Town of Wales
Mining Ordinance

Final Draft: April 7, 2011

Adopted: June 11, 2011
ARTICLE I – TITLE & PURPOSE

1.1 Purpose
The purpose of this Ordinance is to put into law minimum removal and reclamation standards; and municipal procedures to regulate the removal, processing and storage of topsoil, loam, mineral based borrow and fill material, peat, stone, rock, flat rock, clay, sand, gravel, minerals, or other similar materials. These standards and procedures are intended to protect the public health, safety, and general welfare; and to minimize the adverse impact of extraction 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 value of property and its future ability to be an asset to the town and its residents.

1.2 Title
This Ordinance shall be known and may be cited as the Town of Wales Mining Ordinance and will be referred to herein as “this Ordinance.”

ARTICLE II – AUTHORITY, APPLICABILITY & 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., Section 3001.

2.2 Administration
The provisions of this Ordinance shall be administered by the Town of Wales Planning Board and enforced by the Town of Wales Code Enforcement Officer (CEO) and Selectmen.

2.3 Effective Date
This Ordinance shall be effective upon its adoption by vote of the eligible voters of the Town of Wales, Maine in Town Meeting.

2.4 Applicability
A. This Ordinance applies to soil, mineral and rock extraction, handling, storage and processing activities as defined as Mineral Extraction in the Town of Wales Definition Ordinance that occur within the boundaries of the Town of Wales, Maine, except as provided in Article III of this Ordinance. Mineral Extraction 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 activities which are:
1. 5 acres or less;
2. Active but not permitted by DEP.

3. New or proposed: New is defined as activity occurring in areas where activities have not previously occurred.

4. Recurring: Activities in areas in which activities had ceased, or contiguous land in the same ownership, or under common scheme of development. Any application submitted to the Planning Board for any portion of the affected area shall be classified for size and treated as if it included all the previously exempt, un-reclaimed, inactive area.

5. Expansions of activity plans previously permitted by the Planning Board, except as provided in Article III of this Ordinance.

6. Handling, storage, processing, or other accessory uses.

2.5 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.

2.6 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. 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.

ARTICLE III – EXEMPTIONS

3.1 This ordinance shall not apply to the following:

A. Commercial activities that affect less than 1,000 cubic yards of material in 12 consecutive months

B. Storage of winter abrasives (sand/salt) used for the maintenance of private or public roads. This applies to the stockpile or storage area itself and not any associated mineral extraction activity or area.

C. Removal or filling of material for all improvements incidental to construction, alteration or repair of a structure, town or state roads, or in the landscaping incidental thereto.

D. Construction of farm and fire ponds and normal agricultural operations.

E. Inactive areas: Inactive is defined as mining extraction that has ceased for 48 consecutive months prior to the passage of this Ordinance, in any areas where mining extraction activity had previously occurred. As long as no mining extraction activity recurs in the affected area, or on contiguous land under a common scheme of development, the inactive area shall remain exempt from this ordinance.

G. Removal of stone or rock walls or foundation walls.
H. Stripping of topsoil (loam) not part of a mineral extraction operation on an area of 2 acres or less, at one time, to a depth of no greater than 1 foot provided the area so stripped is reclaimed and supports a sufficient vegetative cover to reduce runoff and erosion in the same growing season as removal.

I. Extraction of material used for personal purposes. Not to exceed 2,000 cubic. yards

J. Excavation of material to remain on site for personal purposes.

[NOTE: Non compliance shall trigger an application or amendment (to your activity) in order to comply with this ordinance.]

ARTICLE IV – MINERAL EXTRACTION ACTIVITY REVIEW

4.1 Application

Prior to the establishment, continuation or expansion of an activity, an applicant shall apply for a permit from the Town. The application 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. Verification of the right to title or interest the applicant has in the property; and a copy of the deed(s) of the 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.

C. A Site Plan 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 5 feet.

4. Boundaries of the tract of land showing lot lines, lots within 1,000 feet, as defined by the Land Use Ordinance and illustrated on the Town of Wales Tax Assessor’s Maps, the names of all such property owners, total acreage of the parcel(s) Town of Wales Tax Assessor’s map and lot number(s). The Planning Board may require a boundary survey of the property at the expense of the applicant, by a licensed surveyor if the boundaries are in question.

