

# **TOWN OF HOOKSETT**

## **Commercial Earth Excavation Regulations**

### **SECTION I: AUTHORITY**

Chapter 155-E of the New Hampshire Revised Statutes Annotated, as amended, stipulates that, with some exceptions, all earth excavations in the State are subject to regulations from the local municipality in which the operation occurs. Pursuant to the authority vested in RSA 155-E, the Hooksett Town Council adopts the following regulations to govern the excavation of earth materials in the Town of Hooksett.

### **SECTION II: PURPOSE AND SCOPE**

The goal of these regulations are to: provide for reasonable and responsible opportunities for excavation; minimize safety hazards which can be created by open excavations; ensure that the public health and welfare will be safeguarded; protect natural resources and the environment; and maintain the aesthetic features of the Town. For achieving these goals, no earth materials in the Town shall be excavated except in conformance with these regulations.

These regulations supplement the provisions of RSA 155-E and provide further clarification of the statutory requirements and their application in the Town of Hooksett. They are adopted as provided in RSA 155-E:11. And, as adopted, whenever local regulations differ from the most recent provisions of RSA 155-E, those which impose greater restriction or high standard shall be controlling.

### **SECTION III: DEFINITIONS**

- A. ABUTTER** means (1) any person who property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. (2) For the 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. (3) 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 form of ownership or association, as defined in RSA 356-B:3, XXIII.B. (4) For purposes of notification and receiving testimony, “abutter” means all affected towns, and the regional planning commission(s) in the case of a development having regional impact, as determined by the Board.
- B. APPROVING ABUTTER** means an abutter who registers his or her approval to the Board during the public hearing process for the excavation permit. Absent such notice of approval, all abutters shall be considered disapproving abutters for the purposes of determining excavation setbacks. (See Section VI, A 2)

- C. AGRICULTURAL EXCAVATION** means excavation of earth by the owner of the land to be used on the owners' land exclusively for agricultural use.
- D. AGRICULTURAL USE** means land used for agriculture and farming, as defined by RSA 21:34-a, including dairying, pasturage, apiculture, horticulture, floriculture, silviculture and animal and poultry husbandry.
- E. 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.
- F. BOARD** means the Town of Hooksett Zoning Board of Adjustment and regulator of excavation permits.
- G. COMMERCIAL EXCAVATION** means excavation of 1,000 cubic yards or more of earth intended for commerce.
- H. COMMERCIALLY USEFUL** means any earth material leaving the property intended to be sold or used in commerce or is 1,000 cubic yards or more.
- I. CONTIGUOUS** means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in the Town of Hooksett.
- J. 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 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.
- K. EARTH** means sand, gravel, rock, soil, loam or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally-occurring unconsolidated materials that normally mask the bedrock.
- L. 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. Excavating includes excavate.
- M. EXCAVATE** means a land area which is used, or has been used, for the commercial taking of earth, including all slopes.

- N. EXCAVATION AREA** means the surface area within an excavation site where excavation has occurred or is eligible to occur under the provisions of RSA 155-E. This is also known as the pit area.
- O. EXCAVATION SITE** means any area of contiguous land in common ownership upon which excavation takes place as approved by the Board.
- P. EXISTING EXCAVATION** means any excavation, as described in RSA-E:2, I, which lawfully existed as of August 24, 1979, from which earth material or sufficient weight or volume to be commercially useful has been removed during the 2-year period before August 24, 1979, and has submitted the report as required by RSA 155-E:2, I, (d).
- Q. EXPANSION** means excavation and disturbance of earth beyond the limits as shown on the plan as approved by the Board.
- R. INCIDENTAL EXCAVATION** means excavation that is subordinate or accessory to a primary use located on the same lot and conducted immediately prior to initiating the primary use. Incidental uses shall meet all the following criteria: 1. Will be completed within 90 days; 2. Will involve the removal from the site of less than 1,000 cubic yards; and 3. all required permits, including those for the proposed primary use, have been obtained prior to commencing the incidental excavation. Excavation that results in a high level of intensity or potential for safety concerns shall not be considered incidental.
- S. 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.
- T. NORMAL LANDSCAPING** means the on-site alteration and contouring of the land exclusively devoted to improving the function utility and planting of the grounds.
- U. PHASE EXCAVATION** means excavation over a limited part of the permitted area, with reclamation of that area to be inspected before expanding to a new portion of the permitted area.
- V. QUARRY** means an excavation in bedrock open to the surface excavated for the purpose of removing rock, minerals or metallic ores.
- W. RECLAMATION** means the restoration of an excavation site to an acceptable standard at least equal to those described in Section X of these regulations and as determined and approved by the Board.

