storage: The term 'Mining Storage' shall mean the storage of sand, gravel, crushed stone, soil, or metallic minerals stockpiles or other forms.

Mining Transportation: The term 'Mining Transportation' shall mean using the public roads in Dixmont to haul sand, gravel, crushed stone soil, or metallic minerals, except for the purposes of snow plowing and sanding operations.

Monitoring Well, Piezometer: The term 'Monitoring Well' shall mean a well installed at sufficient depth to permit measurement of the average seasonal high water table and of sufficient capacity to permit withdrawal of acceptable water samples for analysis. A piezometer is an example of a satisfactory monitoring well.

Ore: Rock containing sufficient metallic mineralization to process using technologies that exist at the mining operation.

Overburden: Soil, rock, or other materials which lie above or between the natural mineral deposits to be mined.

Parcel: The term 'Parcel' shall mean all contiguous land in the same ownership within which a Mining Pit is located.

Person: An individual, firm, partnership, association, company, limited liability company, corporation, joint venture, municipality, governmental entity, or other legal entity.

Plan: The term 'Plan' shall refer to the to-scale plan, normally prepared by a licensed professional, required by Section VIII.C.2. of this Ordinance.

Restoration: The term 'Restoration' shall refer to restoration procedures set forth in Section IX.D.1 of this Ordinance.

Tailings: The product resulting from the milling and mineral concentration process remaining after extraction of minerals by physical or chemical means.

Water Table: The term 'Water Table' shall mean the upper surface of groundwater below which the soil is saturated with water.

SECTION III. AUTHORITY

This Ordinance shall be known as the "Town of Dixmont Mining Ordinance" and is referred to herein as "this Ordinance." The Town of Dixmont is referred to herein as "the Town."

A. Aggregate and Topsoil Mining:

This ordinance is adopted pursuant to and consistent with Title 30-A MRSA, Sections 3001 et. seq. and may be known and cited as "Dixmont Mining Ordinance".

B. Metallic Mineral Mining

Maine Constitution, Article VIII, Part Second, 30-A M.R.S.A. § 2101 et seq. (municipal home rule), 30-A M.R.S.A. §§ 3001-3006 (ordinance power), and 38 M.R.S.A. § 490-NN(3) (regulation of metallic mineral mining by local units of government).

SECTION IV. EFFECTIVE DATE

The effective date of this Ordinance shall be at such time as it shall be signed by a majority of the Select Board of the Town of Dixmont, pursuant to authority of a duly called and validly held Town Meeting. Permits applied for and/or granted prior to the effective date of this Ordinance shall remain subject to the provisions of the Dixmont Mining Ordinance and Site Plan Review Ordinance effective at the time of application until such time as these permits expire.

SECTION V. VALIDITY AND SEVERABILITY

Should any section or provision of this Ordinance be declared invalid by any court of competent jurisdiction, such decision shall not invalidate any other section or provision of this Ordinance, and to this end the provisions of this Ordinance are hereby declared to be severable.

SECTION VI. CONFLICT WITH OTHER ORDINANCES

This Ordinance shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other rule, regulation, by-law, permit, or provision of law. Where this Ordinance imposes a higher standard, the provisions of this Ordinance shall prevail. This Ordinance does not relieve a person of the obligation to comply with all other applicable state, federal, or local laws, rules, and ordinances, including the Maine Metallic Mineral Mining Rules.

SECTION VII. APPLICABILITY

A. Activities requiring permits: all activities covered by this section will require permitting through the Town of Dixmont as well as any required by relevant State of Maine and/or federal laws.

B. Prohibited Activities. The following activities are prohibited by this Ordinance:

1. Industrial-scale metallic mineral mining operations,
2. Any exploration or mining activities that do not comply with the requirements of this Ordinance, and no permit shall be issued under this Ordinance to a mining operation that includes:

- a. Heap, percolation or in-situ leaching
 - b. Mining for thorium or uranium ore
 - c. Block caving
 - d. Hydraulic mining
 - e. Wet mine waste units and tailings impoundments are prohibited, except that a mining operation may place into a mine shaft waste rock that is neutralized or otherwise treated to prevent contamination of groundwater or surface water
3. Subdividing land parcels to avoid permitting under this Ordinance shall not be allowed.

