
Earth Excavation and Reclamation Regulations



Loudon, New Hampshire

Adopted: November 19, 2015

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SECTION I: AUTHORITY

In accordance with the provisions of New Hampshire Revised Statutes Annotated, Chapter 155-E, the Loudon Planning Board adopts the following regulations governing the excavation of earth materials and reclamation of excavation sites in the Town of Loudon, New Hampshire.

SECTION II: PURPOSE AND SCOPE

For the purpose of identifying and utilizing existing sources of necessary construction materials, as recognized by the New Hampshire State Legislature, while at the same time minimizing safety hazards which can be created by open excavations and ensuring that the public health and welfare will be safeguarded and natural resources and the environment protected, no earth materials shall be removed except in conformance with these regulations.

SECTION III: DEFINITIONS

- A. Abutter: Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. For the purposes of receiving testimony only, and not for the purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration.
- B. Applicant: The record owner of the excavation site at the time of application or said owner's designee.
- C. Application: A complete submission of information and plans as required by Section VII, Application Procedure.
- D. Board: The Planning Board of Loudon.
- E. Commercial Excavation: Any use of earth material for sale or resale on or off the excavation site. Excavation shall be considered commercial if earth materials are transported to other sites.
- F. Contiguous: Land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town, except in the case of stationary manufacturing plants, whose perimeter is not defined by town boundaries.
- G. Dimension Stone: Rock that is cut, shaped or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and is used for external or interior parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which sections of dimension stone are to be produced. Dimension stone does not include earth as defined below.
- H. Earth: Sand, gravel, rocks, soil or construction aggregate produced by quarrying, crushing, or any other mining material or such other naturally occurring unconsolidated materials that normally mask the bedrock (RSA 155-E: 1, I).
- I. Excavation: A land area that is used or has been used for the commercial taking of earth, including all slopes.

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- J. Excavations, Abandoned: Any excavation for which the affected area has not been brought into complete compliance with reclamation standards of this regulation shall be deemed abandoned if:
- (1) No earth material has been removed from the site during any two (2) year period either before, on or after August 4, 1989; or
 - (2) The excavation is still in use, but the owner or operator has not brought the affected areas into compliance with the incremental reclamation requirements of this regulation or posted a bond or other surety sufficient to cover the costs of reclamation; or
 - (3) The owner or operator of the excavation has neither secured a permit pursuant to these regulations nor filed a report of an existing excavation within the prescribed time period.
- K. Excavations, Existing: Those excavations that lawfully existed as of August 24, 1979, from which earth material of sufficient weight or volume to be commercially useful were removed during the two-year period before August 24, 1979.
- L. Excavation Permit: The permit to conduct earth removal activities issued by the Loudon Planning Board pursuant to and in conformance with RSA 155-E and these regulations.
- M. Excavation Site: Any area of contiguous land in common ownership upon which excavation is presently taking place, has taken place or is intended to take place.
- N. Expansion:
1. Existing Excavations - means beyond the limits of the Town and the area that on August 24, 1979, was contiguous to and in common ownership with the excavation site and has been appraised and inventoried for tax purposes as part of the same tract as the excavation site;
 2. Stationary Manufacturing Plants - means to any contiguous lands that were in common ownership with the site of the plant on August 4, 1989.
- O. Reclamation: The restoring of an excavation site to a minimum standard as outlined in Section X of these regulations.
- P. Stationary Manufacturing and/or Processing Plants: Plants that are permanently placed on a site for the purpose of sorting, washing, screening, crushing, classifying, drying or processing excavated earth materials.

SECTION IV: PERMIT REQUIRED

An excavation permit must be obtained from the Loudon Planning Board for the following excavation operations:

- A. Those that commenced operations since August 24, 1979, without first obtaining a permit from the Board, unless specifically exempted by Section V below.
- B. Any excavation proposing to begin operation after the effective date of these regulations.

