

BROOKFIELD EARTH EXCAVATION AND RESTORATION REGULATIONS

I. GENERAL PURPOSE AND AUTHORITY

Chapter 155-E of the New Hampshire Revised Statutes requires that, with several exceptions, all mining and excavation operations in the State obtain prior approval and permit from the local municipality in which the operation is to occur. The purpose of the Statute is to minimize safety hazards created by open excavations; to safeguard the public health and welfare; to preserve our natural assets of soil, water, forests and wildlife; to maintain aesthetic features of our environment; to prevent land and water pollution; and to promote soil stabilization.

II. DEFINITIONS

- A. "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for 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. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII.
- B. "Application" means a completed application for an excavation permit. An application shall not be considered complete until all of the application checklist items (Appendix B) have been completed and accepted to the satisfaction of the Planning Board in addition to any other requirements of this regulation.
- C. "Commercial" means any use of any earth material for sale or resale on or off site of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported to other land whose ownership is different than the ownership of the land from which the earth was excavated. Excavations which use earth materials in the processing of other material such as, but not limited to, concrete, asphalt and other building materials shall be considered commercial.

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- D. "Dimension stone" means rock that is cut, shaped or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and used for external or interior parts of building, 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 in Section II-B.
- E. "Earth" means sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally-occurring unconsolidated materials that normally mask the bedrock.
- F. "Excavation" means a land area which is used, or has been used, for commercial taking of earth, including all slopes.
- G. "Excavation site" means any area of contiguous land in common ownership upon which excavation takes place.
- H. "Notice of Intent" means a written notice to a Planning Board and to the Conservation Commission to inform them of the intent to apply for a permit to excavate for a new excavation, or for expansion of, or continuation of an excavation in operation at the time of adoption of this regulation.

III. PERMIT REQUIRED

No owner shall permit any excavation of earth on his premises without first obtaining a permit except:

- A. An excavation which lawfully existed and was in use on or before August 24, 1979 may continue to excavate without a permit subject to:
 - 1) Such an excavation site shall be exempt from local zoning, provided that at the time the excavation was first begun, it was in compliance with any local ordinances that may have been in effect.

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- 2) Such an excavation site may not be expanded beyond the limits of the Town in which it is situated and the area which, on August 24, 1979, and at all times subsequent thereto has been contiguous to and in common ownership with the excavation site of that date, and appraised and inventoried for property tax purposes as part of the same tract as the excavation site.
- 3) Such an excavation shall be performed in compliance with the operational and reclamation standards in these regulations (Sections VI, VII and VIII).
- 4) The owners or operators of any existing excavation site for which no permit has been obtained shall file an excavation report with the Planning Board no later than August 4, 1991. Any existing excavation that fails to file a report within that time period shall obtain a permit from the Planning Board before continuing excavation of the site.

The report shall contain the following information:

- a. the location of the excavation--tax map and lot number;
 - b. the date the excavation first began;
 - c. a description of the permissible limits of expansion as described in Section III-A-2;
 - d. an estimate of the area which has been excavated to date; and
 - e. an estimate of the amount of commercially-viable earth materials still available on the parcel.
- B. An excavation performed exclusively for the lawful construction, reconstruction, or maintenance of a Class I, II, III, IV, or V highway by a unit of government which has jurisdiction for the highway or an agent of the unit of government which has a contract for the construction, reconstruction, or maintenance of the highway, provided that:
- 1) A copy of the pit agreement executed by the owner, the agent and the governmental unit shall be filed with and accepted by the Planning Board prior to the start of excavation; and such excavation shall not be exempt from the provisions or Sections VI, VII and VIII of this regulation, nor from any other land use regulations of the municipality. Failure to file a copy of the pit agreement with the

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municipality or to comply with the terms of the agreement constitutes a violation enforceable under the provisions of Section XVI of these regulations.