5. Location of existing and proposed activities and structures on the property.

6. Approximate location of residences on properties within 1,000 feet of the proposed activity.
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 to the activity from public roadways.

9. Location of all setbacks, buffers, and conservation areas, and protected natural resources.

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 outdoor lighting.

13. Location and size of signs and all permanent outdoor fixtures such as fences, gates, utility poles.

14. Location and type of existing and proposed berms, fences, hedges, and tree lines.

15. Location of existing natural drainage ways and proposed storm drainage facilities, 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.

16. Location of existing wells: within 500 feet of the proposed activity and all wells on the parcel itself.

17. Location of proposed or existing fuel handling/storage, washdown and hazardous material storage areas.

D. Name and contact information of the proposed manager of operations.

E. An estimate of the average daily traffic during periods of operation projected to be generated by the activity and a traffic impact narrative, if required, as stated in Article V of this ordinance.

F. A narrative description of the surface and ground water impacts, including protection plans and the identification of any significant mapped aquifers.

G. Information and a map showing Soils Conditions on the site of the proposed activity. For subsurface sewage disposal proposed, the information shall include evidence of soil suitability according to the standards established in Article V of this Ordinance. The Site Plan shall show the location of soil test areas.


I. A “Preservation of Natural and Historic Features,” plan and map if required by Article V of this Ordinance.

J. A reclamation plan including: the final grades, a re-vegetation plan, any phasing of the plan and a detailed cost estimate for complete reclamation of the site.
K. 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, including any proposed mitigation, within 500 feet of the activity.

L. A narrative description of the present use of the parcel and property within 500 feet of the activity.

M. Estimated longevity of the operation, including phasing.

N. Proposed hours and days of operation.

O. Types and amounts of equipment to be used in the operation.

P. Proof of financial capacity, and/or capacity to obtain a Performance Guarantee as specified in Article VI, payable to the Town of Wales.

Q. A Spill Prevention, Control & Containment (SPCC) Plan. (See Article V §2-C).

R. Blasting Plan, if any.

S. Plan for screening/buffering the excavation activity from abutters and any public roads.

T. All submissions made or required to be made to any federal or state agency concerning the property.

4.2 Alternate Submissions

Activities that already have a valid DEP permit or a complete pending DEP application may submit the DEP application to the Planning Board subject to the Planning Board request for additional information on submissions above, not covered by the DEP application.

4.3 Waivers of submissions

The planning board may grant waivers from specific application submission requirements, provided the applicant can demonstrate all of the following;

A. A waiver would not be contrary to the public interest or intent of this ordinance;

B. A literal enforcement of submission requirements would result in unnecessary or undue hardship:

C. The intent of the item being waived can be met in some other manner as determined by the planning board; and

D. There will be no adverse impacts resulting from the waiver.

4.4 Application Procedures

The owner or operator of any active un-permitted mineral extraction activity shall within 90 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 permit within 90 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. All costs related to the application and ordinance compliance will be paid by the applicant.
A. Application Submission:

1. Applications for mineral extraction activity permits shall be submitted to the Town Clerk or CEO who 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.

2. The application shall be accompanied by an application fee as established by the selectmen, payable to the Town of Wales. The 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 Board may feel is reasonably necessary to protect the general welfare of the town. This escrow payment shall be made before the Board engages any outside party to undertake this review and to make recommendations to the 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. If a public hearing is deemed necessary by the Planning Board, an additional fee shall be required to cover the costs of advertising, postal notification and dissemination of information.

B. Public Hearing

If a Public Hearing is deemed necessary, the planning board will hold the 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 statement of the matter to be addressed. At least 10 days before the public hearing, the applicant or his/her designee, shall notify by mail the owners of properties within 1,000 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 95 days of having received a complete application, 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 a written finding regarding the criteria and standards contained in this ordinance and conditions of any permit.

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 Androscoggin County Registry of Deeds. One copy shall be retained by the applicant, one copy shall be retained by the Planning Board, one copy shall be filed with the Tax Assessor, and one copy shall be filed with the Code Enforcement Officer. The Planning Board shall maintain a permanent record of their action on the activity. Any plan not recorded within 90 days after approval, with the Androscoggin 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 Wales, Maine of any road, easement, or other open space shown on such plan.