- X. STATIONARY MANUFACTURING AND/OR PROCESSING PLANTS** means equipment and facilities, including a scale and scale house, which are placed on a site for the purposes of sorting, washing, screening, crushing, classifying, drying, weighing or processing excavated earth materials.
- Y. VISUAL BARRIER** means a human-made structure or natural vegetative growth, or a combination thereof, to provide a year-round method to absorb, neutralize, minimize, and conceal visual, noise, dust or other impacts. This includes but is not limited to natural or planted, berms, walls or opaque fences, vegetated fence rows, forested land whether managed or undisturbed (See Section VI A 7).

#### **SECTION IV: COMPLIANCE WITH ZONING & PROJECTS REQUIRING A PERMIT**

Prior to applying for an excavation permit, an Applicant must comply with all zoning ordinances and acquire any necessary variances, special exceptions or equitable waivers. Any excavation of earth unless specifically exempted by either RSA 155-E:2 or specifically accepted in Section V of these regulations requires a permit.

Excavation permits cease to be valid upon expiration. A new permit must be in place prior to continuing excavation activities beyond the expiration date. Permit holders wishing to continue to excavate beyond a permit expiration date should make a timely application for the new permit to avoid being unpermitted.

#### **SECTION V: EXEMPTIONS FROM AN EXCAVATION PERMIT**

A. The following projects are deemed to be exempt from a permit:

- 1) Site developments, construction activities, or other projects, that require excavation of earth and will not remove more than 1,000 cubic yards of earth from the site. If the project will result in the removal of more than 1,000 cubic yards from the site, the project will be considered incidental provided that all of the required state and local permits have been issued. In those instances, the Board may impose operational conditions and a non-lapsing performance bond as may be deemed necessary to insure completion of the proposed project.
- 2) Excavation of less than 1,000 cubic yards of earth for the alteration of a building or structure, parking lot or driveway on a portion of the premises where removal occurs, provided all local and state permits have been issued.
- 3) Excavation of earth that is incidental to agricultural activities, normal landscaping, or minor topographical adjustments as defined in Section III(R) of these regulations.
- 4) 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).

- 5) An excavation performed exclusively for the lawful construction, reconstruction, or maintenance of 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, as regulated by RSA 155-E:2, IV.
- 6) 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 later after written notification to the Board.
- 7) Existing excavations as defined in RSA 155-E:2, I, including the quarrying or crushing of bedrock do not require a permit, but are nevertheless subject to the Operation and Reclamation Standards of these regulations. Compliance with these Standards is mandatory to retain the non-permit status. The Board may require the owner/operator to come before the Board and submit such information as may be necessary to demonstrate compliance with said standards.
- 8) Stationary Manufacturing Plants. No permit shall be required under this chapter for excavation from an excavation site which on August 4, 1989, was contiguous to or was contiguous land in common ownership with stationary manufacturing and processing plants which were in operation as of August 24, 1979, and which use earth obtained from such excavation site. Such excavation shall be performed in compliance with the operational standards as expressly set forth in RSA 155-E:4-a and the reclamation standards as expressly set forth in RSA 155-E:5 and 155-E:5-a, which express standards shall be the sole standards with which such excavations must comply in order to retain their non-permit status as provided under this paragraph. Loss of such non-permit status shall be preceded by written notice from the Board that the excavation is not in compliance and the owner shall have failed to bring such excavation into compliance within 30 days of receipt of such notice. Such excavation may be expanded without a permit under this chapter to any contiguous lands which were in common ownership with the site of the plant on August 4, 1989, except as limited by RSA 155-E:4-a, I, II, and III.

(b) No further permit shall be required under this chapter for excavation from a site which on August 4, 1989, was contiguous to or was contiguous land in common ownership with stationary manufacturing and processing plants for which local or state permits have been granted since August 24, 1979, and before August 4, 1989, which use earth obtained from such site. It is further provided that their operation and reclamation shall continue to be regulated by such local or state permits and any renewals or extensions thereof by the permitting authority or authorities.

