

EXCAVATION REGULATIONS

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Amended 12/4/1991
Amended 1/16/2019

EXCAVATION REGULATIONS

Section I: Excavation Regulations

Pursuant to the authority vested in the Town by RSA 155- E:11, these regulations are hereby adopted as a supplement to the statutory regulations contained in New Hampshire RSA 155-E, as amended. All other applicable land use regulations in the Town of New Ipswich shall be complied with.

Section II: General Purpose

The purpose of these excavation regulations is: to provide for reasonable opportunities for excavation; to minimize safety hazards created by open excavations; to safeguard the public health and welfare; to preserve the natural aspects of soil, water, forests and wildlife; to maintain the aesthetic features of the Town and environment; to prevent land and water pollution; and to promote soil stabilization.

Section III: Definitions

In addition to the definitions in RSA 155-E:1 and the New Ipswich Zoning Ordinance and Subdivision Regulations, the following definitions shall apply:

AGRICULTURAL EXCAVATION means excavation of earth by the owner of the land to be used on the owners land exclusively for agricultural use.

AGRICULTURAL USE means land used for agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, silviculture and animal and poultry husbandry.

APPLICANT means the owner of the property to be excavated or the owner's agent, so designated in writing as part of the excavation application.

COMMERCIAL EXCAVATION means excavation of earth intended for commerce, this may also include excavation that is strictly conducted for the purpose of alteration, renovation, improvement or construction to the property on which the excavation takes place. Any commercially useful earth material leaving the property for whatever reason is considered to be a commercial operation.

COMMERCIALLY USEFUL means the amount of excavated earth deemed by the Regulator to be commercially useful which has been determined to be 1,000 cubic yards or more.

CONTIGUOUS means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town.

EXCAVATING means extracting earth from a site that is in a natural state, or a site that is reclaimed or naturally reclaimed, by any method, such as dredging, blasting, digging out and removing, or forming a cavity or a hole in any land area.

EXPANSION means excavation and disturbance of earth beyond the limits as shown on the plan as approved by the Regulator.

INCIDENTAL EXCAVATION means excavation of earth which has been granted an exception from an excavation permit by the Regulator.

MINOR TOPOGRAPHICAL ADJUSTMENT means a one time removal of earth from the site of less than 1,000 cubic yards that is exclusively necessary to change the physical configuration of the land for a specified use or situation.

NORMAL LANDSCAPING means the on-site alteration and contouring of the land exclusively devoted to improving the functional utility and planting of the grounds.

RECLAMATION means the restoration of an excavation site to an acceptable standard as determined and approved by the Regulator.

REGULATOR means the New Ipswich Planning Board pursuant to the New Ipswich Zoning Ordinance Article XIII Paragraph J.

STATIONARY MANUFACTURING AND/OR PROCESSING PLANTS means facilities which are placed on a site for the purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated earth materials.

Section IV: Permit Required

- A. All excavations require a permit except those specifically exempted in RSA 155-E:2 and 155-E:2-a, provided however that :
1. The Regulator shall determine what is incidental in the event that site development, construction activities, or other projects that require excavation of earth will result in the removal from the site of more than 1,000 cubic yards.
 2. The Regulator shall determine what is incidental in the event that excavation of earth that is a result of agricultural use, normal landscaping or minor topographical adjustment as defined in Section III of these regulations will result in the removal from the site of more than 1,000 cubic yards.
 3. In making the determination as to what is incidental, the Regulator shall take into consideration the extent to which the earth material to be removed is associated with the proposed construction or alteration, the effect on adjacent areas, and any nuisance or serious hazard to vehicles or pedestrians.
 4. The Regulator may attach conditions to any excavation that it determines to be incidental.
- B. When the scope of an approved permitted excavation is proposed to be altered as to affect either the size or location of the excavation, or the plan for reclamation, the owner must submit a new application, plans, and other required submission items for a new excavation permit hearing process. If the approved excavation previously required a special exception or variance, the proposed changes must first be approved by the Zoning Board of Adjustment. Changes in the rate of removal require prior approval by the Regulator.
- C. Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E (Mining and Reclamation) is deemed to be an exception from a permit

Section V: Application for Permit

Any owner or owner's designee subject to these regulations shall apply for an excavation permit by submitting an application which includes an Excavation Plan and a Reclamation Plan in compliance with the following items. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. At least five copies of all plans and one

electronic copy in a format specified by the Regulator shall be submitted to the Regulator and one copy to the Conservation Commission.

