

GRAVEL ORDINANCE
April 8, 2009

TOWN OF LAMOINE, MAINE

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Enacted: March 1982
Revised: March 1985
Revised: November 30, 1989
Revised: March 5, 1996
Revised: April 8, 2009

(Originally entered from an attested copy December 2, 1998)

GRAVEL ORDINANCE

SECTION 1. PURPOSE

The purposes of this ordinance are to:

1. define and regulate the excavation, extraction, processing, storage and transportation of sand, gravel, crushed stone, soil and loam in the Town of Lamoine in order to protect the public health, safety and welfare and to conserve the natural beauty of the Town.
2. ensure soil stabilization to prevent wind or water erosion from causing on-site or off-site damage and improve the aesthetic appeal and ability of the site to support wildlife.

SECTION 2. AUTHORITY

This ordinance is adopted pursuant to and consistent with Title 30-A MRSA, Sections 3001 and 3105 and may be known and cited as the "Lamoine Gravel Ordinance".

SECTION 3. EFFECTIVE DATE

The effective date of this Ordinance is March 5, 1996.

SECTION 4. VALIDITY AND SEVERABILITY

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decisions shall not invalidate any other sections or provisions of the Ordinance, and to this end the provisions of this Ordinance are hereby declared to be severable.

SECTION 5. 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 for the promotion and protection of health, safety, and welfare, the provisions of this Ordinance shall prevail.

SECTION 6. APPLICABILITY

This Ordinance shall apply to all proposed and/or operating gravel pits and gravel extractions. A permit will be required for gravel pits and gravel extraction operations where the area affected exceeds or will exceed one acre, or from which more than five hundred cubic yards of material has or will be removed.

SECTION 7. ADMINISTRATION

A. Permit Required

After the effective date of this Ordinance, no person, firm or corporation shall engage in any gravel excavation or processing operation requiring a permit without the gravel pit owner first obtaining a permit from the Lamoine Planning Board.

B. Procedure

The application for a permit shall be filed with the Planning Board and accompanied by the required application fee. The application fee shall be commensurate with the size of the proposed or existing gravel pit. The fee shall be \$100 for 4 acres or less, \$200 for over 4 acres to 8 acres, and \$300 for more than 8 acres.

Within forty-five (45) days of receipt of a complete application for renewal of a permit not yet expired, the Board shall hold a site visit and may additionally hold a public hearing.

Within forty-five (45) days of receipt of a complete application for renewal of a permit which has expired, the Board shall hold both a site visit and a public hearing.

Within forty-five (45) days of receipt of a complete application for a new pit, the Board shall hold a site visit and a public hearing.

Within forty-five (45) days of a public hearing, or within seventy-five (75) days of the receipt of a complete application, or unless an agreement is made between the applicant and the Planning Board to extend the time, the Planning Board shall, in writing, either approve, approve with conditions or disapprove the application.

C. Submission

The application for a permit shall be submitted to the Planning Board accompanied by the following information:

1. The name and current address of the record owner of the property involved.
2. The name and current address of the individual, firm or corporation working the site if different from the record owner.
3. A to scale plot plan showing the location and boundaries of the site and the name and location of abutting property owners.
4. The existing contours of the land within and extending beyond the above boundaries for 100 feet at intervals not to exceed 10 feet in elevation. The scale used in defining contours shall appear on the plot plan.
5. Maps
 - a. For renewal of a permit (see Section 7. B. Procedure above), a map which clearly indicates (by color coding or other method):
 - i. the area included in the applicant's extraction operation for the three years immediately preceding this permit application

- ii. the area of intended extraction during the three years covered by this permit application
 - iii. any areas of the pit which have been fully restored
 - iv. any area of the pit from which no further extraction is anticipated (closed portion)
 - b. For a new permit (see Section 7.B. Procedure above), a map which clearly indicates (by color coding or other method):
 - i. areas restored (if applicable) during the three years immediately preceding this permit application
 - ii. areas anticipated to be restored during the three years covered by this permit application
 - iii. any areas of the pit which have been fully restored
6. The location of all proposed access roads and temporary structures.-
7. The proposed provisions for drainage and erosion control.
8. The estimated longevity of the gravel pit and/or extraction operation based on the annual removal rate of the last 12 consecutive months prior to the application. For a new pit submit a best estimate.
9. An indication of the financial capacity of the applicant to carry out the necessary site restoration.
10. A detailed landscaping/vegetation plan defining the manner that the gravel pit shall be returned to as near a natural state as is practical by grading, filling, draining and planting. The landscaping/vegetation plan shall contain a general schedule for implementation of the restoration of the pit with a detailed schedule for restoration to be completed within the duration of the permit.
11. Prior to the October CEO annual inspection each operator shall provide a written statement to the CEO stating whether or not 200 cubic yards were removed during the previous 1 October to 30 September 12 month period.
12. Any other information the Planning Board may deem necessary to indicate the hydrology, the physical characteristics of the site, the extent of proposed operations, and compliance with the performance standards.
13. Plans for any anticipated washing operation, to include any proposal to use ground water extraction from the site to provide for same, demonstrating that the operation will not lower the ground water level at the boundaries of the area by more than two feet, or to the detriment of any existing ground water use.
14. A plan for monitoring separation of excavation limits from the average seasonally high water table.