## **SECTION VI: PROHIBITED PROJECTS**

- A. The Board shall not grant a permit for any Prohibited Excavation Projects as defined in RSA 155-E:4.
- 1) No excavation below road level within fifty (50) feet of the right-of-way of any public highway as defined in RSA 229:1, except in those cases where the edge is not readily defined, then one hundred (100) feet from a road centerline.
  - 2) No excavation within seventy-five (75) feet of the boundary of a disapproving abutter or within twenty-five (25) feet of an approving abutter.
  - 3) No excavation shall be permitted within 100 feet of any pond, navigable river, or any other standing body of water 10 acres or more in or within 50 feet of any other stream, river or brook which normally flows throughout the year, or any naturally occurring standing body of water less than 10 acres, prime wetland as designated in accordance with RSA 485-A:15, I or any other wetland greater than 5 acres in area as defined by the Department of Environmental Services. Within 250 feet of water, shoreland permits may be required.
  - 4) When the excavation cannot receive necessary approvals from state or federal agencies, such as, but not limited to the N.H. Department of Environmental Services Alteration of Terrain or Wetlands permits.
  - 5) Where the excavation is not permitted by zoning or other applicable local ordinances and a variance or special exception has not been obtained as defined in RSA 155-E:4, II and required by the Town of Hooksett Zoning Ordinances and Section IV of this Ordinance.
  - 6) Where the issuance of a permit would be unduly hazardous or injurious to the public welfare, including creating a nuisance or health or safety hazard. The Board shall give particular consideration to such factors as noise, dust, traffic, fumes or danger from operation.
  - 7) Where the excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof.
  - 8) The excavation will not cause a diminution in area property value or unreasonably change the character of the neighborhood.
  - 9) Where existing visual barriers in the areas specified in RSA 155-E:3, III would be removed, except to provide access to the excavation.

10) Where the excavation would damage an aquifer, as designated by the United States Geological Survey.

11) Where the project cannot comply with the reclamation provisions of RSA 155-E:5 and 155-E:5-a or the operational standards of RSA 155-E:4-a.

## **SECTION VII: ABANDONED EXCAVATIONS**

A. Any excavation, to include both grandfathered and permitted pits, for which the affected area has not be brought into complete compliance with the reclamation standards of this regulations shall be considered abandoned if:

- 1) No earth material of sufficient weight or volume to be commercially useful has been removed from the site during any 2-year period either before, on, or after August 4, 1989.
- 2) The excavation is in use, but either has not been brought into compliance with the incremental reclamation standards of this regulation, or a bond has not been posted and a reclamation timetable has not been approved by the Board.
- 3) Neither the owner nor the operator of the excavation has secured a permit pursuant to these regulations.

B. In the event the Board determines that any abandoned excavation presents a hazard to the public health, safety or welfare, the owner may be required, following a public hearing, to comply with the timetable and bonding requirements outlined above, or to complete reclamation within a reasonable period. Should reclamation not be completed, the Board may request the Town to authorize reclamation at the Town's expense. The Town's cost shall constitute an assessment against the owner and shall create a lien against the property 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 VIII: EXCAVATION EXPANSIONS**

When the scope of an approved permitted excavation is proposed to be altered as to affect either the size or location of the excavation, the rate of removal, 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 change must first be approved by the Board. The Board may then adjust the performance bond accordingly.

## **SECTION IX: OPERATIONAL STANDARDS**

A. All excavations requiring a permit must comply with the operational standards pursuant to RSA 155-E:4-a which are the minimum. In addition, all excavations must also comply with the following more stringent standards, which the Board may waive under certain defined circumstances:

- 1) All excavation operations, including trucking, shall be performed from 7:00 a.m. to 5:00 p.m., Monday through Friday with no operations on weekends or federal holidays. The Board may modify these hours during the permitting process.
- 2) No excavation of an area shall exceed (5) acres at any one time without reclamation.
- 3) A hauling plan shall be provided to the Board. This plan shall include, but is not limited to, hauling routes to be utilized, the type and weight of motor vehicles to be used, as well as the frequency and schedule of operations of said vehicles and shall be provided to the Board prior to the issuance of an excavation permit.
- 4) The Board reserves the right to conduct a traffic study, at the Applicant's expense, to ensure the public's safety, neighborhood compatibility and road capacity and conditions have been properly considered and are adequately addressed in the hauling plan.
- 5) Trucks operating on any roads with the Town of Hooksett will be limited to New Hampshire Department of Transportation statutory weights.
- 6) The Applicant shall be responsible for the restoration and repair of any existing Town road(s) which is damaged as a result of the hauling or excavation operation. This includes, but is not limited to, any roads which may access the excavation site.
- 7) A bond for road repair will be provided to the Town of Hooksett prior to excavation activity and after the appropriate amount is determined by Town staff.
- 8) All vehicles transporting excavated material shall have loads secured and covered at all times to prevent dust and spillage when loaded.
- 9) No fuels, lubricants or other toxic polluting chemicals or waste, building materials or rubble shall be stored or buried on-site unless in compliance with state and federal laws or rules pertaining to fuels and lubricants, or other toxic or polluting chemicals.
- 10) Prior to the removal of material at a new excavation site, topsoil material shall be stripped and stored for site restoration use when the excavation project is completed. This should be undertaken in a phased manner to minimize erosion potential. Topsoil shall be re-vegetated during the period of storage. In addition, prior to the removal of topsoil or other overburden material from any land area that has not yet been excavated, the excavator shall file a reclamation bond or other security as prescribed by the Board, sufficient to secure the reclamation of the land area to be excavated.



- 11) A visual barrier, no less than 6 feet in height, shall be maintained or provided within the buffer areas defined by Sections VI A 1), 2), and 3). Natural vegetation adjacent to neighboring properties on which excavation is not intended shall be maintained for the purposes of erosion control, dust control, screening, noise reduction, and property valuation. The Board shall have the authority to require additional screening (e.g. vegetation or fencing) where necessary. Where no effective barrier exists, planting or Board approved fencing may be required.
- 12) Where the depth of excavation will exceed fifteen (15) feet and temporary slopes will exceed 1.5:1 in grade a fence or other suitable barriers shall be erected to warn of danger or to limit access to the site.
- 13) Drainage shall be maintained so as to prevent the accumulation of free-standing water for prolonged period of time. Excavation practices which result in siltation in streams or degradation of any water supplies are prohibited.
- 14) Access roads leading to and/from the excavation site shall be paved a minimum of fifty (50) feet from the intersection of existing paved 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. The provisions of RSA 236:13-14 (“Highway Access”) shall be adhered to by the applicant and shall be shown on the excavation plan.
- 15) The provisions for access under the development regulations of the Town shall be adhered to by the Applicant and shall be shown on the reclamation plan. Access over Class VI roads, bridges, or other public ways to be utilized in the proposed excavation shall be clearly shown on the reclamation plan. The maintenance and final condition of said roads, bridges and ways shall be defined in writing and made part of said plan. All roads must be properly maintained and swept accordingly to maintain safe access. There shall be a water truck onsite at all times for dust control.

#### B. Processing of Earth Material

- 1) Processing machinery 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.
- 2) No earth material shall be stock piled or located outside the permitted area without prior approval by the Board.
- 3) No blasting shall occur without receiving prior approval during the permitting process.

- 4) Crushing may not be introduced without prior approval from the Board during the permitting process.

#### C. Backhauling, Importing and Storage of Material

- 1) Waste, building materials and rubble (i.e. “demolition and construction debris” or “C&D waste”) shall not be stored or buried on the site without written approval by the Board. If approved by the Board, the specific site location will be noted on the plan and performed in accordance with all local, state and federal regulations.
- 2) The site will not be used for storage of junk vehicles, machinery, etc. as defined in RSA 236:112.
- 3) Stumps and brush shall be allowed to be buried or stored on site so long as the stumps and tree parts are buried in a manner to preclude the development of sink hole and erosion of cover materials and will be protective of the environment, public health, and safety. Any burial or storage site must be at least 75 feet from any water supply, 25 feet from any property line, and at least 4 feet above the seasonal high water table. The burial or storage will be performed in accordance with all local, state and federal regulations. The site plan and property deed shall provide:
  - a. A statement that the property has been used for the disposal of stumps and tree parts.
  - b. The date the activity took place.
  - c. The location of the burial area(s) with sufficient specificity as to allow an independent third party to locate the area(s); and
  - d. The estimated quantity of waste disposed on the property.
- 4) Earth, concrete, and asphalt that did not originate from the site shall not be brought in, or stored upon, the site without prior approval by the Board.