- 2) The New Hampshire Department of Transportation or its agent may apply to the appeals board created under RSA 21-L to be exempted from the provisions of local land use regulations. The appeals process includes a formal public hearing in the affected municipality as set forth in RSA 155-E:2, IV-(c).
- C. Excavation that is exclusively incidental 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. This excavation cannot be started, however, until all required state and local permits necessary for the construction or alteration of the building, structure, parking lot, or way have been issued.
- D. Excavation that is incidental to agriculture or silvicultural activities, normal landscaping or minor topographical adjustment.
- E. Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E.
- F. A person owning land abutting a site which 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 and may remove the earth at a later date after written notification to the regulator.

IV. ABANDONED EXCAVATIONS

The permit and zoning exemptions under Section III shall not apply to any abandoned excavations as defined in Section IV-A.

- A. Any excavations for which the affected area has not been brought into complete compliance with the reclamation standards of this regulation (Sections VI and VIII) shall be deemed abandoned if excavation occurred on the site subsequent to August 24, 1979, and;
 1. no earth material has been removed from the excavation site during any three (3) year period; before or after the effective date of this section the owner or

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operator may, however, extend the period by submitting a time table for reclamation to the Planning Board and posting a bond or other surety in a form and amount prescribed by the Planning Board sufficient to cover the costs of reclamation; or

2. the excavation is still in use, but the owner or operator has not brought the affected area into compliance with the incremental reclamation requirement of this regulation within three (3) years of August 4, 1989 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 this regulation nor filed a report of an existing excavation with the prescribed time period.
- B. The Planning Board, after a noticed hearing, may order the owner of any land containing an abandoned excavation to either file a reclamation time table 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 within the prescribed time period may result in the Planning Board requesting the governing body to cause reclamation to be completed at the expense of the municipality. The municipality'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.

V. APPLICATION FOR PERMIT

Any owner or owner's designee subject to this chapter shall, prior to excavation of or continuance or expansion of excavation of any land, apply to the Planning Board for a permit for excavation and submit a reclamation plan. The permit application shall be signed and dated by the applicant and shall contain at least the following information in addition to other regulation, checklist and site plan review requirements. The Planning Board may waive one or more of the items listed under this section.

- A. 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;

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- B. An Excavation Plan at a scale of no less than one inch equals one hundred feet (1":100') and showing the area to be excavated and the land falling within two hundred (200) feet of the perimeter of the area to be excavated. All plans submitted to the Planning Board shall comply with the provisions in the Soil Erosion and Sedimentation Control Subdivision and Site Plan Regulation (Appendix A). 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 six (6) copies of final plans shall be filed with the Planning Board prior to issuance of a permit.

The Excavation Plan shall include:

1. seal or signature of an engineer registered in the State of New Hampshire;
2. existing topography at contour intervals of five (5) or fewer feet, based on mean sea level;
3. the breadth, depth and slope of the proposed excavation, and existing excavation where applicable, and the estimated duration of the excavation;
4. wooded and heavily vegetated areas;
5. all surface drainage patterns including wetlands and standing water;
6. location of all easements, on or below the ground;
7. location and width of all public roads and rights-of-way;
8. a log of borings or 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;
9. location and extent of any stone walls, ledge outcroppings, wells, existing buildings, septic systems, utilities and the like;
10. a locus map, at a scale of one inch equals one thousand feet (1":1,000'), showing the proposed operation in relation to existing roads;
11. any existing and all proposed excavation areas;
12. any existing and all accessory facilities/activities;

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13. existing and proposed access roads, including width and surface materials;
14. existing and proposed parking areas;
15. existing and proposed fencing, buffers or visual barriers, including height and materials;
16. storage areas for topsoil to be used in reclamation;
17. all measures to control erosion, sedimentation, water pollution, air pollution, and hazards to human safety;
18. the location of existing buildings, structures, septic systems and wells within one hundred and fifty (150) feet of the property boundary;
19. the location of all driveways and road intersections within two hundred (200) feet of the property boundary; and
20. copies of any permits required by state or federal regulations.