D. Approval of Permits

The Planning Board shall approve or deny those applications on which it is empowered to act as stated, in this Ordinance. The Planning Board shall, after the submission of a complete application including all the information requested, and after review of the most recent Code Enforcement Officer compliance report and any other available enforcement information available with respect to the gravel pit in question, grant a permit if it makes a positive finding based on the information presented that the proposed operation:

1. Will not unreasonably result in unsafe or unhealthful conditions.
2. Will not unreasonably result in erosion or sedimentation.
3. Will not unreasonably result in water pollution, nor affect adversely existing ground water, springs, or ponds.
4. Will conserve natural beauty in keeping with the restoration provisions of this ordinance.
5. Will not adversely affect public ways.
6. Will not adversely affect surrounding properties.
7. Is in conformance with the performance standards of Section 8.

E. Terms of Permit

No permit shall be issued for a period to exceed three years.

F. General Provisions

1. Waiver and Modification of this Ordinance.
 - a. Where the Planning Board finds that extraordinary and unnecessary hardships may result from strict compliance with this Ordinance, or where there are special circumstances of a particular plan, it may waive any provision of this Ordinance provided that such waiver will not have the effect of nullifying the purpose of this Ordinance, the Comprehensive Plan, the Shoreland Zoning Ordinance, or any other ordinance.
 - b. In granting any waiver, the Planning Board shall require such conditions as will, in its judgement, secure substantially the objectives of the requirements so waived.

G. Appeals

If the Planning Board shall disapprove an application for permit or grant approval with conditions that are objectionable to the applicant or when it is claimed that the provisions of this Ordinance do not apply, or that the true intent and meaning of this Ordinance have been misconstrued or wrongfully interpreted, the applicant may appeal in writing the decision of the Planning Board within 30 days to the Lamoine Board of Appeals.

H. Enforcement

This Ordinance shall be administered by the Planning Board and enforced by the Code Enforcement Officer and the Selectmen.

1. **Inspection** - The Code Enforcement Officer shall inspect all gravel extraction operations on an annual basis usually during the month of October for the purpose of enforcing the Ordinance. Documentation of his inspection findings are required. All violations noted will be reported to the Planning Board at the next regular meeting following the detection of a violation.

2. **Right of Entry** - The Code Enforcement Officer in the performance of his duties may with permission enter any site for the purpose of assuring compliance with the provisions of this Ordinance. In accepting a permit under the provisions of this Ordinance, permission shall be deemed to have been given by the landowners for the right of entry. If the landowner denies entry to the Code Enforcement Officer, the Code Enforcement Officer shall not enter the property without first obtaining an administrative warrant pursuant to the Maine Rules of Civil Procedure.
3. **Violations** - In all cases of violations of this Ordinance the Code Enforcement Officer shall notify in writing the owner and if applicable the lessee of the gravel extraction operation and the Selectmen of the nature of the violation and the proposed correction of the same if possible. Said notification shall be deemed to have been made when sent to the owner and if applicable to the lessee by certified or registered mail to the address supplied in the permit application or subsequent notice to the Planning Board.
4. **Prosecution** - The Selectmen are charged with the prosecution of all violations of the provisions of this Ordinance. In case the owner or lessee does not comply within 60 days with the corrective action requested by the Code Enforcement Officer, the Selectmen shall make such complaints to the courts as in their judgement are proper or may institute such actions or proceedings at law or in equity as are proper to restrain, correct, remove or punish such violations.
5. **Fines** - Any person, firm or corporation being the owner or having control or use of any gravel pit who shall violate any of the provisions of this Ordinance or fail to comply with any of the requirements thereof shall be guilty of a misdemeanor and upon conviction be fined not less than \$25 nor more than \$100 per offense. Each day a violation exists shall constitute a separate offense. Violation of any of the standards or provisions of this Ordinance shall be deemed just cause for revoking the permit after reasonable notice and an opportunity for a hearing.