#### D. Aquifers and Seasonal High Water Tables

- 1) Excavation over aquifers and seasonal high water tables shall be performed in accordance with the applicable Town of Hooksett Zoning Ordinance.
- 2) No excavation shall be permitted within eight (8) feet of the seasonal high water table. A waiver to such prohibition shall be granted if the applicant demonstrates that such excavation will not adversely affect water quality. Any written exception shall be recorded in the registry of deeds, one copy filed with the NH Department of Environmental Services (NHDES), and one copy filed with the Board.

- 3) 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.
- 4) 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.
- 5) The Board may require that the applicant provide data or reports prepared by a professional groundwater consultant to determine the seasonal high water table and to assess the potential aquifer damage caused by the proposed excavation project.

## **SECTION X: SITE RECLAMATION STANDARDS**

- A. Within 12 months following the expiration date of a permit issued under these regulations, or of the completion of any excavation, whichever occurs first, the owner of the excavated area shall have completed the reclamation of the areas affected by the excavation to meet each of the minimum standards as detailed in RSA 155-E:5.
- B. For excavations requiring a permit, the standards contained in RSA 155-E:5 are the minimum standards, and the Board 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.
  - 1) The 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. Any costs associated with these inspections shall be the responsibility of the applicant.
  - 2) 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. In no case shall a soil material slope be left steeper than 2:1. Changes in slope shall not be abrupt but shall blend with the surrounding terrain.
  - 3) All debris, stumps, boulder, etc., shall be lawfully disposed of in a manner acceptable to the Board or its designee.
  - 4) 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.

- 5) 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 revegetation shall be given first priority should available topsoil be limited. The disturbed area(s) shall be limed and fertilized, if necessary, and seeded with a grass or grass/legume mixture.
  - 6) If deemed necessary by the 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. All plantings must be successfully maintained for 2 years after planting.
  - 7) The character of the restored landscape shall blend with the surrounding natural features.
- C. 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 strictive, and not in conflict, with the AOT permit. Copies of all such AOT permits and update plans shall be filed with the Board.
- D. For any excavation plan not requiring an Alteration of Terrain permit, the applicant may, in conjunction with a Town employee or agent, design a reclamation plan acceptable to the Town. Such a plan shall meet all of the criteria established by Section XII(B).
- E. Incidental excavations that have received an exception from the Board to remove more than 1,000 cubic yards of earth shall reclaim the property in accordance with the specifications dictated by the Board.
- F. Incremental Reclamation:

Except for excavation sites of operating stationary manufacturing plants, any excavated area of 5 contiguous acres or more which is depleted of commercial earth materials, excluded bedrock, or any excavation from which earth materials of sufficient weight or volume to be commercially useful have not been removed for a 2-year period, shall be reclaimed in accordance with RSA 155-E:5 within 12 months following such depletion of 2-year non-use, regardless of whether other excavation is occurring on adjacent land in contiguous ownership. A reclamation plan, including a reclamation timetable for the depleted areas with the reclamation site, shall be submitted to the Board for approval.

## **SECTION XI: PERFORMANCE GUARANTEE**

- A. Prior to the granting of any permit, the applicant shall submit to the Hooksett Town Council a non-lapsing bond or other sufficient surety as determined by the Board in consultation with Town staff, or if the Board deems, a professional hired at the expense of the applicant. The purposes of the bond are to guarantee reclamation to the area, compliance with the permit

and any inspections. Off-site improvements for potential damage of Town roads or facilities caused by the transportation of earth materials shall be discussed at this stage and bonded as necessary. Surety will be reviewed at the time of periodic inspections.

