From: Horn-Olsen, Samantha
To: Beaucage, Timothy
Subject: FW: Mining rule changes
Date: Friday, April 04, 2014 3:54:42 PM

Please include this as public comment on the mining rules.

From: chris@noyesrealty.com [mailto:chris@noyesrealty.com]
Sent: Thursday, March 13, 2014 10:54 AM
To: Horn-Olsen, Samantha
Subject: Mining rule changes

Hi Samanth,
I couldn't open any of the public hearing or rule changes, I got a Adobe Read error message. I am in support of the mining, however, has anyone thought through the amount of manpower oversight that the State will need to regulate the permitting? An engineer, knowledgeable in mining practices should be assigned to the office responsible along with training for Forestry, IFW, LUPC and Revenue. The permits should cover a majority of the cost to oversee the process.

Rangeley plan: I have spoken to Patty Ellis, Mark Beauregard, Dave Schinnas, and others about the survey. They all agree the plan had and still has development flaws. It did not allow for future development, only that which was on the books. Zoning set backs were not applied to the land, just an arbitrary measurement on a map.
Camp Ground limitations have been stymied to protect Rangeley Heritage Trust and State Park competition.
Allowing concrete foundations to support structures and secure value of camps makes sens but is only allowed 100' set back. What is the impact at 0-100' ? Why is DEP & coastal zones treated different?
Why in DEP forestry doesn't require a permit for a temporary bridge/stream/river crossing for forestry while LUPC jurisdiction it does? Example permit in Coplin for Odias (Odie) Bachelder? Each points the finger at each other but the permitee paid over $300 for a 30 day permit. Business friendly Maine?
Last, they all agree when the Commission meets it is overwhelmingly intimidating. Compared to a local planning board, getting a decision is lengthy and costly. Restrictions do not have merit or supportive information yet imposed anyway. Example 32 days to use a rock crusher? Where did that number come from? A mile away under DEP a rock crusher is used year round. In Strong, at the wood pellet factory, a wood chipper is used 7 days a week and at any hour. No sound proofing required or time limits. Yes this under DEP but again, no consistency.
Plantations, Rangeley PLT, Sandy River PLT, Dallas PLT, and others, all believe they are over accessed and under staffed by LUPC for the price they pay and the cost of permits.
One great thing that has changed is no more permit fees for out buildings.
They all mentioned no consistency determining a PSL.
And last, no variance process, if the permit request doesn't fit the rule or model, or is "non-conforming", then the answer is no.

If a study should be done it's on span of control. Right now the amount of coverage is

far greater than the staff can handle and positions support. I think changing the process to allow Assessors more authority to grant permits, then the regional staff to work on larger projects like camp grounds or major development, is a better/expedient model for the customer.

Thank you for your time, again, and hope the information, although it may appear critical, can help improve the process. The land owner should have rights to use their property, within reason, and those who are not directly effected, like Land Trust companies, stay out of the opinion review process. Unfortrunately, whether it's development or rebuilding RT 4, the activists get heard and not the local residents.

Chris Botka, Sandy River PLT, 207-491-1612

Natural Resources Council of Maine
3 Wade Street • Augusta, Maine • 04330

Comments of the Natural Resources Council of Maine on the Land Use Planning Commission's Proposed Rule Amendment to Chapter 13, "*Metallic Mineral Exploration, and Certification of Advanced Exploration and Mining*" and Chapter 10, "*Land Use Districts and Standards*"

Thank you for the opportunity to comment on the Proposed Rule Amendment to the Commission's Chapter 13, "*Metallic Mineral Exploration, and Certification of Advanced Exploration and Mining*" Subchapters 1 and 2; and Chapter 10, "*Land Use Districts and Standards*". The Natural Resources Council of Maine (NRCM) has several comments for the Land Use Planning Commission's (LUPC, Commission) consideration.

1. **Adoption of this rule amendment will confuse petitioners and the general public because the current Subchapters 1 and 2 have not been repealed.** This rule revision anticipates legislative approval of the repeal of Subchapters 1 and 2 as part of a separate major substantive rule change provisionally adopted by the Commission in January 2014. LD 1771, a "Resolve, Regarding Legislative Review of Portions of Chapter 13: Metallic Mineral Exploration, Advanced Exploration and Mining, a Major Substantive Rule of the Maine Land Use Planning Commission" was not approved by the Legislature. Furthermore, LD 1772, which disapproves final adoption of the separate major substantive rule and directs the Commission to provisionally adopt such rules prior to February 2016, has not yet been acted on by the Legislature. Whether or not LD 1772 is passed, the major substantive rule change will not be finalized and Subchapter 1 and 2 will not be repealed. If this rule is adopted there will be two Subchapters 1 and 2 on the books, which will be confusing and could lead to inconsistent decision-making by the Commission. We recommend that a repeal of Subchapters 1 and 2 be incorporated into the current rule amendment.
2. **Remove "ore" from the definition of "Advanced Exploration" and replace it with "mine waste".** In order to remove 5,000 tons of ore, many more tons of mine waste must be removed to get at the ore, resulting in a much larger environmental impact than suggested by the proposed rule amendment. Because ore is often around 1% of excavated material, allowing excavation of 5,000 tons of ore would be the same as allowing the excavation of approximately 500,000 tons of mine waste, much of which might be acid generating. This dramatically increases the likelihood of acid mine drainage. Mine waste means all material including, but not limited to, overburden, rock, lean ore, leached ore, or tailings that in the process of mining and beneficiation has been exposed or removed

from the earth during advanced exploration and mining activities. We recommend adopting this definition in Subchapter 1.