D. Annual Compliance Inspections

1. The annual compliance inspection fee shall be as determined by the town of Wales selectman in the Town of Wales fee schedule.

2. The annual compliance Inspection (ACI) shall be conducted by the CEO prior to the anniversary date of the permit. The CEO shall issue a Report of Inspection Compliance (RIC), provided he/she determines that the permit holder has not deviated from the approved plan. If the CEO determines that the permit holder has deviated from the approved plan, the CEO shall issue a Report of Inspection Non-compliance (RIN). Reports shall be written and provided to the Planning Board, the Selectmen, and permit holder. After receipt of the RIN, the Planning Board, after notice and hearing, pursuant to Article IV §5-B, and a determination after hearing that a deviation from the approved plan has occurred, shall request that the CEO issue a STOP WORK ORDER, EXCEPT FOR REMEDIAL ACTION, until such time as compliance is achieved, or a time determined by the Planning Board lapses, which ever occurs first. The CEO shall thereafter re-inspect the site to determine if compliance has been achieved. If he determines compliance has been achieved, he shall issue a RIC, as above. If he determines that compliance has not been achieved, he shall issue a Second Step Report of Non-compliance (SSRN). The permit holder shall again pay the fees, as required by this subsection for this second compliance inspection. The Planning Board, after receipt of the SSRN, shall provide notice and hearing pursuant to Article IV §5-B, to determine whether the permit holder is in compliance with his approved permit; and if not, the Planning Board shall revoke the permit, and request that the Selectmen take remedial action, as is permitted by town ordinance or State law. The applicant can terminate the process above at any time by demonstrating compliance with his approved permit at a subsequent compliance inspection, which he requests, and payment of inspection fees, followed by the issuance of a RIC by the CEO.

E. Operation Conditions and Limitations: Before any activity begins, the applicant shall apply for and receive all applicable permits as may be required by Town, state or federal regulations, laws or ordinances. Any violation of other permits necessary for operation shall be considered a violation of this ordinance.

F. Expiration of Approval: Activity permits shall expire three years from the date of issuance unless the activity is started.

G. Plan Revisions after Approval: Plan revisions after approval shall be made as further provided for in Article 7.3 of this Ordinance.
H. Expert Witnesses and Opinions: In the event that the Planning Board requires expert opinions, advice or testimony during the course of reviewing the application, it will use due diligence to obtain and utilize free services from governmental or non-profit sources. Should the Planning Board be unable to obtain and utilize such services, it may require the applicant to pay for such services, after giving notice to the applicant of the name of the expert, the area of qualification of the expert, the purpose for which the expert is required, and the approximate cost of the expert. The applicant shall be provided with an opportunity to meet with the Planning Board to arrange a schedule for payment of the costs. All costs for which notice is not given by the Planning Board shall be non-reimbursable to the Planning Board.

I. Transfer of Activity Permit: The permit holder shall not sell, lease, assign, or otherwise transfer the permit, or cause or allow any other action where the purpose or consequence is to transfer any of the obligations of the permit holder as incorporated in the permit, except following the approval of the Planning Board. The Planning Board may approve the transfer of the permit if it can be demonstrated that:

1. The terms and conditions of the permit 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 permit.
3. The transfer of the permit or activities it allows will not cause or contribute to a violation of the law. In determining whether transfer of the permit will cause or contribute to a violation of the law, the Planning Board shall consider any prior violation, suspension, or revocation of a permit 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 permit, 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 permit, including financial responsibility requirements, shall be considered a request for permit 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 1,000 feet of any boundary of the property for which the permit transfer is being requested. The owners of properties shall be considered to be persons listed on Town tax maps and lists.
4.5 Appeals and Variances

A. Administrative Appeals

1. Any person aggrieved by an action of the Planning Board pursuant to this Ordinance may file an application for appeal in writing within 30 days of the granting or denial of approval from the Planning Board. The notice of appeal shall state with specificity the exact portions of the Planning Board’s Decision that are being appealed, and the legal grounds for appeal. The appellant shall file this appeal with the Chairman of the Board of Appeals, who shall issue a dated receipt and who shall, within 7 days of the date of receipt, notify the applicant in writing that either the application is complete or, if the application is incomplete, the specific additional material needed to make a complete application.