- A. The Excavation Plan shall be drawn at a scale of 1"=100' or at a scale as approved by the Regulator, and shall include the following:
1. The name and address of the owner of the land to be excavated, the person who will actually do the excavating and all abutters to the premises on which the excavation is proposed
 2. seal of a licensed professional engineer registered in the State of New Hampshire
 3. tax map and lot numbers of the site
 4. zoning district(s)
 5. complete description of the site boundaries
 6. the acreage of the site
 7. location of all easements and rights-of-way within 200 feet of the project boundary
 8. name, location, and width of all public roads and rights-of-way
 9. dwelling units, septic systems, and wells on the site and within 150' of the perimeter of the area to be excavated
 10. location and extent of any stone walls, ledge outcroppings, existing buildings, utilities, and other significant natural and man-made features on the site
 11. a locus map showing the proposed operation in relation to existing roads
 12. existing and proposed access roads, including width and surface materials
 13. the location of all driveways and road intersections within 200 feet of the property boundary
 14. existing and proposed visual buffers from the roadways, specifying which, if any, existing buffers are to remain intact
 15. existing and proposed fencing, buffers, and visual barriers, including height and materials
 16. existing excavation areas, if any
 17. proposed set back distances between disturbed areas and the closest

property lines

18. the area to be excavated, including the breadth, depth, and slope of the proposed excavation
19. estimated volume of earth material to be removed
20. description of project duration and phasing
21. any existing and proposed accessory facilities and/or activities
22. storage areas for topsoil to be used in reclamation
23. existing topography at two foot contour interval
24. proposed topography at two foot contour interval at the completion of excavation and restoration
25. existing vegetation
26. all surface drainage patterns, including wetlands, standing water, lakes, streams, and the like
27. a log of borings or test pits that extend to either the seasonal high water table, ledge, or a minimum of six feet below the maximum proposed excavation depth, including location and soils data
28. the elevation of the highest annual average groundwater table within or next to the proposed excavation
29. all measures to be used to control erosion, sedimentation, water pollution, air pollution, and hazards to human safety
30. aquifer locations and limits as identified by the US Geological Survey and/or other acceptable sources
31. plans for storm water management
32. per RSA 155E:3 VI-a, specific actions to be taken by the applicant on the excavation site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons
33. methods to prevent materials from the site from being tracked onto public roadways

B. The Reclamation Plan shall be drawn at the same scale as the Excavation Plan, shall cover the same area, and shall address the effects of the proposed excavation on soil, surface, and ground water, vegetation, overburden, topography, and fill material, and should

address future land use consistent with the Master Plan. The plan shall, at a minimum, contain the following items:

- 1 . seal of a licensed professional engineer registered in the State of New Hampshire
 - 2 . the boundaries of the area proposed for reclamation and the land within 200 feet of the boundary of the project area
 - 3 . the final topography for the reclaimed area
 - 4 . the final surface drainage pattern, including the location and physical characteristics of all drainage facilities
 - 5 . soil conditioning specifications
 - 6 . the timetable of reclamation of fully depleted sites within the excavation area and the schedule of final reclamation activities including seeding mixtures, mulching materials, fertilizer types, lime, and application rates
 - 7 . the plant materials to be used in the restoration, including the quantities and sizes of the plants
 - 8 . subsequent use of the site, if known
 - 9 . cross sectional views showing existing, excavated, and reclaimed topographical configuration
 10. erosion and sedimentation control plan.
- C . In addition, the following items shall be submitted as part of the application for an excavation permit:
- 1 . Copies of permits required by state or federal agencies.
 - 2 . Hauling information, including routes to be utilized, the type and weight of motor vehicles involved, and the frequency and schedule of operations of such vehicles. The Regulator may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. The Regulator may require that a traffic study be done at the applicants expense to ensure that public safety, neighborhood compatibility, and road capacity and condition have been properly considered and addressed in the hauling plans.
 - 3 . All applicable fees, including the excavation fee per RSA 155-E: 8 (for the processing of the application), all fees for the notification of abutters and the publication of the public notices, and an inspection fee (for any on-site inspections). In addition, the applicant shall be responsible for the payment of any expenses incurred for special studies required by the Regulator.

