

**TOWN OF RINDGE
NEW HAMPSHIRE**

**REGULATIONS GOVERNING
EARTH EXCAVATIONS**

ADOPTED AUGUST 12, 1991

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SECTION I: AUTHORITY

Chapter 155-E of the New Hampshire Revised Statutes Annotated stipulates that, with some exceptions, all earth excavations in the State are subject to regulation from the local municipality in which the operation occurs. Pursuant to the following regulation to govern the excavation of earth material in the Town of Rindge.

SECTION II: PURPOSE AND SCOPE

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

SECTION III: DEFINITIONS

- A. **ABUTTER** shall mean 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 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. In the case of an abutting property being under a Condominium or other collective form of ownership, the term “abutter” means the officers or the collective or association, as defined in RSA 356-B:3, XXIII.
- B. **APPLICANT** shall mean the owner of the property to be excavated or the owner’s agent, so designated in writing as part of the excavation application.
- C. **COMMERCIAL** shall mean any use of earth material for sale or resale on or off the excavation site. An excavation shall also be considered commercial if earth materials in significant quantities are transported to other sites. An excavation which uses earth materials in the processing of other material such as, but not limited to, concrete, asphalt and other building material shall be considered commercial.
- D. **DIMENSION STONE** shall mean 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, foundation , curbing, paving, flagging, bridges, revetments, or other architectural or engineering purposes. Dimension stone includes quarry blocks from

which section of dimension stone are to be produced. Dimension stone does not include earth as defined below.

- E. EARTH shall mean 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 shall mean a land area which is used or has been used, for the commercial taking of earth, including all slopes.
- G. EXCAVATION AREA means the area within an excavation site where excavation has occurred or is eligible to occur under the provisions of this regulation.
- H. EXCAVATION SITE means any area of contiguous land in common ownership upon which excavation takes place.
- I. EXCAVATION, EXISTING shall mean those excavations which lawfully existed, in conformance with local zoning and other regulations, and operated on or before August 24, 1979.
- J. EXPANSION shall mean either: the removal of topsoil from a new area; or excavation beyond the limits of the town and/or the area which in 1979 had been contiguous to and in common ownership with the excavation and has been appraised and inventoried for tax purposes as part of the same tract.
- K. FEES shall mean the following: (See also Section XVII F of this regulation).
 - 1. Filing Fee shall mean the required fee, to be paid upon submission of an excavation application to the Planning Board, to defray the cost to the Town of reviewing the application.
 - 2. Excavation Application Fee shall mean those fees paid by the applicant to the Planning Board upon the granting of a permit to defray the costs of permit compliance.
 - 3. Inspection Fee shall mean any costs associated with site inspections or other reviews should the Planning Board require the advice of an engineer or other agents to ensure compliance with the conditions of the permit.
- L. RECLAMATION Shall mean the restoring of an excavation site to a minimum standard as outlined in Section X of these regulations.

SECTION IV: PROJECTS REQUIRING A PERMIT

The following excavations require a permit from the Planning Board.

- A. Those that have begun operation since August 24, 1979, and any new excavation operations, excepting those described in Section V-A and V-B of this regulation.
- B. Those that have operated prior to August 24, 1979 and wish to expand beyond the limits of the Town or excavation area which, on August 24, 1979, and at all times subsequent thereto had been contiguous to and in common ownership with the excavation and has been appraised and inventoried for property tax purposes as part of the same tract.

SECTION V: PROJECTS EXEMPT FROM A PERMIT

- A. The following projects do not require a permit, but are nevertheless subject to Section IX, X and XI of these regulations; the Planning Board may require the owner/operator to come before the Board at a fully-noticed public hearing to demonstrate compliance with these standards.
 - 1. Grandfathered Excavations which lawfully existed on or before August 24, 1979, from which earth material of sufficient weight or volume to be commercially useful has been removed during the 2-year period before August 24, 1979, are subject to the following:
 - a) Such an excavation shall be exempt from local zoning or other ordinances regulation the location of the excavation site, provided that at the time operation began it was in compliance with any local ordinances that may have been in effect.
 - b) The owner or operator shall file an excavation report with the Planning Board no later than August 4, 1991. Any existing excavation that fails to files said report shall no longer be considered to be grandfathered and must obtain a permit from the Planing Board before continuing excavation of the site. The report shall contain the following information.
 - 1. Tax map and lot number
 - 2. Map or plat showing the location of the excavation site and items 4 & 5 below.
 - 3. The date excavation first began.
 - 4. A description of the permissible limits of expansion as described in Section IV B.
 - 5. An estimate of the area which has been excavated to date.
 - 6. An estimate of the amount of commercially viable earth materials still available on the site.
 - 2. 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 thereof which has a contract for the construction, reconstruction, or maintenance of the highway. The owner or his agent is required to come before the Planing Board at a public hearing to demonstrate compliance with Section IX, X, and XI of these regulations; in addition , the excavation is also subject to RSA 155-E 2, IV (a), (b) and (c).