3. **Remove "ore" from the definition of "Bulk Sampling" and replace it with "mine waste".** See comment 2 for explanation.
4. **Change the definition of "Metallic Mineral" so that it is consistent with DEP's Chapter 200 definition of "Metallic Minerals".** Metallic mineral mining activity in the unorganized territory is regulated by both the LUPC and the DEP. In the interest of clarity, each agency should utilize the same definition.
5. **Clarify Section 1.5.** It is not immediately clear what advanced exploration activities are included within the Chapter 10 use listing "Level B Mineral Exploration". We recommend additional clarification.
6. **A work plan should also be required from a person planning to engage in motorized excavation.** Under the proposed rules, a work plan is required from "a person planning to drill or filing such an application [for any exploration permit]". We recommend requiring a work plan for engaging in any motorized excavation, not just drilling. Exploration and Advanced Exploration uses a variety of methods that may be more environmentally harmful than drilling, such as the large-scale excavation of test pits. We therefore believe it would be prudent for the Commission to be notified of any motorized excavation, as well as drilling.

- end -

MAINE AUDUBON

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Falmouth, Maine 04105
207-781-2330
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APRIL 11, 2014

Samantha Horn Olsen
Maine Land Use Planning Commission
Department of Agriculture, Conservation and Forestry
22 State House Station
Augusta, ME 04333-0022

RE: Proposed Changes to Chapter 13, Metallic Mineral Exploration, and Certification of Advanced Exploration and Mining

Dear Ms. Olsen:

On behalf of Maine Audubon's 15,000 members and supporters, I write to express Maine Audubon's support of the comments submitted by the Natural Resources Council of Maine in regard to the proposed Chapter 13 changes. Thank you for your consideration.

Sincerely,

Jennifer Burns Gray
Staff Attorney and Advocate

PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

Memorandum

To: Maine Land Use Planning Commission

From: Samantha Horn Olsen, Planning Manager

Date: April 11, 2014

Re: Proposed Routine Technical Rulemaking to Replace Chapter 13 "Metallic Mineral Exploration, and Certification of Advanced Exploration and Mining" Subchapters 1 and 2; and to Amend Chapter 10 Land Use Districts and Standards – January 8, 2014 Draft rule

---

On behalf of the Maine Land Use Planning Commission staff, I hereby submit the following comments on the draft rule revisions.

Comments Regarding Rule Language

Chapter 13, Section 2.3,B(4) and Chapter 10, Section 10.27,C,1,b include the same table that specifies the necessary unscarified filter strip between exposed mineral soil and normal high water mark relative to the average slope of land. However, the table is not clear on the necessary filter strip for slopes that are between the stated percentages (e.g., the filter strip width required where the average slope is 43 percent).

The table in Chapter 13, Section 2.3,B(4) and Chapter 10, Section 10.27,C,1,b should be revised in order to be more clear with regard to how the standard is interpreted, specifically both tables should be revised as follows:

Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark (Percent)	**Width of Strip Between Exposed Mineral Soil and Normal High Water Mark** (Feet Along Surface of the Ground)
~~<30~~0-29	75
30-39	85
40-49	105
50-59	125
60-69	145
70 or more	165

Table 13.1. Unscarified filter strip width requirements for exposed mineral soil created by mineral exploration activities or associated access ways.

Coordination with Major Substantive Repeal of Chapter 13, and Replace Subchapter 3

On January 8, 2014, the Commission provisionally adopted major substantive rule revisions that repeal Chapter 13, replace subchapter 3 to add standards for certification, and change the name of Chapter 13 to "*Metallic Mineral Exploration, and Certification of Advanced Exploration and Mining*". In accordance with Title 5, chapter 375, subchapter 2-A, the Commission timely filed the provisionally adopted rules with the Maine Legislature. The resolve that initially provided the vehicle for the Legislature to review and consider the major substantive rules was LD 1771 (attached).

On January 8, 2014, the Commission also initiated the present rulemaking, a separate, routine technical rulemaking to effectively replace Chapter 13 "Metallic Mineral Exploration, and Certification of Advanced Exploration and Mining" Subchapters 1 and 2 and to amend Chapter 10 Land Use Districts and Standards. These routine technical rule revisions have been posted for public comment, with the comment period ending April 11, 2014.

LD 1771 failed to pass either the House or Senate. However, through a series of amendments, one in committee and one on the House floor, legislative review of the provisionally adopted major substantive rules was incorporated into LD 1772. LD 1772 combined review of both the Commission's and DEP's major substantive rules on metallic mineral mining. In general, LD 1772:

- disapproves final adoption of both DEP's and the LUPC's provisionally adopted major substantive rules regarding Metallic Mineral Exploration, and Certification of Advanced Exploration and Mining;
- requires DEP to repeal its existing metallic mineral mining rules and revert to the rules in place prior to April 21, 2013; and
- requires, by February 1, 2016, DEP and the LUPC to provisionally adopt and submit to the Legislature for review rules respectively related to DEP permitting and LUPC certification of metallic mineral mining under the Maine Metallic Mineral Mining Act.

As of April 10, LD 1772, as amended by Committee Amendment A and House Amendment A to Committee Amendment A, has been placed on the special appropriations table pending final passage. In light of the fact that the Commission's current routine technical rulemaking is intended to dovetail with the major substantive rules provisionally adopted by the Commission and DEP, the Commission should take into account the final disposition of LD 1772 when considering whether, and if so how, to proceed with the present routine technical rulemaking.

Attachments:

LD 1771

LD 1772, Committee Amendment A

LD 1772, House Amendment A to Committee Amendment A

126th MAINE LEGISLATURE

SECOND REGULAR SESSION-2014

Legislative Document **No. 1771**

H.P. 1269 House of Representatives, February 11, 2014

Resolve, Regarding Legislative Review of Portions of Chapter 13: Metallic Mineral Exploration, Advanced Exploration and Mining, a Major Substantive Rule of the Maine Land Use Planning Commission

(EMERGENCY)

Reported by Representative WELSH of Rockport for the Maine Land Use Planning Commission pursuant to the Maine Revised Statutes, Title 5, section 8072.