C. Activities subject to the requirements of this Ordinance

1. Aggregate and Topsoil Mining: the scope of excavation, extraction, processing, storage and transportation of sand, gravel, crushed stone, soil and loam exceeds five hundred (500) cubic yards of material.
2. Metallic Mineral Mining (see definition in Section II)
 - a. Industrial-scale Metallic Mineral Mining is prohibited.
 - b. Community-Scale Metallic Mineral Mining Operation: Any metallic mineral mining operation which (i) extracts less than 10,000 tons of mine waste per calendar year, regardless of the number of extraction sources, sites, or facilities used; and (ii) has a mining area of less than three acres; and (iii) extracts less than an aggregate of 10,000 tons of bulk sampling material within a 10-year period as part of any exploration activity. A community-scale metallic mineral mining operation is allowed with a permit, subject to the requirements of this Ordinance
3. Exploration Activities
 - a. At least sixty (60) days before commencing any exploration activities, the applicant must notify, by certified USPS first class mail, return receipt requested:
 - 1) the Town of Dixmont Planning Board and Code Enforcement Officer shall determine if a permit is required per Town of Dixmont Ordinances.
 - 2) all owners of property located within 1,000 feet of any property line of the exploration activities.
 - b. The notice must contain a description of the planned exploration activities, including:
 - 1) estimated quantities and dates of material that will be removed to obtain samples;
 - 2) a map identifying the exact location (latitude and longitude) of each drill hole, test pit, mud pit, trench, or other site to be used for excavations or bulk sampling;
 - 3) and a statement signed by a Maine licensed qualified professional certifying that exploration activities shall be conducted in accordance with the requirements of this Ordinance and the Maine Metallic Mineral Mining Rules.
 - c. Any exploration activities that are occurring in lawful operation within the Town as of the date of applicability of this Ordinance may continue but the operator must give the notices required by this section within 30 days of the effective date of this Ordinance. Said notices must identify:
 - 1) all existing and any new drill holes, test pits, mud pits, trenches, or

- 2) other sites that, as of the date of applicability, are, or will be, used for exploration activities or bulk sampling, and
- 3) the actual and estimated quantities of material that is, or has been, or will be, removed to obtain samples along with the actual and estimated dates of removal.

SECTION VIII. ADMINISTRATION

A. Permit Required. Permits shall not be transferable. No person shall engage in, or permit, the excavation, extraction, processing, storage or transportation of sand, gravel, crushed stone, rock, topsoil, borrow, or metallic minerals (said activities hereinafter "Mining Operations") where the scope of such operations exceeds or will exceed:

1. Aggregate and Topsoil Mining:

- a. An operation from which more than five hundred (500) cubic yards of material have or will be removed without first obtaining a permit (said permit hereinafter "Mining Permit") from the Dixmont Planning Board.
- b. Each mining excavation shall require a separate permit. Expansion of existing mining operations require a separate permit.
- c. Maximum un-reclaimed pit size shall not exceed five (5) acres and no more than two (2) operating pits per parcel

2. Metallic Mineral Mining:

- a. Expansion of existing mining operations require a separate permit.
- b. Maximum un-reclaimed pit size shall not exceed three (3) acres and no more than two (2) operating pits per parcel

B. Application Fee. An application fee for a Mining Permit required by this Ordinance shall be paid with the application. The fee, which is non-refundable, shall be paid to the Town of Dixmont, shall accrue to the Code Enforcement Fund and shall be used for the administration and enforcement of Town ordinances. An application shall not be considered by the Planning Board until such fee has been received by the Town. The amount of the fee is as follows:

1. Aggregate and topsoil:

- a. For mining exploration:
 - 1) Less than a 100 SF of ground disturbance = \$0
 - 2) More than 100 SF of ground disturbance = \$100
- b. Permit fee for mining:
 - 1) 500 or less cubic yards = \$0
 - 2) Over 500 cubic yards but less than 3 acres of ground disturbance = \$1000
 - 3) Between 3-5 acres of ground disturbance = \$2,000