- B. The surety may be phased to coincide with the phasing of work, in an amount sufficient to guarantee reclamation of the applicable section, to be released as sections are completed. Prior to a new section being opened, new securities shall be posted. The surety shall not be released until the Board is satisfied that all conditions of the site reclamation plan have been complied with and that no erosion or die off has occurred for at least two years after closure. Areas used for stockpiling and processing machinery and other non-excavation uses shall not be included in surety requirements.
- C. There are four major acceptable forms of surety: Option 1) bond issued by surety (insurance) company, Option 2) letter of credit issued by a financial institution (bank), Option 3) cash held under “escrow” agreement (cash bond), or Option 4) escrow payment per ton (or yard) removed or stockpiled (incrementally) each year with the payment to be paid annually to the Town and retained in a Town managed escrow account. Other forms of surety may be acceptable by the Board but may not create a real or potential liability for the Town other than as defined herein.
- D. Surety provided by Section XI-C; Option 4 above shall be calculated as follows: The amount of surety required shall be based on the total cost of the proposed reclamation plan (limited to the current phase where phasing is used) less the value of the material needed for back fill and final cover, and the manpower and equipment needed to complete the closure, to the extent that this material, manpower and equipment is available on site. The final amount of surety will be divided by the total tons (or yards) anticipated for removal during the life of the plan (limited to the current phase where phasing is used) to create a tonnage (or yardage) payment OR the Town may establish a minimum payment to be raised each year based on the total closure cost that is purchased from others divided by the total years (limited to the current phase where phasing is used) of approval for the plan if the contributions from this formula are greater than the contributions from the per ton (or yard) payment. The use of owner provided offsets will greatly reduce the amount needed for closure surety. To assure the availability of the material and equipment and manpower, a security interest to the benefit of the Town may be required in the stockpiled reclamation material and equipment needed. That security interested shall also provide resources for manpower to complete the closure. In the event that this agreement is entered into, and surety is provided by on-site material and equipment, the Town determined at a future date that the original agreement is insufficient for closures, the Town may reopen the amount of the performance guarantee. This option may be used in conjunction with other options.

- E. In the granting of an exception for an incidental excavation project that will remove more than 1,000 cubic yards of earth from the site, the Board may require a performance surety to ensure compliance with reclamation specifications.
- F. Other than as provided in Section XI-C, Option 4 above, the performance guarantee will be calculated as \$20,000 per acre of the phased excavation area, unless it can be demonstrated to Town staff that less is required due to stockpiled material already on site.

G. Exceptions

- 1) Due to the diverse nature of excavation operations which vary in scale and scope, and due to the varying conditions of the land to be excavated, the Board may, upon application and following a duly-noticed hearing, grant any exception in writing to the standards contained in Section IX and X for good cause shown. The written decision shall state specifically what requirements are being waived and include any reasonable alternatives.

**SECTION XII: APPLICATION SUBMISSION ITEMS**

Unless exempted by RSA 155-E:2 or Section V, any owner or owner's designee shall, prior to excavation of the land, apply to the Board for a permit for excavation.

The applicant for an excavation permit shall submit to the Board a completed application form, including a current abutters list, an excavation plan and a reclamation plan, a completed checklist with written requests for waivers or written explanation for any item not provided, any other submission documents as requested and the filing fee. Twelve copies of the complete application, excavation plan and reclamation plan shall be filed. The plans shall be at a scale of 1"=100'.

Where a NHDES Alteration of Terrain permit is required, the applicant may submit a copy of that Alteration of Terrain application and/or permit to the Board. While the Alteration of Terrain contains most of the following, the applicant shall provide supplemental items to meet the requirements of the excavation plan and reclamation plan as described below.

**A. EXCAVATION PLAN**

- 1) A site plan prepared by a licensed surveyor or engineer shall, at a minimum, include all of the following:
  - a. Identifying title, date, bar scale, revision block, north arrow and location map, tax map lot number and zone.
  - b. Name and address of the owner and the excavator (if different from owner);
  - c. Name(s) and address of surveyor, and designer; name, license number and seal of the NH licensed land surveyor.
  - d. Names and tax map lot numbers of all abutters to the premises on which the excavation is proposed.

- e. Location and boundaries of the proposed and any existing excavation, the area in square feet and acres to be involved in the project and the municipalities and counties in which the project lies.
- f. Zoning district boundaries (including overlay districts) of the proposed area within 200 feet of the boundary of the project.
- g. All areas that are in current use.
- h. Location of existing buildings, structures, septic systems, wells and catch basins within 200 feet of the boundary of the project.
- i. Public streets, lot lines, driveways, intersections within 200 feet of the boundary of the project.
- j. Existing and proposed rights of way, easements, and deed restrictions within 200 feet of the boundary of the project.
- k. Topography at contour intervals of two (2) feet or less.
- l. All existing surface drainage patterns including wetlands and standing water.
- m. Existing and proposed access roads, including width and surface materials.
- n. Breadth, depth and slope of the proposed excavation and estimated duration of the project.
- o. Elevation of the highest annual average ground water table within or next to the proposed excavation.
- p. Estimate of the total volume of earth to be excavated.
- q. Proposed fencing, buffers or other visual barriers, including height and materials.
- r. All measures to control erosion, sedimentation, water pollution, air pollution and any hazards to public safety.