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- C. Those that have lawfully operated prior to August 24, 1979, and wish to expand beyond the excavation area.
 - D. The expansion of an excavation area that on August 4, 1989, was contiguous to or was contiguous land in common ownership with stationary manufacturing plants that were in operation on August 24, 1979.

SECTION V: PROJECTS EXEMPT FROM A PERMIT

- A. The following projects do not require a permit but are nevertheless subject to the Operational and Reclamation Standards of these Regulations.
 - 1. Existing Excavations, provided that at the time operation began it was in compliance with any local ordinances in effect; and the owner or operator filed an Excavation Report per RSA 155-E: I (d) with the Planning Board.
 - 2. Excavations from a site that on August 4, 1989, was contiguous to or was contiguous land in common ownership with stationary manufacturing and processing plants that were in operation as of August 24, 1979, or for which local or state permits have been granted since August 24, 1979, and before August 4, 1989, and which used earth obtained from such site.
 - 3. An excavation performed exclusively for the lawful construction, reconstruction or maintenance of Class I, II, III, IV or V highway by the unit of government having jurisdiction for the highway, provided that a copy of the agreement between the excavation operator and the governmental unit is filed with the Board.
- B. The following projects are exempt from a permit and are not subject to regulation by the Board:
 - 1. Excavation incidental to construction or alteration to the lawful construction or alteration of a building or structure or the lawful construction or alteration of a parking lot or way including a driveway on a portion of the premises where removal occurs.
 - 2. Excavation incidental to agricultural/silvicultural activities, normal landscaping or minor topographical adjustment.
 - 3. Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E.
- C. Any person owning land abutting a site that was taken by eminent domain or by any other governmental taking upon which construction is taking place may stockpile earth taken from the construction site for later removal after written notification to the Board.

SECTION VI: PROHIBITED PROJECTS

- A. For excavation within fifty (50) feet of the boundary of a disapproving abutter or within ten (10) feet of the boundary of the approving abutter unless approval is requested by said

abutter. In either case, a vegetated buffer will be provided, as determined by the Planning Board during application review.

- B. Where existing visual barriers would be removed, except to provide access to the excavation.
- C. When the issuance of the permit would be unduly hazardous or injurious to public welfare.
- D. Where the excavation would substantially damage a known aquifer, as designated by the United States Geological Survey.
- E. When the excavation cannot receive necessary approvals from state or federal agencies.
- F. When the excavation is not permitted by zoning or other applicable ordinance, provided however that reasonable opportunities for excavation exist in town.
- G. Where the project cannot comply with the Operational and Reclamation Standards of this Regulation.

SECTION VII: NON-CONFORMING EXPANSIONS

Existing excavations that were not allowed by the Town of Loudon Zoning Ordinance effective on or before August 4, 1989, are considered to be non-conforming. Any expansion of such excavation shall not be permitted unless, after due notification and public hearing, the Planning Board finds that the expansion will not have a substantially different and adverse impact on the neighborhood. These impacts will be determined by the Board during the permit process, as neighborhoods will vary in their requirements; however, the following criteria will be taken into consideration:

- 1. The excavation will not cause an unreasonable diminution in property values or unreasonably change the character of the neighborhood.
- 2. The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use of said highways.
- 3. The excavation will not create any unreasonable nuisance or create public health and safety hazards.

SECTION VIII: SUBMISSION PROCEDURES

- A. Prior to the Planning Board rendering a decision for an excavation permit, a public hearing on the application shall be held, with due notification to all abutters and the public not less than fourteen (14) days before the public hearing. All costs for notification and filing fees shall be borne by the applicant and must be paid prior to the public hearing.
- B. The applicant shall submit a completed application form, signed release for inspection of the property, all other submission documents as requested and the filing fee. All submitted plans must be of a quality that is easily understood and of an accuracy that compliance can be easily checked. Three (3) copies of all plans shall be filed with the Planning Board prior to a scheduled public hearing, and one copy shall be sent to the Conservation Commission.