2. The fee to accompany applications for appeal shall be as set in the fee schedule by the Board of Selectmen, lawful currency of the United States of America. All checks, money orders or bank drafts shall be made payable to the Town of Wales, Maine. The applicant shall be required to cover the costs of newspaper advertising, postal notification and dissemination of information for the appeals hearing.

3. The Board of Appeals shall, upon complete Notice of Appeal of an aggrieved party and after public notice, hear appeals from determinations of the Planning Board in the administration of this Ordinance within 30 days of such application. The Appeals Board shall cause notice of the date, time and place of said hearing, the location of the proposed mineral extraction activity and the issues raised in the appeal, to be given in writing to the appellant and published in a newspaper of general circulation in the Town of Wales, Maine at least two times. The date of the first such publication shall be at least 7 days prior to the hearing. The Board of Appeals shall also cause written notice by mail or hand delivery of the hearing be given to the permit holder, the Selectmen, the Planning Board, the Code Enforcement Officer, and all property owners within 1,000 feet of the boundaries of the proposed mineral extraction activity at least 14 days prior to the date of the hearing. The Board of Appeals shall post notices in such public places as it would place notice of a Town Meeting.

4. If such application for appeal is not made within the stated time, the prior decision of the Planning Board shall be final.

5. Following such hearing, the Board of Appeals may reverse the decision of the Planning Board only upon a finding of fact that the decision of the Planning Board is clearly contrary to specific provisions of this Ordinance. The Board of Appeals shall render a decision in writing to the appellant and/or applicant, Planning Board Chairman, Code Enforcement Officer, and the Selectmen within 40 days of the appeal hearing.
B. Variances

1. The Board of Appeals may, upon written application and hearing as outlined in Article VI §4-B of this Ordinance grant a variance from the strict application of the dimensional requirements of this Ordinance, including lot sizes, setbacks, site distances, lot coverage by structures, sign requirements, and parking requirements only if the requirement of this Ordinance would result in undue hardship to the applicant, as defined in Article IV §5-B(2), below, of this Ordinance.

2. In order to find an undue hardship the Board of Appeals must find all of the following to grant a variance:
   a) That the land in question cannot yield a reasonable return unless a variance is granted; and
   b) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
   c) That the granting of the variance will not alter the essential character of the locality; and
   d) That the hardship is not the result of action taken by the applicant or a prior owner.

3. Following the public hearing, as outlined in Article IV§4-B of this ordinance, the Board of Appeals shall render a decision to grant or deny a variance in writing to the applicant, the Planning Board, and selectmen, within 40 days of the appeal hearing.

C. Appeal to Superior Court

Any aggrieved party having proper standing may appeal any decision of the Appeals Board under this Ordinance to the Superior Court of Androscoggin County, within 45 days of a written decision in accordance with Maine State Law.

ARTICLE V – MINIMUM DESIGN & PERFORMANCE STANDARDS

5.1 General Requirements

A. Mineral extraction activities shall conform to all applicable State laws and local ordinances or regulations.

B. The owner and/or operator of a mineral extraction activity shall be responsible, both jointly and severally, for ensuring the maintenance of all infrastructures, structures and their sites.

C. Mineral extraction activities in the Shoreland Zone shall be in accordance with the Shoreland Zoning Ordinance or this Ordinance whichever is stricter.

D. The Planning Board shall consider the financial and technical ability of the applicant to complete all proposed activities in approval of this permit. The Planning Board may deny, modify, or revoke its approval if the applicant or agent is not in compliance with other Town or State permits for Mineral Extraction Activity.

F. 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.
5.2 Performance Standards.

A. Erosion Sedimentation Control and Storm water Management.

1. All projects.
   a) Sediment may not leave the parcel or enter a Protected Natural Resource.
   b) Topsoil stockpile must be stabilized and inspected as specified in Article V§2-B(1).