2) The following items shall also be submitted with the application:

- a. Test pit data that extends to either the high-water table, ledge or a minimum of eight (8) feet below the maximum proposed excavation depth, including location and soils data in appropriate locations to adequately assess the highest annual average water table, to be submitted by a professional geologist or other qualified individual as determined by the Board. Boring logs may be submitted separately.
- b. Plans for storm water management.
- c. Plans for equipment maintenance.
- d. Methods to prevent materials from the site from being tracked onto public roadways.
- e. Copies of all necessary state and federal permits.
- f. Specific actions to be taken on the site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety or unauthorized persons.
- g. Such other information or other special investigative studies as the Board may be reasonable deem necessary. The Board may request these after the application submittal and prior to permit approval.

h. Current photographs of access road(s) prior to the start of any excavation activity.

3) The board may also order a comprehensive environmental site assessment that may include onsite sampling at a cost to the applicant.

## **B. RECLAMATION PLAN**

A plan for the reclamation of the area affected by the excavation at least in compliance with RSA 155-E:5 and RSA 155-E:5-a. Such plan shall address the effects of the proposed excavation on soil, surface water and groundwater, vegetation, overburden, topography and fill material and may address future land use consistent with the approved master plan and shall include a timetable for reclamation of fully depleted areas within the excavation site during said project. The Board may grant an exception to RSA 155-E:5 & RSA 155-E:5-a for good cause shown.

The reclamation plan shall also contain the following items:

- 1) Seal and signature of a licensed surveyor and engineer. The Board will accept copies of engineering drawings required by NHDES in lieu of additional drawings.
- 2) All boundaries of the area proposed for reclamation and the land within 200 feet of the boundary of the project area.
- 3) Existing topography of the project area proposed for excavation, at contour intervals of five feet or less.
- 4) Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities.
- 5) Timetable as to reclamation of fully depleted sites within the excavation area.
- 6) Schedule of final reclamation activities including seeding mixtures, cover vegetation, fertilizer types and application rates.
- 7) Final reclaimed topography of the excavation area at contour intervals of five feet or less.

## **C. OTHER INFORMATION**

The Board reserves the right, per RSA 155-E:3, VII to request any other information it deems necessary to make an informed decision, or to have plans reviewed by an outside agency or other expert. According to the authority vested in the Board by RSA 155-E:11, III and RSA 675:5, IV, any reasonable expenses incurred for such information or reviews shall be charged to the applicant. Failure to pay such costs constitutes valid grounds for the Board to deny the application.



### **SECTION XIII: NOTICE OF EXCAVATION APPLICATION & HEARING**

- A. Prior to the Board rendering a decision for an excavation permit, a public hearing shall be held, with due notifications of all abutters and the public. The procedure for holding these public hearings will be in compliance with the Rules of Procedure of the Board and in addition:
- 1) Applications for excavation permits shall be filed with the Board no later than 21 days before the next regularly scheduled Board meeting. A completed application shall consist of a completed application page, the required submission items, a completed abutters list, and the appropriate fees as required.
  - 2) A public hearing will be scheduled within 30 days after a completeness review has been completed by Town staff.
  - 3) All abutters will be notified by certified mail, not less than 10 days prior to the meeting, which the application will be submitted for acceptance. Names and address of abutters must be taken from Town records not more than five (5) days before filing the application.
  - 4) Public notice will appear in a newspaper of general circulation and in at least three public places not less than 5 days prior to the meeting.
  - 5) The notice must include the location and general description of the proposal, as well as the date, time and place of the meeting.
  - 6) If the Board determines, during the scheduled hearing, that a proposed excavation has a potential for regional impact, the Board shall not close the public hearing until after the Town has provided a copy of the application and proposed plans to the regional planning commission and all affected municipalities. All copies shall be provided by the applicant.
  - 7) Within 30 days of the close of the hearing on the application, or any continuation thereof, the Board shall make a decision approving or disapproving the application, with reasons given for disapproval. Notice of this decision shall be recorded in the minutes of the meeting and placed on file in the Town Office within 5 days.
  - 8) An applicant shall receive a copy of 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.