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- C. For a new or original application, all of the submission items contained in Paragraphs D, E and F below are required. For subsequent applications of previously-permitted operations, the applicant will submit, as applicable, the following:
- (1) All of the information that was provided in the original application.
 - (2) A copy of the most recent DES Alteration of Permit.
 - (3) A report and/or plans showing the current conditions of the site, if different from the approved plans, including:
 - a. The amount of material that has been removed since the previous permit was granted.
 - b. An estimate of the amount of material remaining.
 - c. An estimate of the duration of the operation.
 - d. A description of what, if any, areas have been reclaimed.
 - e. Updated photographs.
 - (4) Any other applicable state or federal permits.
- D. APPLICATION FORM, signed and dated by the applicant.
- E. EXCAVATION PLAN, containing, in the form of maps and narrative, where applicable, the following information for the proposed project; these same requirements shall also apply to any existing excavation on the same parcel:
1. Names and addresses of the owner(s), excavator (if different), all abutters and map number and lot numbers.
 2. Seal and signature of a surveyor/or an engineer licensed in the state of New Hampshire.
 3. Sketch and description of the location and boundaries of the proposed excavation, at an appropriate scale, the number of acres involved and the municipalities and counties in which the project lies.
 4. Lot lines, public streets, driveways, intersections and rights-of-way; easements above, on or below the ground; and zoning district boundaries of the proposed area and within two hundred (200) feet of the boundary.
 5. Topography at contour intervals of five (5) feet or less, based on mean sea level.
 6. The breadth, depth, and slope of the proposed excavation and the estimated duration of the project.
 7. All surface drainage patterns including wetlands and standing water.
 8. The elevation of the highest annual average groundwater table within or next to the proposed excavation.
 9. Wooded and heavily vegetated areas.
 10. Test pits that extend to either the seasonal high water table, ledge, or a minimum of six (6) feet below the maximum proposed excavation depth, including location and soils data; boring logs may be submitted as a separate document.

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11. Location and extent of any stonewalls, ledge outcroppings, wells, existing buildings, septic systems, utilities and the like.
 12. All accessory facilities and/or activities, including parking areas.
 13. A sketch and description of the access to public roads, including width and surface types, routes to be utilized, the type and weight of vehicles involved, and the frequency and schedule of trips.
 14. Proposed fencing, buffers or visual barriers, including height and materials.
 15. Storage areas for any stockpiled topsoil that is to be used in reclamation.
 16. All measures to control erosion, sedimentation, water pollution, air pollution, and hazards to human safety.
 17. The location of existing buildings, structures, septic systems, and wells within one hundred fifty (150) feet of the property boundary.
 18. Copies of any required state and federal permits.
- F. RECLAMATION PLAN, which shall contain, in the form of maps and narrative, where applicable:
1. Seal and Signature of a surveyor or an engineer licensed in the state of New Hampshire.
 2. All boundaries of the area proposed for reclamation, and the land within two hundred (200) feet of the boundary of this site.
 3. Final topography of the area proposed for reclamation, and the land within two hundred (200) feet of the boundary of this site.
 4. Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities.
 5. Schedule of final reclamation activities including seeding mixtures, cover vegetation, fertilizer types and application rates.
 6. Photographs of the site before excavation (from at least two (2) different vantage points).
 7. Subsequent use of the site, if known or anticipated.
- G. OTHER INFORMATION

The Planning Board reserves the right, per RSA 676:4,1(g), to request any special studies or other information it deems necessary, at the applicant's expense, to make an informed decision.

SECTION IX: OPERATIONAL STANDARDS

For excavations not requiring a permit, the following standards apply. For those that require a permit, these standards are considered to be the minimum and the Board may require additional standards as deemed necessary.