Reference to the Committee on Environment and Natural Resources suggested and ordered printed pursuant to Joint Rule 218.

Millicent M. MacFarland

MILLICENT M. MacFARLAND
Clerk

Printed on recycled paper

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 13: Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major substantive rule of the Maine Land Use Planning Commission that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This resolve provides for legislative review of Portions of Chapter 13: Metallic Mineral Exploration, Advanced Exploration and Mining, a major substantive rule of the Maine Land Use Planning Commission.

L.D. 1772

Date: (Filing No. H-)

ENVIRONMENT AND NATURAL RESOURCES

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE

HOUSE OF REPRESENTATIVES

126TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 1270, L.D. 1772, "Resolve, Regarding Legislative Review of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a Late-filed Major Substantive Rule of the Department of Environmental Protection"

Amend the resolve by striking out the title and substituting the following:

'Resolve, Regarding Metallic Mineral Exploration, Advanced Exploration and Mining'

Amend the resolve by striking out everything after the title and before the summary and inserting the following:

'**Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major substantive rule of the Department of Environmental Protection, has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A outside the legislative rule acceptance period; and

Whereas, portions of Chapter 13: Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major substantive rule of the Maine Land Use Planning Commission, has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of these rules; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Disapproval of final adoption; Department of Environmental Protection. Resolved: That final adoption of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major substantive rule of the Department of Environmental Protection that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A outside the legislative rule acceptance period, is not authorized; and be it further

Sec. 2. Disapproval of final adoption; Maine Land Use Planning Commission. Resolved: That final adoption of portions of Chapter 13: Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major substantive rule of the Maine Land Use Planning Commission that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is not authorized; and be it further

Sec. 3. Existing metallic mineral mining rules; Department of Environmental Protection. Resolved: That the Department of Environmental Protection shall, as soon as practicable, repeal its existing metallic mineral mining rules and adopt metallic mineral mining rules identical to those rules in effect immediately prior to the routine technical rule amendments to exploration and advanced exploration sections that took effect on April 21, 2013. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A; and be it further

Sec. 4. Major substantive rulemaking; Department of Environmental Protection. Resolved: That, by February 1, 2016, the Department of Environmental Protection shall provisionally adopt and submit to the Legislature for review rules related to the Maine Metallic Mineral Mining Act.

1. Legislative rule acceptance period. Notwithstanding any provision to the contrary contained in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, major substantive rules submitted pursuant to this section on or before February 1, 2016 must be considered submitted within the legislative rule acceptance period for the Second Regular Session of the 127th Legislature, as defined in Title 5, section 8071-A, except that, if the rules are submitted outside the otherwise applicable legislative rule acceptance period but on or before February 1, 2016, the department shall, at the time the rules are submitted, provide written notice to the Executive Director of the Legislative Council stating that the department is submitting the rules outside the otherwise applicable rule acceptance period in accordance with the allowance provided in this subsection.

2. Standards. The rules adopted pursuant to this section must include standards determined by the department to be necessary to protect the public health and safety and the environment. Standards adopted by the department may include, but are not limited to, standards regulating effects on groundwater quality, control of noise, preservation of

historic sites, preservation of unusual natural areas, effects on scenic character and protection of wildlife and fisheries.

3. Maine Land Use Planning Commission certification. The rules adopted pursuant to this section relating to the permitting process for a mining permit must provide for Maine Land Use Planning Commission certification pursuant to the Maine Revised Statutes, Title 38, section 490-NN, subsection 2 in the initial stages of the permitting process.

Rules adopted pursuant to this section are major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A; and be it further

Sec. 5. Major substantive rulemaking; Maine Land Use Planning Commission certification of mining permit applications. Resolved: That, by February 1, 2016, the Maine Land Use Planning Commission shall provisionally adopt and submit to the Legislature for review rules related to commission certification of metallic mineral mining permit applications as described in the Maine Metallic Mineral Mining Act. Notwithstanding any provision to the contrary contained in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, major substantive rules submitted pursuant to this section on or before February 1, 2016 must be considered submitted within the legislative rule acceptance period for the Second Regular Session of the 127th Legislature, as defined in Title 5, section 8071-A, except that, if the rules are submitted outside the otherwise applicable legislative rule acceptance period but on or before February 1, 2016, the commission shall, at the time the rules are submitted, provide written notice to the Executive Director of the Legislative Council stating that the commission is submitting the rules outside the otherwise applicable rule acceptance period in accordance with the allowance provided in this section. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; and be it further

Sec. 6. Metallic Mining Fund; Department of Environmental Protection. Resolved: That all costs associated with rule-making activities undertaken by the Department of Environmental Protection pursuant to section 3 or 4 must be drawn from existing funds within the Metallic Mining Fund established under Public Law 2011, chapter 653, section 32.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.'

SUMMARY

This amendment, which is the majority report of the committee, replaces the resolve and changes the title. This amendment disapproves final adoption of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major substantive rule of the Department of Environmental Protection that was filed outside the legislative rule acceptance period, and portions of Chapter 13: Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major substantive rule of the Maine Land Use Planning Commission. It directs the Department of Environmental Protection to, as soon as practicable, repeal its existing metallic mineral mining rules and adopt metallic mineral mining rules identical to those rules in effect

immediately prior to the routine technical rule amendments to exploration and advanced exploration sections that took effect on April 21, 2013. It directs the Department of Environmental Protection to, by February 1, 2016, provisionally adopt and submit to the Legislature for review major substantive rules related to the Maine Metallic Mineral Mining Act. It directs the Maine Land Use Planning Commission to, by February 1, 2016, provisionally adopt and submit to the Legislature for review major substantive rules related to commission certification of metallic mineral mining permit applications as described in the Maine Metallic Mineral Mining Act. It directs the Department of Environmental Protection to draw funding for its rule-making activities authorized in this resolve from the Metallic Mining Fund established under Public Law 2011, chapter 653, section 32.