2. Metallic Mineral:

- a. For mining exploration:
 - 1) Any exploration up to 100 SF = \$500
 - 2) \$100 per each additional 100 SF of ground disturbance
- b. Permit fee for mining:
 - 1) \$2,500 for any metallic mineral mining

C. Application: The Town of Dixmont does not have a formal application for Mining Operations. An applicant for a Mining Permit instead shall provide, in writing, all information required below. A fully executed original and nine copies of the application shall be submitted to the Dixmont Town Office not less than fourteen (14) days prior to a regularly scheduled meeting of the Board. The application shall contain the following:

1. General information. (Note: Items a. – g. shall be entered on the Dixmont Mining Ordinance Permit Application cover sheet. Answers to items h. – k. shall be inserted in the body of the application.)
 - a. Name and current address of owner of record of the Parcel on which Mining Operations are proposed.
 - b. Name and current address of the applicant (individual, firm or corporation) seeking the Mining Permit, if different from the parcel owner.
 - c. Name assigned to the proposed Mining Operations.
 - d. Length of permit applied for (may not exceed three [3] years).
 - e. The location on the property in which the mining operation is proposed to occur.
 - f. The assessors' tax map and lot number of the Parcel on which Mining Operations are proposed.
 - g. A copy of the deed, option to purchase, lease, or other evidence of the applicant's title, right or interest in the Parcel.
 - h. The status of the property taxes.
 - i. Names and addresses of all owners of property within five hundred (500) feet of the property lines of the Parcel on which Mining Operations are proposed; and the assessors' tax maps and lot numbers of those properties.
 - j. The name and registration number of the land surveyor, engineer, soils scientist, and/or similar professional(s), if any, who prepared the Plan (required in Section VIII C.2. below) submitted on behalf of the applicant.
 - k. A statement from a bank or other financial institution indicating that the applicant has sufficient resources to fulfill the obligations required by this Ordinance (including Restoration as hereinafter defined) and any other activities which may be required by the Planning Board.
2. Existing Conditions:
 - a. The applicant shall provide a to-scale plot plan (hereinafter "Plan") showing:
 - 1) location, bearings and distances of all property lines of the Parcel on which Mining Operations are proposed.
 - 2) location of all properties abutting the Parcel, the names of the owners of these abutting properties, and the assessors' tax map and lot number of abutting property.
 - 3) existing elevations and contours of the land both within and extending one hundred (100) feet beyond the boundaries of the Parcel at intervals not to exceed ten (10) feet in elevation. The scale used to define contours shall appear on the Plan and be expressed in "feet above sea level".
 - 4) locations, names and widths of existing roads and rights-of-way within or adjacent to the Parcel on which Mining Operations are proposed.
 - 5) direction of existing surface water drainage (flow) across the Parcel.

- 6) location of any private water supplies located within three hundred (300) feet of any boundary of the proposed Mining Operations.
 - 7) location of any public water supply located within 1,000 feet of any boundary of the proposed Mining Operations (to be distinguished from the property boundary).
 - 8) location of open drainage courses (streams and springs), wetlands, stonewalls, graveyards, fences, stands of trees, and other important or unique natural areas and site features within the Parcel on which Mining Operations are proposed, including, but not limited to, floodplains, deer wintering areas, significant wildlife habitats, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources, together with a descriptions of such features.
- b. The applicant shall provide documentation of the average seasonal high water table level (expressed in feet above mean sea level) within the area where Mining Operations are proposed. The water table shall be determined by use of monitoring wells. At least one monitoring well shall be installed for each five (5) acres, and additional fraction thereof, of proposed Mining Operations in order to determine the average seasonal high water table of the entire area for which a Mining Permit is sought.
 - c. The applicant shall provide documentation of water quality as determined from samples taken from each monitoring well. Field parameters measured and recorded at each sampling event shall be pH, specific conductance, turbidity, and temperature. Laboratory analyses shall include iron, manganese, Volatile Petroleum Hydrocarbons and Extractable Petroleum Hydrocarbons. Samples shall be taken by a certified professional hydrologist or registered professional engineer and analyses shall be completed by an approved laboratory.
3. Proposed Pit: On the to-scale plot plan required in Section VIII C.2.a. above, the applicant shall also indicate:
 - a. the portion of the Parcel for which the applicant seeks a Mining Permit (hereinafter called the "Mining Pit" or "Pit").
 - b. the surveyed location, bearings and distances of the boundaries of the Mining Pit.
 - c. location of all setbacks and buffers within the Parcel.
 - d. the area, in acres, of the Pit.
 4. Proposed Operations: On the to-scale plot plan required in Section VIII C.2.a. above, the applicant shall also indicate, with color, grids or other means:
 - a. the area(s) of proposed Mining Operations during the life of the permit.
 - b. the area(s) of proposed Restoration during the life of the permit.
 - c. if applicable, the area(s) of Mining Operations during the life of the immediate prior permit.
 - d. if applicable, the area(s) of Restoration during the life of the immediate prior permit.
 - e. the buffer strip(s) to be maintained as required in Section IX. A.
 - f. the location of all access roads, existing and proposed, from a public roadway to the proposed Pit.