Section VI: Operational Standards

In addition to the standards provided in RSA 155-E:4 and 4- a, the following shall apply to all excavations requiring a permit:

1. Access roads leading to the excavation site shall intersect existing streets and roads at locations that have been duly approved by state or local officials and in a manner that will not endanger the safety of highway users and local residents.
2. Permit approval shall be conditioned on compliance by the applicant with street and highway regulations promulgated by federal, state, and local authorities.
3. Natural vegetation adjacent to neighboring properties on which excavation is not intended shall be maintained for the purposes of erosion control, screening, noise reduction, and property value. The Regulator shall have the authority to require additional screening where necessary.
4. All temporary structures required during excavation operations shall be removed from the site within 30 days after such operations cease.
5. All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded. All spillage on public roads shall be swept daily.
6. Start up time for all machinery associated with a gravel or sand pit shall be no earlier than 7:00 am and all machinery must be shut down by 5:00 pm. Hours of operation are limited to Monday through Friday. Hours of operation other than those stipulated may be allowed if specifically authorized by the Regulator, provided there is no detrimental impact on surrounding properties.
7. Topsoil shall be stripped from the excavation area and stockpiled for use in subsequent reclamation of the site. It shall be protected from erosion by seeding, covering, or some other acceptable method. No topsoil shall be removed from the site without specific approval from the Regulator.
8. Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process. Excavations shall comply with the erosion and sedimentation control provisions in the town's subdivision regulations.
9. The applicable state statutes pertaining to forestry practice and timber harvesting shall apply to the removal of vegetative cover at excavation sites.
10. Excavation operations shall be set back at least 25 feet from wetlands as

defined in the New Ipswich Wetlands Conservation District Ordinance and must comply with the State of NH Department of Environmental Services Wetland regulations. It must be demonstrated that no sedimentation of the wetlands will occur as a result of the excavation. The Regulator shall have the authority to require greater wetlands setbacks in situations where it can be demonstrated that they will be required to protect the wetlands from degradation due to the proposed excavation operations

11. Excavation operations shall be performed in such a manner as to not cause substantial damage to any aquifer identified by the U.S. Geological Survey or by other studies. The Regulator shall determine whether or not substantial damage to the aquifer will be incurred by considering the following criteria:
 - a. the excavation shall not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long term susceptibility of the aquifer to potential pollutants;
 - b. the excavation shall not cause a significant reduction in the long term volume of water contained in the aquifer or in the storage capacity of the aquifer.

Furthermore, the Regulator may require that the applicant provide data or reports prepared by a professional groundwater consultant which assess the potential aquifer damage caused by the proposed excavation project.

12. Machinery for processing earth material shall be erected or maintained on the lot as approved within the operational plan and such machinery shall be removed from the lot upon expiration of the permit or as otherwise provided in the permit. Permits granted for incidental excavations shall not allow for the on-site processing of materials that are to be removed from the site.
13. No earth material shall be stock piled or located outside the permitted area without prior approval by the Regulator.
14. No blasting or crushing shall occur without receiving prior approval by the Regulator.
15. Waste, building materials and rubble (i.e. "demolition and construction debris" or "C&D waste") shall not be stored or buried on the site.
16. Stumps and brush shall not be allowed to be buried or stored on site.

17. The site will not be used for storage of junk vehicles, machinery, etc. as defined in RSA 236:112.
18. Earth, concrete, and asphalt that did not originate from the site shall not be brought in, or stored or processed on the site without prior approval by the Regulator.

Section VII: Reclamation standards

For excavations requiring a permit, the standards contained in RSA 155-E:5 are considered to be the minimum standards and the Regulator may require more stringent reclamation standards as deemed necessary by the nature and scope of the operation. The reclamation will be done in accordance with the approved plans and reclamation sequence. The following shall apply to all excavations covered by these regulations:

1. No slope in soil material shall be left steeper than 3:1 unless it can be demonstrated by the applicant that a steeper grade can be adequately vegetated and stabilized.
2. Ground levels and grades shall be established as shown on the approved reclamation plan as soon as practical during site excavation, but not later than one year after excavation has been completed.
3. Stockpiled topsoil shall be spread over the disturbed area to a depth sufficient to allow establishment and maintenance of vegetation. Areas posing the most critical problems for re-vegetation shall be given first priority should available topsoil be limited. The disturbed areas should be limed and fertilized, if necessary, and seeded with a grass or grass-legume mixture.
4. If deemed necessary by the Regulator, suitable trees or shrubs may be planted in order to provide screening and natural beauty and to aid in erosion control. Such planted areas shall be protected from erosion during an appropriate establishment period by mulch and structural erosion control devices. Landscaping plans shall be subject to approval by the Regulator and shall be warranted by the owner for a period of two years after the final satisfactory site inspection.
5. The responsible party shall not be released from its reclamation bond until the Regulator receives certification from a registered professional engineer that all terms of the Excavation Plan and Reclamation Plan have been complied with.
6. Incidental excavations that have received an exception from a permit by the Regulator to remove more than 1,000 cubic yards of earth shall submit a final grading and landscaping plan in lieu of a reclamation plan.

7. Any excavation permit applicant that requires a RSA 485-A:17 Alteration of Terrain Permit (AOT) from the NHDES shall incorporate the requirements of these regulations, to the extent that they are more restrictive, and not in conflict, with the AOT permit. Copies of all such AOT permits and update plans shall be filed with the Regulator.

Section VIII: Bonding

The Regulator shall establish the amount of the bond prior to the issuance of the excavation permit. The bond shall be an amount sufficient ~~for~~ to

1. guarantee the reclamation of the site pursuant to RSA 155-E:4-a VII and
2. to guarantee compliance with the permit, which shall include re-landscaping areas visible from abutting properties if necessary, repairs to public roadways damaged as a result of the excavation operation traffic, and other items as may be required by the Regulator.

The reclamation portion of the bond shall be based on the acreage of the project or approved phases and the estimated per acre reclamation costs. That portion of the bond shall be released when the reclamation has been completed and a final satisfactory site inspection has been conducted by the Regulator or its designee. The remainder of the bond shall be released after a final satisfactory inspection by the Regulator or its designee of any required road repairs and other bonded work. The applicant shall pay for any bond reviews by the Town Engineer or Town Counsel.

On each anniversary of the requirement of the applicant to post the initial security, the applicant shall increase the existing balance of the security by 10% to account for cost escalations.

Section IX: Administration and Enforcement

In addition to the provisions of RSA 155-E:10:

1. Permits shall be issued only to the owner. A copy of the permit shall be prominently displayed at the site or the principal access to the site.
2. The owner shall submit an updated plan every five (5) years.
3. The Regulator may include in the permit any such reasonable conditions as are consistent with the purpose of these regulations.
4. The Regulator or its designee will conduct site inspections to verify permit compliance.

These shall be done on an annual basis unless a more frequent schedule is necessary due to special characteristics of the excavation or reclamation plans. A site inspection review letter will be sent to the owner citing any deficiencies and providing a timeline for correction of the deficiency

5. Bonding will be reviewed at the time of periodic inspections
6. The Regulator may suspend or revoke the exception from a permit for an incidental excavation if the Regulator determines that any provision of the ~~permit~~ exception has been violated, a material misstatement made in the ~~permit~~ application upon which an exception was granted, or any unsafe or hazardous conditions are determined by a site inspection to exist, or failure to correct any deficiency after notice pursuant to RSA 155-E:10. Such suspension or revocation shall be subject to a motion for rehearing pursuant to RSA 155-E:9 and further appealed in accordance with RSA 677:4-15.
7. The Regulator may require at the applicant's expense a review of the site by the town engineer for compliance with the plan and RSA 155-E

Section X: Waivers

In addition to the provisions of RSA 155-E5-b, which addresses exceptions to the standards of RSA 155-E:4-a, 5, and 5-a, the applicant may request waivers to submission requirements for the Excavation Plan or Reclamation Plan if not explicitly required by RSA 155-E. Any such request must be made in writing at the time of submitting the application, and shall include specifically which submission requirements the applicant requests the waivers for, the reasons why the waivers are being sought, and reasonable alternatives where appropriate. All waivers must be discussed at the public hearing, and the Regulator's decision regarding waivers must be in writing and shall state specifically what submission requirements are being waived and what alternatives are accepted.

Section XI: Separability

If any section, paragraph, subdivision, clause, or provision of these regulations shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause, or provision adjudged, and the remainder of these regulations shall be deemed to be valid and effective.

Section XII: Effective Date

These regulations shall take effect upon adoption by the Planning Board and as amended.

Amended January 16, 2019

_____	_____
Bert Hamill, Chairman	
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