L.D. 1772

Date: (Filing No. H-)

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE

HOUSE OF REPRESENTATIVES

126TH LEGISLATURE

SECOND REGULAR SESSION

HOUSE AMENDMENT " " to COMMITTEE AMENDMENT " " to H.P. 1270, L.D. 1772, "Resolve, Regarding Legislative Review of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a Late-filed Major Substantive Rule of the Department of Environmental Protection"

Amend the amendment by striking out all of the emergency preamble and emergency clause.

SUMMARY

This amendment removes the emergency preamble and emergency clause from the committee amendment.

SPONSORED BY: _____

(Representative WELSH)

TOWN: Rockport

AROOSTOOK RESOURCES

April 11, 2014

Samantha Horn Olsen
Land Use Planning Commission
Dept. of Agriculture, Conservation
and Forestry
22 State House Station
Augusta, ME 04333-0022

RE: Proposed Rule Changes to Commission's Chapter 13, "Metallic Mineral Exploration, and Certification of Advanced Exploration and Mining" and Chapter 10, "Land Use Districts and Standards"

Dear Samantha:

Aroostook Resources, Inc. submits the attached comments on the proposed changes to Chapter 13 regarding exploration to increase consistency with the Maine Metallic Mineral Mining Act. For your convenience, our comments are provided both within (as redline) and under each section of the proposed rules on which we have comments.

Note that we have added our comments on the redlined text of the proposed rule changes you provided us. Consequently, the redlined changes that appear on Chapter 10 are ones LUPC itself is proposing.

Please don't hesitate to contact us if you have questions regarding any of these comments.

Very truly yours,

Anthony Hourihan

cc: Nicholas D. Livesay, Esq., Executive Director, LUPC
Thomas R. Doyle, Esq.

Proposed Routine Technical Rule Repeal and Replace[1] to

the Commission's Chapter 13

"Metallic Mineral Exploration, and Certification of[2] Advanced Exploration and Mining"

Subchapter1 and Subchapter 2

and

Amendment To the Commission's Chapter 10

Definitions, Section 10.02, 98;

Planned Development Subdistrict, Sections 10.21,G,6 and 9; and

Mineral Exploration and Extraction, Section 10.27,C

In response to Public Law 2011, Chapter 653 (LD 1853)

Comments in blue from Aroostook Resources, Inc.

- DRAFT -
January 8, 2014

The following proposes to replace subchapters 1 and 2 of Chapter 13 "*Metallic Mineral Exploration, and Certification of Advanced Exploration and Mining,*" and to amend certain sections of the Commission's Chapter 10 rules. The proposed subchapters 1 and 2 of Chapter 13 will replace the existing subchapters 1 and 2. The proposed changes to Chapter 10 are shown in ~~strikeout~~ and underline format.

[1] This rule revision anticipates legislative approval of the repeal of subchapters 1 and 2, as part of a separate rule change which was provisionally adopted by the Commission January 8, 2014. This revision replaces subchapters 1 and 2 herein.

[2] This rule revision anticipates the change to the name of Chapter 13, as part of a separate rule change which was provisionally adopted by the Commission January 8, 2014. This revision includes the new chapter name herein.

CHAPTER 13
METALLIC MINERAL EXPLORATION, AND CERTIFICAITON OF ADVANCED EXPLORATION AND MINING

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SUB-CHAPTER 1: GENERAL PROVISIONS

1.1 Applicability.
This Chapter applies to all exploration activity and all mining activity, including advanced exploration, in the unorganized and deorganized areas of the State.

1.2 Definitions.
As used in this Chapter, unless the context otherwise indicates, the following terms have the following meanings:

A. Advanced Exploration. "Advanced exploration" or "advanced exploration activity" means any metallic mineral bulk sampling or exploratory activity that exceeds those activities that are exploration activities, but remove 5,000 tons or less ~~of ore~~mine waste. Samples taken as part of "exploration" are not considered bulk sampling.

In its provisionally adopted rules, DEP uses the term "mine waste," so LUPC should be consistent. No reason to have a different definition of advanced exploration in different areas of the State.

B. Bulk Sampling. "Bulk sampling" means the removal of samples for the purpose of testing to determine the feasibility, method, or manner of extraction and/or processing of metallic minerals. Such testing may include milling or grinding tests, and/or pilot plant and processing tests. Methods of bulk sampling may include, but are not limited to, drilling and boring, digging of shafts and tunnels, or digging of pits and trenches. For purposes of this rule, bulk sampling of metallic mineral deposits is included in advanced exploration and is limited to the removal of no more than 5,000 tons of ore.

C. Commission. "Commission' means "the Maine Land Use Planning Commission" and, unless clearly stated otherwise or clearly evident from the context, includes Commission staff where, consistent with Chapter 3 of its rules, the Commission has delegated authority to its staff to act on behalf of the Commission.

D. Department. "Department" means the Maine Department of Environmental Protection.

E. Director. "Director" means the Director of the Maine Land Use Planning Commission.

F. Drilling. "Drilling" means the making of holes with a drill for exploration of a metallic mineral deposit.

G. Drill Hole. "Drill hole" means the cavity created by drilling.

H. Exploration. "Exploration" or "exploration activity" means activities conducted in accordance with this Chapter for the purpose of determining the location, extent and composition of metallic mineral deposits, test boring, test drilling, hand sampling, the digging of test pits, trenching or outcrop stripping for the removal of overburden having a maximum surface opening of 300 square feet per test pit or trench, or other test sampling methods determined by the Commission, in consultation with the Department, to cause minimal disturbance of soil and vegetative cover.