- g. the location and dimensions of all buildings and structures, existing and proposed, whether temporary or permanent, within the Parcel.
 - h. the size, location, intensity and direction of all outdoor lighting.
 - i. location of any proposed hazardous material storage areas including, but not limited to, fuel storage and handling.
 - j. location of observational well(s), existing or to be installed, to be used to monitor the separation distance between the excavation floor of the Pit and the average seasonal high water table elevation.
 - k. The estimated longevity of the Mining Pit based on anticipated removal rates.
 - l. A written plan describing how setback and screening requirements as set forth in Sections IX.A. & IX.B. shall be met.
 - m. A written plan for monitoring the separation distance between the excavation floor of the Pit and the average seasonal high water table.
 - n. A written plan describing any proposed washing operation and its impact on existing ground water quantity and quality.
 - o. The type, size and location of any equipment, plans for blasting, or other procedures that are likely to generate appreciable noise at the lot lines.
 - p. An estimate of the average daily traffic generated by Mining Operations during periods of operation.
 - q. A written soil erosion and sedimentation control plan prepared in accordance with the standards contained in the latest revision *Best Management Practices for Erosion and Sediment Control* as established by the State. Indicate any catch basins, dry wells, drainage ditches, swales, retention basins and storm sewers to be installed or created on the Plan.
 - r. A written Restoration Plan describing in detail the manner in which the Mining Pit shall be restored in accordance with the provisions described in Section IX. D.
 - s. Copies of all submissions to, and permits or licenses issued by, federal or state agencies with regard to Mining Operations on the Parcel.
 - t. Note: The Planning Board may require additional information from the applicant in addition to that requested in the application as set forth above. See Section VIII.E. below.
 - u. Current aerial imagery of the area shall be provided as part of the application
- D. Application Requirements Waiver: The Planning Board may modify or waive any of the requirements set forth in Section VIII.C. above when the Board determines that such modification or such waiver of said requirements would not adversely affect the general health, safety and welfare of the residents of the Town or otherwise be converse to the purposes and intent of this Mining Ordinance.
- E. Procedure:
1. Review of Application for Completeness: The Planning Board shall review an application for a Mining Permit to determine whether the application is complete. The Board shall also review the findings of the Code Enforcement Officer's Annual Compliance Inspection(s) for the Parcel in question if the same was previously permitted for Mining Operations. If the Board determines the application is not complete, it shall inform the applicant of the information necessary to make the application complete.