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- A. No excavation shall be permitted closer than one hundred fifty (150) feet to an existing dwelling or to a site for which a building permit has been issued at the time the excavation permit is granted.
 - B. No excavation shall be permitted below road level within fifty (50) feet of the right-of-way of any public highway as defined in RSA 229:1 unless such excavation is for the purpose of said highway.
 - C. Vegetation shall be maintained or provided within the peripheral areas of Paragraphs A and B above, as determined by the Planning Board during application review.
 - D. No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with state laws or rules pertaining to the storage of such materials.
 - E. Where temporary slopes will exceed a 1:1 grade, a fence or other suitable barricade shall be erected to warn of danger and/or limit access to the site.
 - F. Appropriate drainage shall be provided to prevent the accumulation of freestanding water for prolonged periods.
 - G. Projects requiring a permit from the Division of Water Supply and Pollution Control pursuant to RSA 149:8-(a) shall file a copy of the said permit with the Planning Board prior to receiving excavation approval.
 - H. Appropriate erosion, sedimentation, air, and water quality measures shall be demonstrated in the plan.
 - I. 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 valuation.
 - J. No excavation shall be permitted closer than four (4) feet above the seasonal high water table or to bedrock (as indicated by the required boring test pits), nor which would preclude the subsequent reuse of the site in accordance with existing public health standards, zoning requirements, and the Master Plan.
 - K. All temporary structures required during excavation operations shall be removed from the site within one year after such operations cease.
 - L. All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.
 - M. No excavation shall disturb the groundwater flow.

SECTION X: SITE RECLAMATION STANDARDS

For excavations not requiring a permit, the following standards apply. For those that require a permit, these standards are considered to be the minimum and the Board may require additional standards as deemed necessary.

- A. All disturbed areas shall be spread with topsoil or strippings, if any, but in any case covered by soil capable of sustaining

vegetation, and shall be planted with seedlings or grass suitable to prevent erosion.

- B. Areas visible from a public way, from which trees have been removed, shall be replanted with tree seedlings, set out in accordance with accepted horticultural practices.
- C. All earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of.
- D. All slopes shall be graded to natural repose for the soil type or at a ratio proposed by the applicant and approved by the Board. Changes of slope shall not be abrupt but shall blend with the surrounding terrain.
- E. Any standing bodies of water created by the excavation that is judged to constitute a hazard to health and safety shall be eliminated.
- F. The topography of the land shall be left so that water draining from the site leaves the property at the original, natural drainage points and in the natural proportions of flow.
- G. For excavation projects requiring a permit from the Department of Environmental Services, the provisions of RSA 149:8-a shall supersede this regulation. Copies of all such permits shall be filed with the Planning Board.
- H. Abandoned Excavations. The Planning Board may order the owner of any land containing an abandoned excavation to either file a reclamation timetable and bond or other surety, or to complete the reclamation in accordance with this regulation within a stated reasonable time. Failure to complete said reclamation in the prescribed time period may result in the Planning Board requesting the Town to authorize reclamation at Town expense. The Town's costs shall constitute an assessment against the owner, and shall create a lien against the real estate on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

SECTION XI: INCREMENTAL RECLAMATION

- A. Any excavated area of five (5) contiguous acres or more, which either is depleted of commercial earth materials, excluding bedrock or from which no earth materials have been removed for a two (2) year period, shall be reclaimed in accordance with this section, within one (1) year following such depletion or the period of nonuse.
- B. No excavation of a new area shall exceed five (5) acres in size at any one time. In addition, the size of the area for any permitted excavation shall not exceed that area which can be excavated and reclaimed according to the approved application within a five (5) year period.

SECTION XII: PERFORMANCE GUARANTEE

Prior to the removal of any topsoil, the applicant shall submit to the Selectmen a bond with sufficient surety, as determined by the Planning Board, to guarantee compliance with the permit. In determining the amount of the bond, the Planning Board shall consider the cost of

restoring the excavation site and any inspection fees, as well as the estimated costs of any potential damage to Town roads or facilities caused by the transportation of earth materials. The bond shall be for a period consistent with the permit so that the Board can consistently monitor both issues.