I. Exploration Permit. "Exploration permit" means a permit issued by the Commission pursuant to Chapter 10, *Land Use Districts and Standards*, and in accordance with Chapter 13, authorizing metallic mineral exploration activities.

J. Exploration Site. "Exploration site" means the area within which exploration or activities incidental thereto occur, or may reasonably be expected to occur.

K. Groundwater. "Groundwater" means all the waters found beneath the surface of the earth which are contained within or under this State or any portion thereof, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.

L. Metallic Mineral. "Metallic mineral" or "metallic mineral deposit" means 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. For purposes of this rule, the term "metallic mineral" does not include thorium or uranium.

M. Mining or Mining Activity. "Mining" or "mining activity" means 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 and includes the bulk sampling, advanced exploration, extraction or beneficiation of metallic minerals as well as waste storage and other stockpiles and reclamation activities, but does not include exploration.

N. Ore. "Ore" means rock containing metallic mineralization that is profitable to process using technologies that exist at the mining operation.

O. Overburden. "Overburden" means all of the earth and other materials which lie above the natural mineral deposits to be mined.

P. Person. "Person" shall mean an individual, firm, association, organization, partnership, trust, company, corporation, state agency or other legal entity.

Q. Qualified Professional. "Qualified professional" or "qualified person" means a scientist, engineer, or professional in a technical discipline with sufficient training and experience to enable the individual to make sound professional judgments regarding conducting technical analyses or regarding the design, construction, and operation of regulated units and ancillary structures who, if accreditation is the norm in the profession, is accredited in the State of Maine, or subject to review and approval by the Commission, is accredited in another jurisdiction.

R. Reclamation. "Reclamation" means the rehabilitation of the area of land affected by the exploration activities, including but not limited to, the stabilization of slopes and the creation of safety benches, the planting of vegetation including grasses, crops, shrubs, and/or trees, and the enhancement of wildlife and aquatic habitat and aquatic resources.

1.3 Prohibition.

It shall be unlawful for any person to engage in any exploration or mining activity, including advanced exploration, or to initiate construction in preparation for conducting these activities, except as authorized pursuant to this Chapter.

1.4 Relation to Other Rules.

This Chapter is intended to supplement rules administered by the Commission. No activity described in this Chapter is exempt from a requirement contained in any Commission rule unless such requirement, and rule, is specifically cited and described as inapplicable.

A. Obligation to Comply. Compliance with the provisions of this Chapter, or an exploration permit or certification determination issued in accordance with this Chapter does not relieve a person of the obligation to comply with all other applicable state or federal statutes or regulations, including but not limited to, the regulations for air emissions, waste discharges, solid and hazardous waste

management, underground oil storage facilities, oil discharge pollution prevention measures and facilities, and waste oil.

B. Other Permits. Depending upon the location, type and extent of activity, a permit may be required under other rules or statutes. Persons seeking to conduct exploration or mining activities should check with the appropriate agencies, including the Department and the Maine Geological Survey to determine applicable requirements.

1.5 Relation to Chapter 10.

The Commission's Chapter 10 rules, *Land Use Districts and Standards*, establishes in which subdistricts exploration activities and mining activities, including advanced exploration, are an allowed use. Chapter 10 categorizes all exploration and advanced exploration activities as falling into one of the following three use listings: Level A Mineral Exploration, Level B Mineral Exploration, or Level C Mineral Exploration. The Chapter 10 use listing "Level A Mineral Exploration" solely consists of activities defined as exploration in these Chapter 13 rules. The Chapter 10 use listing "Level B Mineral Exploration" consists of exploration activities, as well as some advanced exploration activities, as defined in these Chapter 13 rules. The Chapter 10 use listing "Level C Mineral Exploration" solely consists of activities defined as advanced exploration in these Chapter 13 rules. All Level A Mineral Exploration, as well as Level B Mineral Exploration that qualifies as exploration under this Chapter, is subject to subchapter 2. All Level C Mineral Exploration, as well as Level B Mineral Exploration that qualifies as advanced exploration under this Chapter, is subject to subchapter 3.

SUB-CHAPTER 2: EXPLORATION

2.1 Purpose of Exploration Requirements.
The purpose of this subchapter is to establish procedures and standards for exploration activities.

2.2 Applicability of Exploration Requirements.
This subchapter applies to any person proposing to conduct exploration activities.

NOTE: Geophysical surveys are considered as exploration for the purposes of this Chapter and the standards and submissions under Section 2.3, provided that they require some disturbance of soil or vegetation, such as cutting or clearing of vegetation along a survey grid. Non-intrusive methods, such as aeromagnetic surveys or other remote-sensing methods that do not require any disturbance of soil or vegetation are not considered part of exploration for the purposes of this Chapter.

2.3 Requirements for Exploration Activities.

A. Applicability of Standards. The Commission's Chapter 10 rules identify in which subdistricts exploration is an allowed use. Where an allowed use, exploration is allowed without a permit subject to standards, allowed with a permit, or allowed with a permit upon obtaining special exception approval. To be allowed without a permit subject to standards, the person engaging in exploration must comply with the standards in Section 2.3,B, and not the standards in Section 10.27,C1, of the Commission's Chapter 10 rules. Where exploration is allowed only after obtaining a permit, whether or not special exception approval is required, the person applying for a permit must demonstrate compliance with the standards in Section 2.3,B, and not the standards in Section 10.27,C,1, of the Commission's Chapter 10 rules. Notwithstanding the general requirement that a person engaging in exploration must comply with the standards in Section 2.3,B, exploration that would not comply with these standards may be allowed upon issuance of a permit from the Commission, provided that exploration is an allowed use in the subdistrict involved. An applicant for such a permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards in Section 2.3,B, shall be conducted in a manner that produces no undue adverse impact upon the resources and uses in the area

Conforming changes should be made within each of the Chapter 10 subdistricts to make clear the applicable standards (Section 2.3.B of this chapter) for exploration.