2. Site Walk: Within forty-five (45) days of receipt of a complete application, the Board shall visit the Parcel proposed for Mining Operations to verify in the field the location of the site, boundaries, natural features, access roads, and other information presented in the application. Following the site walk, the Board may require additional information to be submitted by the applicant.
3. Public Hearing: Within forty-five (45) days of receipt of a complete application, but after the site walk noted in Section VIII E.2. above, the Board shall hold a public hearing regarding the application. The Town of Dixmont shall publish, at the expense of the applicant, notice of the date, time, and place of the hearing in a newspaper of general circulation at least twice, the date of the first publication to be not less than ten (10) days prior to the hearing. In addition, the Town shall mail, by certified mail (return receipt requested) and at the expense of the applicant, a notice of the public hearing to all abutters of the Parcel on which Mining Operations are proposed not less than ten (10) days prior to the hearing. Following the public hearing, the Board may require additional information to be submitted by the applicant.
4. Additional information: The Planning Board may also require an independent evaluation and/or study in addition to information provided by the applicant. This evaluation and/or study shall be done by a person or firm of the Board's choosing. Said person or firm shall be required to estimate the cost of an evaluation or study and the applicant shall pay to the Town of Dixmont the full estimated cost. At the completion of the evaluation or study, any balance due shall be paid to the Town by the applicant or any balance remaining shall be returned to the applicant.
5. Planning Board Decision: Within seventy-five (75) days of receipt of a complete application or, if additional information as noted in Sections VIII E.2, E.3, and E.4 above is required, at a mutually agreed upon later time, but after the Site Walk and Public Hearing, the Board shall grant without conditions, or grant with conditions, or deny the permit. The Board shall grant the permit, either without or with conditions, if the Board makes a positive finding, based on all the information available to the Board, that the proposed Mining Operations are in conformance with the Performance Standards set forth in Section IX.

F. Length of Permit: Permits may be granted for a period not to exceed three (3) years.

G. Appeals:

1. Any decision of the Planning Board may be appealed by any party of standing to the Dixmont Board of Appeals. The appeal shall be in writing and submitted within thirty (30) days of the date of the written decision of the Planning Board and shall be accompanied by the required fee as established by the Dixmont Board of Selectmen.
2. A hearing shall be conducted by the Board of Appeals, which shall act solely in an appellate capacity. Following a hearing, that shall not be de novo, but shall be limited to a review of the record developed before the Planning Board, and the parties' arguments based on that record, the Board of Appeals may reverse the decision of the Planning Board only upon a finding that the decision is clearly contrary to specific provisions of the applicable ordinance. Upon reversal, the matter shall be remanded to the Planning Board for further proceedings consistent with the Board of Appeals' ruling.

H. Enforcement:

1. Annual Compliance Inspection:
 - a. All Mining Operations shall be inspected annually for the purposes of ensuring

compliance with this Ordinance and any additional conditions placed on the permit. The Annual Compliance Inspection shall be conducted by the Code Enforcement Officer (CEO) in the Spring prior to June 1.

- b. The CEO shall issue a *Report of Compliance* if it is determined that the Mining Operations and Restoration are in compliance with the Ordinance and any conditions which were placed on the permit at the time of issuance. The report shall be written and provided to the Planning Board, Selectmen, and the permit holder.
- c. The CEO shall issue a *Report of Non-compliance* if it is determined that the Mining Operations and Restoration are not in compliance with the Ordinance and/or any conditions which were placed on the permit at the time of issuance. The report shall be written and copies of the report provided to the Planning Board, the Selectmen, and the permit holder.

2. Notice of Violation:

- a. When the CEO finds that Mining Operations and/or Restoration are not in compliance with the Ordinance and/or any additional conditions which were placed on the permit at time of issuance as described in Section VIII H.1.c. above, the CEO shall issue to the permit holder a *Notice of Violation* specifying the particular violation(s), ordering the permit holder to cease immediately any further violation(s), and ordering the permit holder to take any necessary remedial actions to bring operations into compliance.
- b. If within thirty (30) days after issuance of the *Notice of Violation* the permit holder takes such remedial actions which, in the determination of the CEO, bring the Mining Operations into compliance, the *Notice of Violation* shall be rescinded by the CEO and a *Report of Compliance* issued.
- c. If thirty (30) days after issuance of the *Notice of Violation* the CEO determines that the permit holder persists in violation and/or has not taken such remedial actions as to bring the Mining Operations into compliance, the CEO shall issue a *Stop Work Order* requiring immediate cessation of all Mining Operations authorized under the existing permit. The Planning Board shall then have the authority to seek revocation of the Mining Permit. If a Mining Permit is revoked, the pit owner/operator is required to immediately commence such Restoration as is required by Section IX.D. of this Ordinance and as was required by the revoked permit.