2. Internally Drained projects.
   a) Land shall be restored and stabilized according to the Reclamation Plan.

3. Externally Drained Projects. – Waivers may be applied for, if waiver is approved, the following applies:
   a) If surface water flows out of and away from the proposed site during and after the site is excavated, the following should be provided to assure proper erosion control and prevent siltation of downstream waters. Temporary erosion control measures shall be included in the project design, such as hay bale barriers, silt fencing, and riprap and other approved control measures. Plans shall show the location and installation details to include a description of the timing of installation, inspection and maintenance of erosion control measures.
   b) Additional information including:
      i. A plan and narrative detailing specific erosion control measures; and
      ii. A site plan showing the pre-construction and post-construction contours, and if applicable, phased contours. The plan must show on and off site watershed boundaries and hydrologic surface water flow lines.
   c) Sedimentation pond location and design, if any, shall be designed to the 25 year storm event and based on the U.S.D.A. Soil Conservation Service methodology contained in TR-55. The location and construction details of the pond shall be shown on the site plans.

B. Reclamation Plan: The affected land must be restored to a condition or physical state that is both similar to and compatible with that which existed prior to any development, or encourages the productive use of the land. A reclamation plan is required for ALL activities according to the following specifications:

1. Soil Stockpiling. Soil which 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 any previously stripped topsoil will be used for final cover.

2. Regrading. Upon completion of the excavation, the side slopes must be regraded to a slope no steeper than 2.5 horizontal to 1 vertical, except that a steeper slope may be allowed, if a slope stability analysis is submitted showing that there will be no major failure or sloughing of slopes.

3. Vegetative cover. Vegetative cover must be established on all affected land. Topsoil must be placed, seeded, and mulched within 30 days of final grading.
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 soil and site characteristics such as drainage, pH, nutrient availability, and climate.

b) The vegetative cover is acceptable if within one 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 50% survival rate; and
   ii. the planting results in 90% ground coverage.

4. 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 reclamation plan.

5. Phased Reclamation. The site must be reclaimed in phases so that:
   a) The working pit does not exceed 3 acres at any time.
   b) For guidance in planning and implementation of reclamation, see Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices (March 2003), Section I-1 Pit Reclamation.

Note: Any inactive area, may be considered for Tax assessing purposes as active, if the area has not been reclaimed according to the standards of the ordinance. Currently, reclaimed land has a lower assessed value.

C. Petroleum Usage

1. Spill prevention, control, and counter measures are applicable to all size projects.

2. Petroleum Products Storage
   a) 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 should 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 permit in the Town's records.
   b) Any petroleum products, highly flammable or explosive liquids, solids or gasses to be stored on site, shall be located in bulk, above ground, anchored tanks or containers, having a roofed, secondary containment system, adequate to contain 110% of the full contents of such container, for control of spills and leaks, and must be located at least 75 feet from any lot line, Town road or interior road.
   c) The use of underground tanks is strictly prohibited.

3. Machinery Maintenance
   a) Crankcase oil, hydraulic fluids, and similar products shall be properly disposed of per state requirements
b) Routine maintenance operations, such as refueling or oil changes, may be allowed for fixed equipment such as screeners, crushers and wash facilities, if allowed in the district the operation will be located in, provided that a secondary containment system in accordance with the SPCC Plan, adequate to contain 110% of the full contents of said equipment is installed.

4. Any discharge or leak of petroleum product over a gallon shall be immediately reported to the Code Enforcement Officer and the Department of Environmental Protection. All discharges or leaks of any size shall be cleaned up promptly according to Best Management Practices.

D. Buffers and Setbacks Buffers and setbacks shall be shown on the site plans as follows:

1. Property Boundaries: To minimize visual impacts and provide for wildlife, a 75 foot buffer shall be maintained from property boundaries. This buffer may be reduced to 25 feet with written permission of an abutting landowner provided:
   a) Written permission is obtained from the abutter and recorded at the registry of deeds, and
   b) Erosion & storm water control standards on both properties are met.
   c) Planning board must approve requests for reduced setbacks

2. Existing Structures: A 300 foot buffer from the closest edge of an existing residence or business, or farm building used for livestock shall be maintained with all projects. This buffer may be reduced with written permission of the owner of the structure, provided:
   a) Written permission is obtained from the abutter and recorded at the registry of deeds, and
   b) Erosion & storm water control standards on both properties are met.
   c) Planning board must approve requests for reduced setbacks

3. Protected Natural Resources: Unless covered in Article V §1-D above the following shall apply:

   Unless authorized pursuant to the Natural Resources Protection Act, Title 38, M.R.S.A, Section 480-C no part of any extraction operation, including drainage and runoff control features shall be permitted within one hundred (100) feet of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within seventy-five (75) feet of any property line, without written permission of the owner of such adjacent property.