SECTION XIII: EXCEPTIONS

Due to the diverse nature of excavation operations that vary in scale and scope, and due to the varying conditions of the land to be excavated, the Planning Board may, in its discretion, waive certain standards contained in Sections IX, X and XI for good cause shown. The written decision shall state specifically what requirements are being waived and include any reasonable alternatives.

SECTION XIV: BOARD ACTION ON APPLICATION

- A. Within thirty (30) days of receipt of an application, the Board will schedule a public hearing. A ten (10) -day notice of the hearing shall be sent to all abutters, placed in (a newspaper of general circulation) and in three public places in Town (_____). The ten (10) days do not include the day of the publications or the day of the meeting.
- B. Providing that the application is complete, the Board will vote to accept the application for review. If the application is not accepted as complete, the hearing must be continued or another public hearing may be required.
- C. Within twenty (20) days of the hearing or any continuation thereof, the Board shall make a decision. Notice of this decision shall be recorded in the minutes of the meeting and placed on file in the Town Offices within five (5) business days.
- D. The applicant shall receive a copy of the minutes along with the decision. If the application was approved with special conditions, these conditions shall also be stated. In the event the application is disapproved, the reasons for the disapproval shall be given.

SECTION XV: ADMINISTRATION AND ENFORCEMENT

A. Permits:

1. Permits shall be issued only to the owner or his agent and shall not be transferable without the prior written consent of the Planning Board. A copy of the permit shall be prominently displayed at the site or the principal access to the site. The Board may include in the permit any such reasonable conditions as are consistent with the purpose of these regulations.
2. A permit shall be valid for up to five (5) years and the expiration date shall be specified. When feasible, the Planning Board will seek to have its permit period consistent with a DES Alteration of Terrain permit, if applicable.
3. Permit holders wishing to amend a permit by altering the size or location of the excavation, the rate of removal or the plan

for reclamation shall follow the same procedures as provided for an excavation permit.

4. The Planning Board may suspend or revoke a permit if the Board determines that any provision of the permit has been violated, a material misstatement made in the application upon which a permit was granted, or any unsafe or hazardous conditions are determined by a site inspection to exist. Such suspension or revocation shall be subject to a motion for a rehearing thereon and appeal in accordance with those regulations.
 5. Any person affected by the Planning Board's decision to approve or disapprove an application or an amendment thereto, or the granting of any exceptions, or any suspension or revocation of a permit, may appeal to the Planning Board for a rehearing in accordance with RSA 155-E-9 and RSA 677.
- B. Fees: Fees shall be assessed against all applications, granted permits, and excavation operations, that the Town may recover all reasonable costs of administration of these regulations.
- C. Monitoring:
1. The Planning Board shall oversee the ongoing monitoring of all excavation operations in Town, whether they have a permit or are exempt. Monitoring will include:
 - a. an annual review of all Intents to Excavate and Excavation Reports that are filed with the Town; and
 - b. a physical inspection of all operations, including photos of the site. The Planning Board may request assistance from the Select Board and/or their designee.
 2. Should a review of any operation result in the Planning Board questioning whether a permit is not being properly followed, or an exempt operation is operating beyond the allowable limits, the Board will notify the operator(s) that they need to come before the Board to clarify their status. Depending on the findings, the Board may call for either a new permit application or a permit amendment, as is deemed necessary.
- D. Penalties: Fines, penalties, and remedies for violations of this regulation shall be the same as for violations of RSA 676:15 and RSA 676:17. Whoever violates any provision of this regulation, a permit or valid order issued hereunder shall be guilty of a misdemeanor.

SECTION XVI: SEPARABILITY

The invalidity of any provision, sentence, paragraph, etc. of this regulation shall not affect the validity of any other provision.

SECTION XVII: EFFECTIVE DATE

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