B. Standards. Except as provided in Section 2.3,A, the following minimum standards must be met for exploration activities:

(1) Access ways shall involve little or no recontouring of the land or ditching, and shall not include the addition of gravel or other surfacing materials. Clearing of the vegetative cover shall be limited to the minimum necessary to allow for the movement of equipment.

The highlighted language does not appear in DEP's exploration standards. Is there a compelling reason why this language should be different in unorganized versus organized areas? Moreover, there should be some provision for allowing a drill program to run a grader down an existing forest haul road or skid trail, or to add some gravel temporarily on top of a geofabric in a soft spot to minimize erosion issues. Additionally, the geologist and crew need to be a able to drive to the drill to collect samples, haul core, bring tools, etc. to the site.

(2) Access way approaches to stream channels shall be located and designed so as to divert water runoff from the way in order to prevent such runoff from directly entering the stream.

(3) Erosion control measures must be implemented to prevent unreasonable erosion of soil or sediment beyond the exploration site or into sensitive areas such as slopes exceeding 15% and areas that drain directly into water bodies, drainage systems, water crossings, or wetlands; these measures must be in place before exploration activity, or related activities including, but not limited to, clearing and road construction, begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken and the site must be maintained to prevent unreasonable erosion and sedimentation.

(4) Exploration activities or associated access ways where the operation of machinery used in such activities results in the exposure of mineral soil, shall be located such that an unscarified filter strip of at least the width indicated below is retained between the exposed mineral soil and the normal high water mark of a flowing water, body of standing water, tidal water, or wetland identified as a P-WL1 subdistrict:

Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark (Percent)	**Width of Strip Between Exposed Mineral Soil and Normal High Water Mark** (Feet Along Surface of the Ground)
<30	75
30	85
40	105
50	125
60	145
70	165

Table 13.1. Unscarified filter strip width requirements for exposed mineral soil created by mineral exploration activities or associated access ways.

The provisions of Section 2,B(4) apply only on a face sloping toward the water, provided, however, no portion of such exposed mineral soil on a back face shall be closer than 25 feet; the provisions of Section 10.27,C,1,b do not apply where access ways cross such waters.

(5) Except when surface waters are frozen, access ways for exploration activities shall not utilize stream channels bordered by P-SL2 Shoreland Protection Subdistricts except to cross the same by the shortest possible route. Unless culverts or bridges are installed in accordance with Sections 10.27,D, 2 and 5 of the Commission's Chapter 10 rules such crossings shall only use channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

(6) Soil which is stripped or removed must be stockpiled for use in reclaiming disturbed land areas. Soil stockpiles shall be seeded, mulched, and anchored or otherwise stabilized.

(7) The ~~affected land~~ exploration site shall be restored to a physical state that is similar to and compatible with that which existed prior to any exploration. Within 30 working days following completion of exploration at an exploration site, any person conducting exploration activities shall accomplish the following:

"Affected land" is not defined in these rules. We recommend that the Commission use "exploration site," which is defined.

(a) Disposal of all debris in accordance with applicable state laws and regulations;
(b) Grading of the surface of the site so that the final graded slope conforms with the original contour of the land; and

(c) Reseeding and stabilization of graded topsoil with vegetation native to the area. Any person conducting exploration activities shall follow the "Guidelines for Vegetative Stabilization," Appendix B of the Commission's Chapter 10 rules.

(8) Within 30 working days after completion of exploration activities, all excavations including trenches, test pits, and mud pits shall be capped, refilled or secured. All settling ponds or sumps must be backfilled, covered with topsoil and seeded.

(9) In accordance with the provisions of Section 10.26,G, 5 of the Commission's Chapter 10 rules, drill pump stations may be located closer than the setbacks required for structures from waterbodies or wetlands in Section 10.26,D,2 of the Commission's Chapter 10 rules, but at no time shall the drill pump station be located closer than 25 feet to a wetland or waterbody.

(10) Except for samples collected for exploration purposes, all drilling mud, water and other fluids, as well as waste cuttings must be confined to the drill site by the use of storage tanks or sumps. All excavation sites and resulting waste must be managed to ensure no untreated water is released to the environment and released volumes will not adversely impact existing stream flows.

(11) Sealing of all drill holes, whether temporary or permanent, shall be completed within 30 days of cessation of drilling or testing activities such as "down-the-hole" geophysical surveys or other similar activities. All artesian wells shall be capped or sealed within 48 hours after cessation of drilling or the onset of artesian conditions. No drill hole may be temporarily sealed for more than 3 years unless the drill hole is being used for sampling or other studies related to a mineral deposit or general hydrological conditions of the area. A drill hole that has remained temporarily sealed for more than 3 years and is not being used for sampling or other studies shall be sealed permanently. All sealing activities will be conducted according to the "Guidance for Well and Boring Abandonment," produced by the Department's Bureau of Remediation and Waste Management, Division of Technical Services, dated January 7, 2009.

(a) Within 30 working days after permanent sealing of the final drill hole of a drill program, any person conducting exploration activities shall submit to the Commission a report including, but not limited to, the following information for each drill hole:
(i) Location and identification of the drill hole;
(ii) Dimensions of the drill hole;
(iii) Identification of depth, static elevation, and estimated flow of any groundwater encountered, if known; and
(iv) Methods of sealing the drill hole, demonstrating compliance with Section 2.3,B(11)~~(7)~~.