3. Right of Entry: The Code Enforcement Officer is authorized to enter any Parcel on which a permitted Mining Pit is located for the purpose of monitoring compliance with the provisions of this Ordinance and any additional conditions which were placed on the permit by the Planning Board. If the permit holder denies entry to the CEO, the CEO shall not enter the property without first obtaining an administrative warrant pursuant to the Maine Rules of Civil Procedure. However, failure by or on behalf of the permit holder to grant the CEO access to the Parcel shall be considered just cause for the Planning Board to seek revocation of the Mining Permit.

4. Prosecution:

- a. In the event that the permit holder continues operations after a permit has either expired or been revoked, the Selectmen shall make such complaints to any court of competent jurisdiction as in their judgment are proper or may institute such actions or proceedings at law or in equity as are proper to restrain, remove or punish such violation.

- b. Continuing Mining Operations without a permit, whether such permit has expired or has been revoked, shall subject the operator to a fine of five hundred dollars (\$500.00) per day of violation.

SECTION IX. PERFORMANCE STANDARDS

All Mining Operations shall conform to the following standards:

- A. Set-backs: The purpose of set-backs is to lessen adverse impacts, such as noise, erosion, despoiling of views, and deterioration of water quality on neighboring properties and residents.
 1. A buffer strip of at not less than 100 feet in width shall be maintained between the boundary of the Mining Pit and the boundary of the Parcel on which the Pit is located.
 - a. However, the buffer strip between permitted Mining Pits on abutting Parcels may be eliminated with the written permission of both owners, provided the elimination of the buffer strip does not increase the runoff from either excavation across the property boundary.
 - b. Excavation in the 100-foot buffer strip may take place not less than seventy-five (75) feet from the Parcel boundary when conditions stated in Section IX A.2., A.3., and A.4. below, are met and if the following conditions are met:
 - 1) the Parcel or part thereof on which the Mining Pit is located had been granted a Site Plan Review Permit for a Mining Pit;
 - 2) the owner of the abutting property grants written permission for the excavation to occur. Such written agreement shall be recorded at the Penobscot County Registry of Deeds, making reference to the title deed of the owner of each such abutting Parcel;
 - i. excavation within the buffer strip may not exceed the 2.5:1 slope as required and described in Section IX.D.1.a (Restoration);
 - ii. the area within the buffer strip anticipated to be excavated during the life of the Permit must be specified in the application and will be considered as part of the Pit; and
 - iii. reclamation of the area designated in 4.) above must be completed prior to the expiration of the Permit.
 2. A buffer strip of not less than 200 feet in width shall be maintained between the boundary of the Pit and an existing private drinking water supply. A buffer strip of at least 1,000 feet shall be maintained between the boundary of the Pit and any public water supply.
 3. A buffer strip of not less than 100 feet in width shall be maintained between the boundary of the Pit and the nearest edge of any public road, public right-of-way or the nearest edge of any private road serving as the principal road in a subdivision.
 4. A buffer strip of not less than 100 feet in width shall be maintained between the boundary of the Pit and the normal high-water line of any great pond. A buffer strip of not less than 75 feet in width shall be maintained between the boundary of the Pit and the normal high-water line of a river, perennial stream, upland edge of a freshwater wetland, or intermittent stream. (See Shoreland Zoning Ordinance for these and other restrictions which may apply.)
 5. The Planning Board shall have the authority to require wider buffer areas if it determines that the above set-back distances are insufficient to achieve the purposes of protecting private and public water supplies, screening Mining

operations from public view, and protecting water bodies, tributary streams or wetlands as noted in Sections IX A.2., A.3., and A.4. Above.

B. Screening: Screening within all required buffer strips as described in paragraph A. above shall be required in order to prevent direct view of Mining Operations from any private residence and/or business, public road, public right-of-way and private road serving as a principal road in a subdivision and to reduce the volume of noise generated from Mining Operations affecting neighboring properties. Natural features such as trees, shrubbery, berms and hills shall be maintained as screening where possible. Where such natural features are not present or are insufficient to provide the required screening, the Planning Board may require construction of fences and/ or additional plantings. Where topography makes it impracticable to screen Mining operations from public view, the Planning Board shall have the authority to alter or waive the screening requirement.