- C. A Reclamation Plan at the same scale as the Excavation Plan, and covering the same area. All plans submitted to the Planning Board shall comply with the provisions in the Soil Erosion and Sedimentation Control Subdivision and Site Plan Regulation (Appendix A). 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 six (6) copies of final plans shall be filed with the Planning Board prior to issuance of a permit.

The Reclamation Plan shall include:

1. seal and signature of an engineer registered in the State of New Hampshire;
2. all boundaries of the area proposed for reclamation;
3. final topography of the area proposed for reclamation;
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 rates;

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6. photographs of the site before excavation (from at least two different vantage points); and
7. subsequent use of the site, if known or anticipated.

VI. ADDITIONAL PERMIT REQUIREMENTS

A. Site and Reclamation Time Limit on New Excavations

No excavations 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 and according to the approved application within a one (1) year period.

B. Size and Reclamation Time Limit on Expansions of Existing Excavations

No expansion and reclamation of an existing excavation shall exceed the area of the existing excavation plus five (5) acres. However, the entire excavation area shall not exceed that area which can be excavated and reclaimed according to the approved application within a one (1) year period. If an existing operating excavation at the time of adoption of this regulation cannot be reclaimed within one (1) year, no additional new excavation into an undisturbed area shall be permitted until the existing excavated area is reclaimed based on an approved permit as required by this regulation. In the case of an excavation in operation at the time of adoption of this ordinance that is not being expanded, the permit period allowed for reclamation shall also be one (1) year.

If reclamation of the site is not completed within the one (1) year permit period the Town may declare part or all of the bond forfeit, and use these monies to reclaim the site, in addition to the requirements of Section XIII (Issuance of Permit). At no time shall more than one permit be allowed on a lot of record.

C. Excavation Sites Considered Non-Conforming

Expansion of any site used for sand and gravel excavation is limited to such activities which are considered a permitted or allowed use in the corresponding zoning district. For those excavation sites determined to be non-conforming uses or activities, no further expansion of the site will be permitted to occur.

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D. Hours of Operation

The hours of operation shall be determined by the Planning Board during the permit process. The level of operation and the type of neighborhood affected shall be considered by the Planning Board in establishing these hours.

E. Hauling Information

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 shall be provided to the Planning Board prior to the issuance of an Excavation Permit. The Planning Board may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. The Planning Board reserves the right to conduct a traffic study at the applicant's expense to ensure that public safety, neighborhood compatibility and road capacity and condition have been properly considered and optimized in the hauling plan.

VI. OPERATIONAL STANDARDS

- A. No excavation covered under RSA 155-E shall be permitted closer than fifty (50) feet of the boundary of a disapproving abutter or within ten (10) feet of an approving abutter unless approval of a lesser distance is requested by the abutter.
- B. No excavation covered under RSA 155-E shall be permitted closer than one hundred fifty (150) feet of an existing dwelling or to a dwelling for which a building permit has been issued at the time the excavation is begun.
- C. 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.
- D. Vegetation shall be maintained or provided within the peripheral areas required by Section VII A, B and C.
- E. 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.

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- F. No actual excavation is to exceed five (5) acres at one time unless specifically authorized by the Planning Board.
- G. Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process. Excavations shall comply with the Soil Erosion and Sedimentation Control Subdivision and Site Plan Regulation (Appendix A).
- H. No excavation shall be permitted so close to the seasonal high water table or to bedrock (as indicated by the required borings or test pits) as would preclude the subsequent re-use of the site in accordance with existing public health standards, local zoning, and local master plan.
- I. Where the depth of excavation will exceed fifteen (15) feet and temporary slopes will exceed 1:1 in grade, a fence or other suitable barricade shall be erected to warn of danger and/or limit access to the site.
- J. No area shall be excavated which will cause the accumulation of free standing water for prolonged periods. Appropriate drainage shall be provided.
- K. Excavation projects requiring a permit from the Water Supply and Pollution Control Division of Department of Environmental Services (DES) under RSA 149:8-a shall file a copy of the permit with the Planning Board prior to receiving a permit.
- L. Topsoil shall be stripped from the excavation area and stockpiled for use in subsequent reclamation of the site.
- M. All temporary structures required during excavation operations shall be removed from the site within thirty (30) days after such operations cease.
- N. All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.
- O. No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with State laws or rules pertaining to such materials.
- P. Prior to the removal of topsoil or other material from anew excavation area, the excavator shall file a reclamation bond or other surety, as prescribed by the Planning Board, sufficient to cover the cost of site reclamation.