SECTION 8. PERFORMANCE STANDARDS

All gravel extraction operations shall conform to the following applicable standards. The gravel pit owner is ultimately responsible for ensuring that these standards are met.

A. Excavation

A natural buffer strip of at least 50 feet wide must be maintained between any excavation and a property boundary. This distance may be reduced to not less than 10 feet with the written permission of the affected abutting property owner or owners, except that the distance may not be reduced to less than 25 feet from the

boundary of a cemetery or burial ground. The buffer strip between borrow pits owned by abutting owners may be eliminated with the abutter's written permission, provided elimination does not increase the runoff from either excavation across the property boundary. All property boundaries must be identified in the field by markings such as metal posts, stakes, flagging or blazed trees. A variance from this provision cannot be granted.

No gravel pit operation shall result in increased erosion or runoff that will adversely affect any adjoining properties.

No gravel pit shall be worked at a level less than five (5) feet above the average seasonally high water tables.

B. Screening

All gravel extraction operations shall be screened from view from adjacent public ways with fencing or vegetation. Screening shall be no less than six (6) feet in height.

C. Groundwater Protection

No gravel pit shall be worked at a level less than five (5) feet above the average seasonally high water table. The Lamoine Planning Board may grant a variance to allow the pit to be worked at a level not less than two (2) feet above the average seasonally high water table if the following conditions are met:

- a) refueling facilities and procedures are implemented that will provide reasonable protection of the groundwater
- b) a spill prevention control and counter measure (spcc) plan is implemented, and
- c) plans for conditions a and b above are submitted to and approved by the Lamoine Planning Board

No substance or item harmful to groundwater quality, including but not limited to salt, creosoted timber, tree stumps, building waste, petroleum products, metal products or rubbish shall be dumped or stored in a gravel pit. This paragraph does not apply to salt sand piles kept in accordance with State law or regulations.

Petroleum products such as fuel and lubricants being used in the gravel extraction operation must be kept under cover and upon an impermeable spill proof base.

D. Restoration

Restoration activity shall be required for any pit or portion thereof which has been discontinued (e.g. that portion of an excavated pit which has reached its boundary limits may be deemed discontinued). Restoration shall be completed within one year of the date on which discontinuance occurred.

All gravel extraction operations shall be restored with perennial vegetation. (See Maine Erosion and Sediment Control BMP, 3/2003 and any subsequent amendments.) No restored slope shall have a steeper incline than a ratio of two point five (2.5) horizontal to one (1) vertical. A variance may be granted by the Planning Board if other inclines have demonstrable stability.

All slopes shall be capable of sustaining vegetation upon discontinuance of the gravel extraction operation. For two years from the restoration completion date the applicant shall guarantee that at least eighty-five (85) percent of planted vegetation thrives. If at the end of two years more than fifteen (15) percent of planted areas does not sustain vegetation, failed areas shall be replanted. (See Maine Erosion and Sediment Control BMP, 3/2003 and any subsequent amendments.)

If no restoration is proposed for the duration of the permit, the applicant shall pay to the Town of Lamoine 5 cents per cubic yard removed within the period of the permit. Payments received by the Town will be held in an interest bearing escrow account for the reclamation of the gravel pit. Money may be withdrawn from the escrow account to perform gravel pit reclamation on a schedule determined by the pit owner and Planning Board.

To insure that the gravel pit will be restored as agreed to in the performance standards of Section 8, Subsection D, the owner/operator shall be required to record the restoration agreement with the Hancock County Registry of Deeds on a completed agreement form provided by the Town of Lamoine. Recording this restoration agreement with the deed to the property in which the gravel pit is located, will assure the Town of Lamoine that the sale of the property to any other owner/operator for any reason, will cause the new owner/operator to comply with the terms of the restoration agreement within the time constraints of the agreement, or immediately if the present or new owner/operator does not continue the operation of the gravel pit and/or mine.

E. Transportation.

All vehicles on the public roads of Lamoine with a load of sand, gravel, crushed stone or soil shall be covered and tailgates secured so as to prevent spillage or leakage of any part of said load.