C. Groundwater Protection:

1. No Mining Pit shall be worked at any time at a level less than five (5) feet above the existing water table. The location of the water table shall be established prior to any excavation taking place. (See Section VIII.C.2.b. requirement).
2. No ditching, trenching, pumping or other methods shall be used to lower the water table for the purpose of allowing more Mining extraction than would be permitted without such lowering of the water table.
3. No substance or item harmful to groundwater quality including, but not limited to, salt, creosoted timber, tree stumps, building waste, petroleum products or rubbish shall be dumped in a Mining Pit.
4. Petroleum products, such as fuel and lubricants, being used in Mining Operations shall be kept under cover and upon an impermeable spill-proof base sufficient to contain the volume of the petroleum products in the event of a spill.
5. The Planning Board may increase the separation distance required if it determines that the water table of neighboring properties will be adversely affected by Mining extraction to the five-foot minimum separation.

D. Restoration:

1. Reclamation Plan: Any area from which mined materials have been extracted and from which no further Mining extraction is either proposed by the pit operator or eligible for permitting by the Planning Board under the terms of the Ordinance shall be restored to a natural state within the specifications set forth below:
 - a. No slopes shall have an incline greater than 2.5 horizontal to 1 vertical (2.5:1). Slopes greater than 2.5:1 shall be regraded, except that a steeper slope may be allowed if slope stability analysis is submitted showing that there will be no failure or sloughing of slopes.
 - b. All disturbed surfaces shall be covered with a minimum of four (4) inches of topsoil. All topsoil stripped prior to mining shall be retained on the premises and shall be seeded and mulched or otherwise stabilized. Additional topsoil shall be obtained from off-site sources if needed to fully cover all disturbed surfaces.
 - c. Vegetative material used in Restoration shall consist of native grasses, legumes, herbaceous, or woody plants or a mixture thereof. The owner/operator shall guarantee that if, after two years from the restoration completion date, less than 85 percent of the planted area does not sustain vegetation, the failed areas shall be replanted. (See, *Best Management Practices for Erosion and Sediment Control 3/2003*, and any subsequent amendments.)

- d. All structures, such as refueling pads and gates, shall be removed and all access, haul or other support roads shall be subject to Restoration once no longer used.
 - e. Restoration activities shall be completed within one year of commencement.
 - 1) Restoration of previously excavated areas proposed or required as part of Mining Permit must be completed within one year of the date of permit issuance. Failure to complete Restoration within the one-year time frame shall be sufficient grounds for:
 - i. revocation of an existing Mining Permit; and/or
 - ii. denial of a subsequent Mining Permit for the same parcel until such time as required Restoration is completed.
 - 2) Restoration of a discontinued pit must be completed within one year of the date of discontinuance.
 - f. A permitted Mining Operation that has not been operated for 12 or more consecutive months shall be regarded as abandoned, and will either:
 - 1) lead to the initiation of a reclamation plan, or
 - 2) require the Mining Permit to be renewed
2. Filing of Reclamation Plan: The owner/operator of the Pit shall record the Restoration Plan with the Penobscot County Registry of Deeds. Recording the Restoration Plan with the deed to the property will assure the Town of Dixmont that the sale of the property to any other owner for any reason will cause the new owner to comply with the terms of the Restoration Plan unless the new owner applies for and receives a Mining Permit within six months of assuming ownership of the Pit.
3. Performance Guarantee – Performance Bond:
- a. The planning board shall require a performance bond based upon the size of the mining operation to be used to address damage resulting from the operations to town roads or other property, and for restoration of the mining area if the permit holder fails to comply with permit requirements.
 - b. Should the owner/operator fail to complete required Restoration work, a lien in an amount three times the estimated cost to complete required Restoration shall be recorded against the Parcel.