VIII. SITE RECLAMATION STANDARDS

The Planning Board or its designee shall periodically inspect the operations and shall perform a final reclamation inspection in order to ensure that the approved plans have been followed.

- A. No slope in soil material shall be left steeper than 3:1 (three horizontal feet for each one foot of vertical drop) unless it can be demonstrated by the applicant that a steeper grade can be adequately vegetated and stabilized. Under no case shall a soil material slope be left steeper than 2:1.
- B. All debris, stumps, boulders, etc. shall be lawfully disposed of in a manner acceptable to the Planning Board or its designee.
- C. Ground levels and grades shall be established as shown on the approved reclamation plan as soon as practical after site excavation has been completed, but no later than one (1) year.
- D. Stockpiled topsoil shall be spread over the disturbed area to a depth to allow and maintain vegetation. Areas posing the most critical problems for re-vegetation shall be given first priority should available topsoil be limited. The disturbed area(s) shall be fertilized, if necessary, and seeded with a grass or grasslegume mixture.
- E. If deemed necessary by the Planning Board, 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.
- F. Upon completion of the reclamation operations, 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. The responsible party shall not be released from its performance commitment (reclamation bond) until the Planning Board certifies compliance with all terms of the Excavation Plan and the Reclamation Plan.

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- H. Any excavation 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 one (1) year period, shall be reclaimed in accordance with Sections VI and VIII within one (1) year.

IX. PROHIBITED PROJECTS

The Planning Board shall not grant a permit:

- A. Where the excavation would violate the operational standards of Section VII;
- B. For an excavation within fifty (50) feet of the boundary of a disapproving abutter or within ten (10) feet of the boundary of an approving abutter unless approval of a lesser distance is requested by the abutter;
- C. Where the issuance of the permit would be unduly hazardous or injurious to the public welfare;
- D. Where existing visual barriers would be removed, except to provide access to the excavation;
- E. Where the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey;
- F. For excavation within one hundred fifty (150) feet of an existing dwelling or to a dwelling for which a building permit has been issued at the time the excavation is begun;
- G. When the excavation is planned beneath or adjacent to inland surface waters or wetlands in such a manner that a permit is required from the Department of Environmental Services or federal agencies with jurisdiction over the premises; but the Planning Board may approve the application when all the necessary permits have been obtained;
- H. Where the project cannot comply with the reclamation provisions of Sections VI and VIII;
- I. Where the excavation is not permitted by zoning or other applicable ordinance.

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X. EXCEPTIONS

The Planning Board, upon application and following a hearing, may grant a waiver in writing, to the standards contained in Sections VI, VII, VIII and IX for good cause shown. The written decision shall state specifically what standards, if any, are being relaxed and include reasonable alternative conditions.

XI. APPLICATION FOR AMENDMENT

When the scope of a project for which an excavation permit has been issued is proposed to be altered so as to affect either the size or location of the excavation, the rate of removal or the plan for reclamation, the owner shall submit an application for amendment of his excavation permit. The amended application shall be subject to approval in the same manner as provided for an excavation permit. An application for amendment to increase the size of a permitted excavation may be allowed if at least one-half of the area covered by the prior permit is reclaimed in accordance with the approved site Reclamation Plan.