4. Public Roads. A 150 foot buffer from the closest edge of the shoulder of a public road shall be maintained with all projects. A 50 feet wide undisturbed natural vegetated area, closest to the road, shall be maintained within the buffer, except for any access road entrance.

E. Road Design, Circulation and Traffic
1. A) Activity site shall be limited to 2 access/egress points.
   
b) Any entrances and roads shall conform to the standards set forth in the Town of Wales Road Ordinance and meet any additional requirements set forth in this ordinance or as required by Town of Wales Road Commissioner, his/her designee, or the Maine Department of Transportation.-

c) Access/egress road(s) leading to or from the extraction site to paved public ways shall be treated with suitable materials to reduce dust and mud; and paved or otherwise hard surfaced for a distance of at least 200 feet from the paved public road.

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 Wales Road Commissioner.

b) The road giving access to the Mineral Extraction Activity and neighboring roads which can be expected to carry traffic to and from the Mineral Extraction Activity shall

   i. have sufficient traffic carrying capacity as determined by the road commissioner and

   ii. Have adequate base and pavement to support the loads generated by activity.

c) If roads are found to be inadequate, 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 should be considered:

   i. No activity shall increase the volume to capacity ratio of any town road above 80%; (this is an application requirement) nor reduce the road’s Level of Service to “D” or below.

   ii. Improvements shall comply with the town of Wales road ordinance. The town may require an engineering impact study or road condition survey at the expense of the applicant.

3. Routing: Routing of traffic to and from the activity shall safeguard against hazards to pedestrians and avoid traffic congestion, or adverse impacts to town roads

F. Ground Water Impacts:

1. Assessment Submitted. The Activity will not cause an adverse impact to ground water quality and quantity

2. Groundwater buffer: To provide an adequate buffer for ground water and allow for filtration of impurities from infiltrated water in time for proper clean-up of spills, extraction shall not be any closer than 5 feet above the maximum seasonal high water level, as documented in the application The town may require, at the applicants expense, installation of (a) known benchmark(s) and monitoring of groundwater levels and quality to assure there are no adverse impacts to any water supplies or wells off-site.
3. **Water Supply buffer:** A 300 foot separation must be maintained between the limit of excavation and any pre development private drinking water supply. A 1,000 foot separation must be maintained between the limit of excavation and any well or spring which qualifies as a public drinking water supply. The town may require larger buffers from water supplies, if they find that a hazard is shown to exist due to the Activity.

4. **Water Use:** An activity must not withdraw more than 5,000 gallons of ground water per day, unless a hydro geologic study, provided by the applicant, showing that the source is sustainable is submitted by a geologist, licensed in the state of Maine.

5. **Standards for Acceptable Ground Water Impacts**
   a) Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
   b) No mineral extraction 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 mineral extraction activity shall increase any contaminant concentration in the ground water to more than the Federal Secondary Drinking Water Standards at the property boundary.
   c) 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.

G. **Preservation of Natural and Historic Features:** The scenic, historic or environmentally sensitive areas or any areas identified in the Comprehensive Plan or by the Maine Natural Areas Program as rare and exemplary areas shall be preserved.

H. **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.

I. **Signs:** Any signs must comply with the standards of other applicable ordinances.

J. **Noise:** The applicant shall demonstrate that noise from the operation does not exceed 75 dB(A) at the property line, except for emergency or safety equipment such as back up beepers. Normal operation times shall be specified, so as not to constitute a nuisance to residents in the area, including but not limited to daily starting and ending times, and operations on weekends.

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 7:00 PM, Monday through Saturday. Depending on the location of the site the hours of operation may be revised by the planning board.