F. Access

Access to gravel extraction areas shall be strictly controlled by the owner with locking gates or cables at the entrance of access roads. Gates or cables shall be closed and locked except during hours of operation. When the pit is inoperable all vehicular entrances shall be made impassible.

G. Hours of Operation

The hours of operation for all Gravel Extraction, Processing, and Loading

operations will be 6 A.M. until 6 P.M. or sunset whichever is later; except on Sunday when all gravel operations are prohibited, with the following exceptions:

1. All gravel pit operations on Sunday are prohibited other than restoration between the hours of Noon and 6 P.M.
2. Upon request to the CEO in emergencies involving health and/or safety. When such permission is granted, the CEO will advise the Planning Board at the next scheduled Planning Board meeting. In emergency situations involving health and/or safety, operations may begin prior to the notification of the CEO.

H. Noise

Excessive noise at unreasonable hours shall be required to be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness, or volume (please refer to table below). The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by this ordinance shall be established by the time period and type of land use listed below. Sound pressure levels shall be measured on a sound level meter at all major lot lines of the proposed site, at a height of four (4) feet above the ground surface.

Sound Pressure Level Limit (500 to 10,000 Hz range)		
	7am -8 pm	8pm - 7am
Non Industrial Establishments	65dB	55dB
Industrial Establishments	70dB	65dB

On a site abutting any residential use, construction activities occurring between 8:00 p.m. and 7:00 a.m. shall be subject to the maximum permissible sound level specified for industrial establishments.

Such maximum sound levels will also apply to noises created by all agricultural, excavation, construction, and maintenance activities between 7:00am and 8:00 pm

I. Report Required

Prior to July 1 of each year, the pit owner shall provide a written report containing the following information:

- 1) Volume of materials removed from the pit, including truck logs, for the previous 12 month period.
- 2) Results of measurement of vertical separation between the excavation limits and the average seasonally high water table. Measurements shall be made and certified by a Maine licensed engineer or geologist. Typically the pit owner will annually, in the spring, dig a 15 foot monitoring well at the bottom of the pit and demonstrate to the CEO and Planning Board that the groundwater level is not within the 15 foot margin. If the groundwater level is found within the 15 foot margin, a piezometer will be installed in order to provide continuous monitoring of the groundwater level.
- 3) Any restoration completed during the previous 12 month period.

SECTION 9. DEFINITIONS

A. Gravel Extraction and Excavation

The term gravel extraction and/or gravel excavation shall mean the removal of sand and gravel, bedrock or soil from its natural site of geologic deposition or formation.

B. Gravel Processing

The term gravel processing shall mean the screening, sorting, crushing or other processing of geologic material extracted or excavated.

C. Gravel Storage

The term gravel storage shall mean the storage of sand, gravel, crushed stone, or soil stock piles or other forms.

D. Gravel Transportation

The term gravel transportation shall mean using the public roads in Lamoine to haul sand, gravel, crushed stone or soil except for snow plowing and sanding operations.

E. Gravel Pit

The term gravel pit shall mean:

1. All of the land area used in the excavation, processing, or storage of sand, gravel, crushed stone or soil; and
2. All of the land area owned by the gravel pit owner that is contiguous to an excavated area unless the gravel pit owner can show that some portion of that land cannot or will not be used as a site for gravel extraction or excavation.

Gravel pits owned and/or operated by the same person, firm, or corporation, and separated by less than 800 horizontal feet of land shall be considered one and the same gravel pit.

Land which has been restored in accordance with Section 7.C.9. will no longer be considered as part of the gravel pit.

F. Gravel Pit Owner

Gravel pit owner shall mean the owner of the land where gravel is excavated, processed or stored. The responsibility to ensure restoration of the gravel pit shall be the obligation of the gravel pit owner.

G. Gravel Pit Restoration

The term means the stabilization of inactive borrow areas with herbaceous perennial plants

H. Discontinued Gravel Pit

Discontinued gravel pit shall mean a gravel pit from which less than 200 cubic yards have been removed within twelve (12) consecutive months.

TOWN OF LAMOINE

GRAVEL ORDINANCE: PERMIT APPLICATION

Map # _____ Lot # _____ Size: _____ acres Fee: \$ _____
Date rec'd ___/___/_____

1. Owner of record and current address:

Name: _____
Address: _____
Phone: (home) _____ (work) _____

2. Operator (if not owner)

Name: _____
Address: _____
Phone: (home) _____ (work) _____

Please attach a plot plan drawn to scale. It must show:

- 3. the location and boundaries of the site and the name and location of all abutting property owners.
- 4. the existing contours of the land within the boundaries and extending beyond the boundaries for 100 feet; the contours must be shown at no more than 10 foot intervals. The scale used to define the contours must be included on the plan.
- 5. The location of all existing or proposed access roads and of any existing or proposed temporary structures.