We believe subsection (11) was intended here.

With respect to the highlighted sentence above, we request that you confirm in your response to comments that "testing" includes ground water sampling as such drill holes should not be sealed if such sampling will continue.

(12) All facilities and equipment shall be promptly removed from the exploration site when they are no longer needed for the exploration activity, or for any reclamation activities or monitoring required for the exploration activity. However, such facilities or equipment which are otherwise allowed under the Commission's rules, or that would be used for an advanced exploration or mining activity under review by the Department, may remain on site, provided that any required permits are obtained.

With respect to the highlighted provision, we assume such equipment may remain while permits are obtained. Please confirm this in your response to comments.

(13) The Commission may enter any exploration site, take samples, and conduct tests in order to determine compliance with any provision of this Chapter or other applicable requirements. The Commission may require the submission of annual self-inspection reports, signed by a qualified professional on exploration activities conducted by the permittee.

(14) Any person conducting exploration activities shall notify the Commission orally within 24 hours and in writing within 5 working days of any activity or occurrence during the course of exploration or reclamation which has the potential to damage public health or the environment.

C. Submission Requirements.

(1) At least 30 days prior to commencing any drilling activities, or when submitting an application for any exploration permit, a person planning to drill or filing such an application shall submit a work plan to the Commission. The work plan shall be prepared and signed by a qualified professional and provides the following information, at a minimum:

(a) Documentation of the property boundaries, landowner information, and description of the area to be explored;
(b) Evidence of the applicant's title, right or interest for access to the area to be explored and to conduct exploration activities;
(c) A site plan showing the proposed access routes and exploration areas;
(d) Identification of any proposed new access ways, roads, or clearings;
(e) A site plan with wetlands or other sensitive environmental features identified;
(f) A sediment and erosion control plan, including a stormwater management plan consistent with standards for stormwater management for access roads, excavation and stockpile areas, and other areas affected by the activity;
(g) A description of proposed drilling and excavation activities and methods, including petroleum products and chemical handling procedures and spill management, estimated quantities of material that must be removed to obtain samples, and best management practices to be employed in conducting the exploration activities. If specified by the Commission, additional measures to protect the environment shall be adopted by the person engaged in exploration activities;
(h) A plan for backfill and restoration of exploration sites which will address subsidence, drill holes, structural safety, water management, restoration of disturbed areas including access roads, and the abatement of any physical hazards; and
(i) A plan showing the exploration drilling area, maximum number of drill holes, and the maximum total drilling footage.

(2) Within 60 days of the completion of the exploration activities the person required to have submitted a work plan pursuant to paragraph (1) above shall submit to the Commission a report, prepared and signed by a qualified professional, documenting that all of the requirements of the restoration plan were completed.

(3) Hand sampling activities (soil sampling with auger or shovel, stream sediment sampling and rock chip sampling) are exempt from the submission of an exploration work plan; however, these activities may require approval under other laws and regulations administered by the Commission.

D. Permit Conditions. Where an exploration permit is required, such a permit shall be subject to the following.

(1) Noncompliance and Occurrence Reporting. The permittee shall provide notice to the Commission of any noncompliance; and to the Department and the Commission of any unpermitted or otherwise unlawful release or discharge of pollutants, fire or explosion at the site. Notice shall be provided orally within 24 hours from the time the permittee becomes

aware of the circumstances, and in writing within 5 working days. If the noncompliance, release or discharge of pollutants, or cause of fire or explosion has not been corrected, the anticipated time it is expected to continue shall be given, together with the steps taken or planned to reduce, eliminate and prevent recurrence. This notice requirement does not superceed or replace any other State or federal spill, release, or discharge reporting requirement.

EFFECTIVE DATE: August 26, 1991

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 4, 1996

NON-SUBSTANTIVE CHANGES: September 2, 1997 - minor spelling, formatting and layout.

EFFECTIVE DATE: June 1, 2014

CHAPTER 10
LAND USE DISTRICTS AND STANDARDS

Section 10.02 - Definitions
Sections 10.21,G, 6 and 9 – Planning Development Subdistricts
Section 10.27,C – Mineral Exploration and Extraction

10.02 DEFINITIONS

98. Level C Mineral Exploration Activities:
Metallic mineral exploration activities means~~involving~~ the disturbance of a site, by excavation, of more than two (2) acres of surface area or the excavation or removal of more than ten thousand (10,000) cubic yards of soil, overburden, ore or other earthen materials from the site of exploration. Removal of more than 5,000 tons of ore is not included in Level C Mineral Exploration Activities and shall be considered Metallic Mineral Mining.

10.21 DEVELOPMENT SUBDISTRICTS

G. PLANNED DEVELOPMENT SUBDISTRICT (D-PD)

6. Procedure
The procedures set forth~~ below and those set forth~~ in Sections 10.21,G, 6, 7 and 8 apply to all developments except ~~:a. T~~ those related to metallic mineral mining and Level C mineral exploration activities which are governed by the procedures set forth in Chapters 12 and 13 of the Commission's rules.

The procedures set forth in Section 10.21,G,9 apply only to: ~~b. Those~~ D-PD subdistricts approved or accepted for processing by the Commission prior to September 1, 2012; ~~and~~ activities not requiring Maine Department of Environmental Protection review under the Site Location of Development Law within D-PD subdistricts accepted for processing after September 1, 2012~~ not requiring review under Site Law~~; and exploration, as defined in the Maine Metallic Mineral Mining Act, within D-PD subdistricts~~ which in addition to those sections set forth above shall also be governed by the procedures set forth in 10.21,G,9~~.