5.3 **Performance Standards - Rock Mining/Extraction Operations**
Because of the intensity of the type of operation, in addition to the performance listed in Section 2 of this ordinance, rock mining operations shall conform to the following:

A. The maximum limit of material that may be extracted per year is 5,000 cubic yards.

B. There shall be a maximum of two acres of open operation at any time, regardless of the size of the project. A surveyed profile of the material on site to be excavated must be developed and submitted with the permit application and the amount extracted per year confirmed by the annual inspection of the CEO.
   1. The area must be reclaimed before next two acres can be started.
   2. Excavation may be done in 1 acre or other increments to ensure continuity of operation.

C. Excavation shall be no deeper than 6' below grade. It shall be necessary to establish the benchmark grade level prior to the granting of the permit. Rock Mining Operations shall be exempt from the Maximum Seasonal High Water Level required by Article VI, §2(F)(2).

D. High velocity blasting requires blast mats or similar measures to attenuate noise, dust, and debris.

ARTICLE VI – PERFORMANCE GUARANTEES

6.1 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 reclamation, taking into account the time-span of the phasing, or reclamation 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 reclamation of the activity site, from which the Town may draw if 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, Town Road Commissioner, Town Selectmen, and/or Town Attorney at the cost of the applicant if applicable.

6.2 Contents of Guarantee

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

6.3 Escrow Account
For any account opened by the permit 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.

6.4 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 reclamation of the activity site and may not be used for any other project or loan.

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

6.6 Performance Guarantee Review
Any proof of financial capacity shall be reviewed no later than 30 days before the expiration of the guarantee, and adjusted if necessary. The applicant may also request adjustments in the guarantee.

6.7 Release of Guarantee
Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, upon the report of a Licensed professional Engineer and concurrence of the CEO, road commissioner and Board of selectman, that the reclamation meets or exceeds the design requirements for that portion of the reclamation for which the release is requested.

6.8 Default
If upon inspection, CEO or other inspecting official finds that any of the required 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 Board, and the permit holder and guarantor. The permit 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.

6.9 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 VII – ENFORCEMENT AND INSPECTIONS

7.1 Reclamation Certification
Upon completion of reclamation or a reclamation phase, the landowner/applicant shall, at his/her own expense, have a Professional Registered Engineer provide to the CEO a written certification that the 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.

7.2 Violations

A. No mineral extraction activity 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 mineral extraction activity site which has not been approved by the Planning Board and recorded in the Registry of Deeds.

C. No public utility shall serve any mineral extraction 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 mineral extraction activity 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 Wales Planning Board 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.

7.3 Mineral Extraction 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.
7.4 Enforcement
A. The Code Enforcement Officer of the Town of Wales, Maine, shall enforce this Ordinance and is authorized to institute legal proceedings with the approval of the Town Selectmen to enjoin violations of this Ordinance. In the absence of a CEO, enforcement actions would fall to the Selectmen of the Town of Wales.
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 Wales, 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 Wales, Maine prevails, said 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.

7.5 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 Wales, Maine as determined by the Selectmen and posted in the Town of Wales Fee Schedule for each day said violation exists after notification of violation.
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 Wales, Maine in an amount equal to the full amount of the penalty unless otherwise determined by order of the court.
C. If the maximum penalty amount of Article VII §5-A of this ordinance is held void or invalid it is the intent of the Town of Wales, Maine that provisions of Title 30-A, M.R.S.A. Section 4452 be given full force and effect and that the maximum penalty amounts authorized by such provision apply to violations of any order, permit, approval or final decision of the Planning Board, or any provision of this ordinance.

ARTICLE VIII – AMENDMENT OF THIS ORDINANCE

8.1 Initiation of Amendment
An amendment to this Ordinance may be initiated by:
A. The Planning Board provided that a majority of the Board has so voted; or
B. Request of the Selectmen to the Planning Board; or
C. Written petition to the Selectmen bearing signatures of registered voters of the Town of Wales, Maine numbering at least ten percent (10%) of the number who voted in the last gubernatorial election.
8.2 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 Selectmen and to the Town. After receiving the recommendation of the Planning Board, the amendment shall be voted on by the voters of the Town of Wales, Maine at a Town Meeting, a majority vote being required for adoption.

ARTICLE IX – OTHER PROVISIONS

9.1 Adjoining mineral extraction activity 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 XI – DEFINITIONS

10.1 Definitions

Unless specifically defined in the Town of Wales Definitions Ordinance, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Ordinance its most reasonable application.