Further requirements according to the current Gravel Ordinance:

- 6. Attach a description of the proposed provisions for drainage and erosion control.
- 7. What is the estimated longevity of this pit, based on the removal rate over the 12 months immediately past?

(For a new pit, give your best estimate) _____

8. Explain how your financial capacity is enough to allow you to restore the pit after it is no longer in operation.

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9. Attach a detailed landscaping and vegetation plan defining how you will restore the pit to as nearly a natural state as is practical by grading, filling, draining and/or planting.
 10. Attach copies of your annual statements to the Code Enforcement Officer stating whether 200 cubic yards or more were removed from the pit during each yearly period from October 1 through September 30. One statement per year is required.
 11. At the request of the Planning Board, you may need to provide information that indicates any or all of the following: the hydrology, the physical characteristics of the site, the extent of your proposed operations, and compliance with the performance standards of Section 8 of the Gravel Ordinance.
 12. Attach a statement of whether you intend to have a washing operation in the pit. If a washing operation is proposed, include any proposal to use ground water extraction from the site to provide for the washing, with a demonstration that the water extraction will not lower the ground water level at the boundaries of the area by more than two feet or will not lower the ground water level to the detriment of existing ground water use.
 - 13. Attach a plan for monitoring separation of excavation limits from the average seasonally high water table.**

CERTIFICATION

The undersigned applicant (and the owner, if the applicant is not the owner) hereby certifies:

- that the information provided in this application is accurate;
- that the estimates made herein are in good faith after a review of the records of the operation; and
- that the undersigned has read and will comply with the Performance Standards set out in Section 8 of the Lamoine Gravel Ordinance.

(date)

(signature of applicant)

(signature of owner, if not applicant)

FOR USE BY PLANNING BOARD ONLY

Date considered _____

Approved [] _____

Date reconsidered _____

Incomplete [] _____

Denied [] _____

Conditions for approval: _____

Reason(s) for denial: _____

TOWN OF LAMOINE
LAMOINE PLANNING BOARD
606 Douglas Highway
Ellsworth, ME 04605

**NOTICE OF INTENT TO RESTORE A GRAVEL PIT OR
MINE**

Date: _____

Owner's Name:

First _____ Last _____

Property Location

Town/City _____ Street/Road _____

Lot # _____ Map # _____ Book # _____ Page # _____

The Gravel pit or Mine Restoration Plan specified on the attached plan has been designed to restore the land areas to their pre- existing condition, or a condition which is in compliance with the Maine State Department of Environmental Protection and the Town of Lamoine's Gravel and Mining Ordinance

The system replacement design is in accordance with Section 8, Performance Standards, Subsection D, Restoration, Items a., b., c., and d. of the Lamoine Land Use Ordinance and the State of Maine's Chapter 38 MRSA § 490-D Sec. 14A, B, C, and D.

Upon sale or transfer of property, the new owners will comply with the recorded Plan if the Gravel Pit or Mining Operations are continued. Otherwise, the new owners will restore the land in compliance with the Plan recorded within 60 (sixty) days of ownership.

Land owner's Name (printed)

Land owner's signature

State of Maine _____ ss:
(county)

Date

Subscribed and sworn to by the above named _____
This _____ day of _____, _____ at _____,
Maine.

Before me,

(Notary Public)

Signature Page

March 13, 1996

The attached ordinance entitled Gravel Ordinance is approved as of March 5, 1996 on an affirmative referendum vote by the Town of Lamoine.

Signed this 13th day of March, 1996

/s/ William Collier, Chairman
/s/Arthur Alley
/s/Glenn Crawford

The Lamoine Board of Selectmen

April 16, 2009

The attached ordinance entitled Gravel Ordinance was approved as of April 8, 2009 by an affirmative vote at the Annual Lamoine Town Meeting

Signed this 16th day of April, 2009 by

_____	S. Josephine Cooper
_____	Richard E. Fennelly, Jr.
_____	Kermit Theall
_____	Gary McFarland
_____	Cynthia Donaldson

The Lamoine Board of Selectmen

Attest: A True Copy

_____, Stuart Marckoon, Deputy Town Clerk