The Planned Development review procedure shall consist of three stages:

(1) Preapplication Conference;
(2) Submission of Preliminary Development Plan / Zoning Petition; and
(3) Submission of a Final Development Plan or amendment to a Final Development Plan for those projects described in Section 6,(b).

The Preapplication Conference serves to inform the prospective applicant, prior to formal application, of the proposed plan's filing requirements. Formal application is made by submitting a Preliminary Development Plan / Zoning Petition that meets the requirements specified herein. No decision thereon can be made until a Public Hearing is held. Thereafter, the Commission may approve or deny the petition. An approval will amend the subdistrict(s) to a D-PD subdistrict and will include a preliminary development approval that specifies under what conditions, if any, the Commission will accept the Preliminary Development Plan / Zoning Petition proposal as the standard against which future certification requests, amendments to existing Final Development Plans, or new Final Development Plans are judged. No development will be allowed except for activities necessary to gather site data for the permit and/or certification applications until such an application is submitted and approved. Necessary site data gathering activities must be consistent with the proposed description as submitted in the Preliminary Development Plan / Zoning Petition and are allowed without a permit.

9. Final Development Plan

The procedures set forth in Section 10.21,G,9 apply ~~only~~ to: ~~all~~ D-PD subdistricts accepted for processing by the Commission prior to September 1, 2012~~,~~; activities not requiring Maine Department of Environmental Protection review under the Site Location of Development Law and development within D-PD subdistricts accepted for processing after September 1, 2012~~; that does not require review under Site Law~~; and exploration, as defined in the Maine Metallic Mineral Mining Act, within D-PD subdistricts.

10.27 ACTIVITY-SPECIFIC STANDARDS

C. MINERAL EXPLORATION AND EXTRACTION

Mineral exploration and extraction activities for non-metallic minerals that are not in conformance with the standards of this section may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved. An applicant for such permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of this section, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

Mineral exploration and extraction activities for metallic minerals are not subject to the following subsections. Metallic mineral exploration and extraction are subject to Chapter 13, Metallic Mineral Exploration and Certification of Advanced Exploration and Mining, including but not limited to the standards for metallic mineral exploration in that chapter.

The following standards~~requirements~~ for mineral exploration and extraction activities for non-metallic minerals shall apply in all subdistricts except as otherwise hereinafter provided:

1. Mineral Exploration. The following standards ~~requirements~~ shall apply to mineral exploration activities for non-metallic minerals:

a. All excavations, including test pits and holes, shall be promptly capped, refilled or secured by other equally effective measures so as to reasonably restore disturbed areas and to protect the public health and safety.

b. Mineral exploration activities or associated access ways where the operation of machinery used in such activities results in the exposure of mineral soil, shall be located such that an unscarified filter strip of at least the width indicated below is retained between the exposed mineral soil and the normal high water mark of a flowing water, body of standing water, tidal water, or wetland identified as a P-WL1 subdistrict:

Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark (Percent)	**Width of Strip Between Exposed Mineral Soil and Normal High Water Mark** (Feet Along Surface of the Ground)
~~0~~	~~25~~
~~10~~	~~45~~
~~20~~	~~65~~
~~<30~~	~~75~~
30	85
40	105
50	125
60	145
70	165

Table 10.27,C-1. Unscarified filter strip width requirements for exposed mineral soil created by mineral exploration activities or associated access ways.

The provisions of Section 10.27,C,1,b apply only on a face sloping toward the water, provided, however, no portion of such exposed mineral soil on a back face shall be closer than 25 feet; the provisions of Section 10.27,C,1,b do not apply where access ways cross such waters.

c. Except when surface waters are frozen, access ways for mineral exploration activities shall not utilize stream channels bordered by P-SL2 subdistricts except to cross the same by the shortest possible route; unless culverts or bridges are installed in accordance with Section 10.27,D,2 and 5, such crossings shall only use channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

d. Access way approaches to stream channels shall be located and designed so as to divert water runoff from the way in order to prevent such runoff from directly entering the stream.

e. In addition to the foregoing minimum requirements, when conducting mineral exploration activities and creating and maintaining associated access ways, provision shall be made to effectively stabilize all area of disturbed soil so as to reasonably avoid soil erosion and sedimentation of surface waters. These measures shall include seeding and mulching if necessary to insure effective stabilization.

2. Mineral Extraction. The following standards ~~requirements~~ shall apply to mineral extraction activities for non-metallic minerals in all subdistricts:

a. A vegetative buffer strip shall be retained between the ground area disturbed by the extraction activity and:

(1) 75 feet of the normal high water mark of any body of standing water less than 10 acres in size, any flowing water draining less than 50 square miles, tidal water, or wetland identified as a P-WL1 subdistrict; and

(2) 100 feet of the normal high water mark of any body of standing water 10 acres or greater in size or flowing water draining 50 square miles or more.

b. No portion of any ground area disturbed by the extraction activity shall be closer than 250 feet from any public roadway, or 250 feet from any property line in the absence of the prior written agreement of the owner of such property.

c. Within 250 feet of any water body the extraction area shall be protected from soil erosion by ditches, sedimentation basins, dikes, dams, or such other control devices which are effective in preventing sediments from being eroded or deposited into such water body.

Any such control device shall be deemed part of the extraction area for the purposes of Section 10.27,C,2,a, above;

d. A natural vegetative screen of not less than 50 feet in width shall be retained from any facility intended primarily for public use, excluding privately owned roads; and

e. If any mineral extraction operation located within 250 feet of any property line or public roadway or facility intended primarily for public use, excluding privately owned roads, is to be terminated or suspended for a period of one year or more, the site shall be rehabilitated by grading the soil to a slope of 2 horizontal to 1 vertical, or flatter.