## B. Fees

A filing fee to cover all administrative costs enumerated on the application shall be paid upon submission of an application for an excavation permit. Failure to pay such cost shall constitute grounds for the Board to not accept the application.

## **SECTION XIV: ADMINISTRATION AND ENFORCEMENT**

### A. Permits

- 1) Permits shall be issued only to the Applicant and shall not be transferable without the prior written consent of the Board. A copy of the permit shall be prominently displayed at the site or the principal access to the site.
- 2) A permit shall be valid for up to five years and the expiration date shall be specified. Permits may be amended in accordance with RSA 155-E: 6. A permit is automatically withdrawn if no substantial work is done on the site for a period of two years from the date of the issuance of the permit.
- 3) Excavation of earth without a valid permit is a violation of RSA 155-E and these regulations. Violators may be issued a cease-and-desist order for non-compliance.
- 4) The Board may include in the decision, permit and plan, any such reasonable conditions as are consistent with the purpose of these regulations.
- 5) The Board may establish a schedule by which all permitted sites are inspected at least annually or more frequently. Incidental excavation exceptions that will remove more than 1,000 cubic yards will have an inspection schedule as determined by the Board.
- 6) Town administration may audit the records and measure stockpiles to assure compliance with the collection of payments due under Section XI-C, option 4.

### B. Conflicts

Where the provisions of this ordinance are in conflict with state or federal law or with other local regulations or ordinances, the more stringent shall apply.

### C. Right of Entry & Inspections

Any permit issued hereunder or other order issued, the Board or its designee may enter upon the land and make periodic inspections of all excavation sites, or incidental excavations, to determine if the operations are in conformance with these regulations, the approved plans, or the exception criteria. The owner or operator will be contacted to arrange a mutually acceptable time for each inspection. A site inspection review letter

will be sent to the owner citing any deficiencies and providing a timeline for correction of the deficiency.

#### D. Written Notice of Violation

A written notice of violation shall be issued to the landowner by mail from Town staff should it be determined that conditions at the site are in violation of any of the standards or requirements of this ordinance or plans approved and that the violation is not an immediate threat to the public health, safety or welfare. The notice of violation shall:

- a. Specify the actions or conditions which violate the requirements of this ordinance or plans approved by the Board;
- b. Identify all corrective actions to be taken by the landowner;
- c. Specify a reasonable timeframe within which the violation(s) must be corrected; and,
- d. Be provided to the landowner with a copy to be kept in the official property file with the original permit.

#### E. Cease & Desist Order

A temporary cease & desist order may be issued to the landowner by Town staff if it is determined that conditions at the Excavation Site are in violation of any of the standards of this ordinance and the violation is:

- a. An immediate threat to public health, safety or welfare; or
- b. The landowner has failed to take corrective action as outlined in Section D above.

#### F. Suspensions and Revocations

The Board may suspend or revoke a permit if the Board determines that any provision of the permit has been violated, or a material misstatement made in the application upon which a permit was granted. The Board may suspend or revoke the exception for incidental excavation if the Board determines that any provision of the exception has been violated, or a material misstatement made in the exception application upon which an exception was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with these regulations.

#### G. Appeals

Any person affected by the Board's decision to approve or disapprove an application or any amendment thereto or any suspension or revocation of a permit, may appeal to the Board for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall be filed within ten (10) days of such decision and shall fully specify every ground upon which it is alleged with that the decision or order complained of is unlawful or unreasonable. The 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 Board’s decision on a motion or rehearing may appeal in accordance with RSA 155-E:9 and RSA 677:4.

H. Penalties

Fines, penalties and remedies for violations of this regulation shall be as stated in RSA 155-E:10, II.

**SECTION XV: SEPERABILITY**

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

**SECTION XVI: EFFECTIVE DATE**

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

**PUBLIC HEARING DATE** \_\_\_\_\_

**ADOPTED BY THE HOOKSETT TOWN COUNCIL DATE** \_\_\_\_\_