E. Transportation:

- 1. All vehicles carrying mined material, either to or from a Mining Pit, shall have the load covered and tailgates secured so as to prevent spillage of any part of the load on the public roads within the Town.
- 2. All access/egress roads leading to or from a Mining Pit shall be paved or otherwise hard-surfaced for a distance of not less than one hundred (100) feet from the near edge of the pavement of a paved public road so as to prevent mud, stones, and the like from being brought onto the public road.
- 3. Except as set forth in Section IX E. 2. above, access roads in and around the Pit shall not be oiled, salted, or paved.
- 4. A minimum sight distance of 12.5 feet for every mile-per-hour of posted speed limit shall be provided where an access/egress road intersects a public road. Sight distances shall be measured as per the Maine DOT Access Management Rules, (MRS 17-229, Chapter 299). If the public road is a State road, a Road

Entrance Permit issued by the Maine Department of Transportation shall satisfy this standard.

5. The angle of intersection of an access/egress road and a public road shall be a minimum of 60° and a maximum of 90°.
6. The maximum permissible grade within 75 feet of such intersection shall be 5%.
7. Road signs stating "Trucks Entering – 500 feet" shall be installed 500 feet from where access roads intersect public ways. Said signs shall be paid for by the permit holder and installed by permission of and in cooperation with the Maine Department of Transportation.
8. The Planning Board reserves the right to adjust requirements/conditions of a permit in the event a real danger is presented to either traffic or damage to roads.

F. Hours of Operation:

1. Regular hours of operation shall be 6 a.m. to 6 p.m. daily with the exception of Sunday when no Mining Operations are permitted.
2. Activities related solely to Restoration are permitted on Sunday between 12 p.m. and 6 p.m.
3. In emergency situations involving public health and/or public safety, Mining operations may occur, but only after notification is made to and permission granted by the CEO. A written report shall be filed within 24 hours of commencement of such emergency operations describing the nature of the emergency warranting such operations.
4. Mining Operations shall not occur on the following holidays: Memorial Day, Independence Day, Thanksgiving Day and Christmas Day.

G. Noise:

1. Noise shall not be objectionable due to intermittence, beat frequency, shrillness or volume beyond the boundaries of the Parcel(s) on which Mining Pit is located.
2. Sound pressure levels shall be measured on a sound level meter at all boundary lines of the Parcel on which the Mining Pit is located.
3. The sound pressure limit shall not exceed 65 dB at any Parcel boundary line.

H. Annual Report:

1. On an annual basis, not less than thirty (30) days following the anniversary date of the permit, the Mining Pit owner/operator shall provide a written report to the CEO containing the following:
 - a. The volume of Mining excavated from the Pit during the previous twelve (12) month period.
 - b. Any Restoration completed during the previous twelve (12) month period.
 - c. Water table levels, expressed in feet above mean sea level, measured within thirty (30) days of the anniversary date of the permit, in all Monitoring Wells/piezometers within the Pit; and the level, expressed in feet above mean sea level, of the lowest point in the Pit floor.
 - d. Water quality data, as determined within thirty (30) days of the anniversary date of the permit, from samples taken from each Monitoring Well/piezometer. Data shall include results of field parameters and analyses, set forth in Section VIII.C.2.c.

I. Exterior Lighting:

1. All exterior lighting shall be designed to ensure safe movement of people and vehicles and to minimize adverse impact on neighboring properties and public ways.
2. Lighting shall be arranged to minimize glare and reflection on adjacent properties and the traveling public.

J. Air Pollution:

Mining Operations shall not create an emission of dust or dirt at any point beyond the boundary line of the Parcel on which the Pit is located that could damage human health, animals, vegetation or property or that could soil or stain persons or property.

K. Landscape Preservation:

Environmentally sensitive areas such as aquifers, significant wildlife habitat, wetlands, steep slopes, floodplains, historic buildings and sites, existing and potential archaeological sites and unique natural features shall be maintained and preserved to the maximum extent practicable.

L. Adverse Effect:

The proposed Mining Operations shall not adversely affect the value of neighboring properties.

M. Comprehensive Plan:

The proposed Mining Operations shall be in conformance with the Comprehensive Plan of the Town.

N. Additional Standards:

The Planning Board shall have the authority to apply additional standards and impose such conditions not otherwise specified in this Ordinance as may be necessary to minimize any adverse effects associated with Mining Operations on public health and safety, and on surrounding land uses and resources.

This ordinance was adopted by the Dixmont town meeting held on March 18, 2023.

The Dixmont Selectboard

_____ David Bright - Chair

_____ Don Pendleton

_____ Beverly Pare