XII. HEARING

Prior to the Planning Board approving an application for an excavation permit or an application for an amended excavation permit, a public hearing shall be held within thirty (30) days on such application. A notice of said hearing shall be sent to all abutters and shall specify the grounds for the hearing as well as the date, time, place, and at least fourteen (14) days notice of the time and place of such hearing shall be published in a paper of general circulation in the town and legal notice thereof shall also be posted in at least two (2) public places in the town; the fourteen (14) days shall not include the day of publication or the date of the meeting, but shall include any Saturdays, Sundays and legal holidays within said period. Within twenty (20) days of said hearing or any continuation thereof, the Planning Board shall render a decision approving or disapproving the application, giving reasons for disapproval.

XIII. ISSUANCE OF PERMIT

If the Planning Board, after public hearing, approves the application for a permit and determines it is not prohibited by Section IX it shall grant the excavation permit upon receipt of an excavation application fee, determined by the Planning Board not to exceed Fifty Dollars (\$50.00), and the posting of a bond or other surety with the municipal treasurer in the amount

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determined by the Planning Board to be sufficient to guarantee compliance with the permit. The performance bond or other surety shall be for the time period of the permit (based on the effective date of the permit and should apply to any acts or omissions occurring within that period. A copy of the permit shall be prominently posted at the excavation site and the principal access thereto. A permit shall not be assigned or transferable without the prior written consent of the Planning Board. A permit shall specify the date upon which it expires. The Planning Board may include in a permit such reasonable conditions as are consistent with the purpose of this regulation including the provision of visual barriers to the excavation. In addition, a permit fee in an amount determined by the Planning Board for application plan review and annual compliance review, by the Planning Board or its designated agent, shall be assessed by the applicant prior to issuance of a permit. This permit fee shall also include sufficient funds for the municipality's designated engineer or other agents of the Planning Board to periodically conduct field reviews at the excavation site to ensure compliance with the approved excavation and reclamation plans.

XIV. WITHDRAWAL OF PERMIT

A permit to excavate is automatically withdrawn if no substantial work is done on the site for a period of three (3) years. Reclamation of areas already worked is mandatory.

XV. APPEAL

If the Planning Board disapproves or approves an application for an excavation permit or an application for an amended permit, any interested person affected by such decision may appeal to the Regulator for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable and said appeal shall be filed within ten (10) days of the date of decision appealed from. The Planning Board shall either grant or deny the request for rehearing within ten (10) days, and if the request is granted, a rehearing shall be scheduled within thirty (30) days. Any person affected by the Planning Board's decision on a motion for rehearing may appeal in accordance with the procedures specified in RSA 677.

XVI. ENFORCEMENT

A. The Planning Board or its duly authorized agent may suspend or revoke the permit of any person who has violated any provision of his permit or this regulation or made a material misstatement in the application upon which his

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permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with Section XV. Failure to file for a permit as required by this regulation shall be considered a violation subject to the enforcement provisions of this regulation.

- B. Fines, penalties and remedies for violations of this regulation shall be the same as for violations of RSA 676:15 and RSA 676:17.
- C. To ascertain if there is compliance with this regulation, a permit issued hereunder or an order issued hereunder, the Planning Board or its duly authorized agent(s) may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since the effective date of this regulation.
- D. Whoever violates any provision of this regulation, a permit issued hereunder, or a valid order issued hereunder, shall be guilty of a misdemeanor.
- E. Operators who fail to file for a permit will be issued a cease and desist order

XVII. SEPARABILITY

The invalidity of any provisions of this regulation shall not affect the validity of any other provision.

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XVIII. ADOPTION

These regulations shall become effective after a public hearing, adoption and certification by the Planning Board and placed on file with the Board of Selectmen, the Town Clerk and the Carroll County Registry of Deeds. A copy of the regulations shall also be forwarded to the New Hampshire Office of State Planning.

Certification of Adoption

These regulations have been adopted by the Brookfield Planning Board on April 5, 1991, after a duly noticed public hearing held on January 14, 1991.

Planning Board Certification

W. David Furler
Chairman

Ann B. Furlan
David L. Albro

Richard A. Hauer
Mark Herbert
John Chouard