B. The following projects are exempt from a permit and are not subject to regulation by the Planning Board.

1. Excavation that is exclusively incidental to the lawful construction or alteration of a building or structure, 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 have been issued
2. Excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustments. (In the event of questions, the Planning Board shall determine what is incidental).
3. 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).
4. 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 Board.

SECTION VI: ABANDONED EXCAVATIONS

The permit and zoning exemptions under Section V of these regulations shall apply to any abandoned excavation, as defined below:

- A.** Any excavation for which the affected area has not been brought into complete compliance with the reclamation standards of this regulation shall be deemed abandoned if:
1. No significant amount of earth material has been removed from the site during any two (2) year period either before, on, or after August 4, 1989; the owner or operator may, however, extend the period by submitting a timetable for reclamation to be approved by the Planning Board and posting a bond or other surety sufficient to cover the costs of reclaiming in a form and amount prescribed by the Planning Board; or
 2. The excavation is in use, but does not conform with the incremental reclamation requirements of this regulation, or the owner operator has not posted a bond or other surety sufficient to cover the costs of reclamation and submitted a reclamation timetable described in subparagraph 1) above; 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 within the prescribed time period.

- B. Subject to the limitations is RSA 155-E:2, II (c), 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 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 VII: PROHIBITED PROJECTS

No excavation shall be permitted in any of the following circumstances:

- A. Within 50 feet of the boundary of a disapproving abutter, or closer than 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. Below road level within 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. Within 10 feet of an approving abutter unless approval is requested by said abutter.
- D. Where the issuance of the permit would be unduly hazardous or injurious to the public welfare. The Planning Board shall give particular consideration to such factors as : noise, vibration, traffic, dust, fumes, danger from operation, or any such other factors which may relate to and impact on the orderly, coordinated and harmonious physical development of the Town.
- E. Where existing visual barriers would be removed except to provide access to the excavation.
- F. Where the excavation would substantially damage or contribute to the damage of a known aquifer, as designated by the Rindge Water Resource Management and Protection Plan.
- G. When the excavation requires land use permits form State or Federal agencies; but the regulator may approve the application when all necessary land use permits have been obtained; or
- H. Where the excavation is not permitted by zoning or other applicable ordinances.
- I. Where the project cannot comply with the requirements of Section IX, X and XI of these regulations.

SECTION VIII: EXPANSION OF NON-CONFORMING EXCAVATION SITES

Should the Zoning Ordinance, as amended as of August 4, 1989, prohibit excavations in an area where an existing excavation is located, any expansion of such an 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:

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

SECTION IX: OPERATIONAL STANDARDS

- A. No excavation shall be permitted within 50 feet of the boundary of a disapproving abutter, or closer than 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 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. No excavation shall be permitted within 75 feet of any great pond, navigable river, or any other standing body of water 10 acres or more in area or within 25 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 482-A:15, 1, or any other wetland greater than 5 acres in area as defined by the Wetlands Board.
- D. Vegetation shall be maintained or provided within the peripheral areas required in paragraphs A and B of this section.
- E. 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.
- F. Where temporary slopes will exceed a 1:1 grade, a fence or other suitable barricade shall be erected to warn of danger and/or to limit access to the site.
- G. Appropriate drainage shall be provided to prevent the accumulation of free-standing water for prolonged periods in accordance with RSA 155-E 4-a IV.

- H. Projects requiring a permit from the Division of Water Supply and Pollution Control pursuant to RSA 485-A: 17 shall file a copy of the permit with the Planning Board.
- I. Prior to the removal of topsoil or other 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 regulator, sufficient to secure the reclamation of the land to be excavated.

SECTION X: SITE RECLAMATION STANDARDS

Within 12 months after the expiration date of a permit issued under this regulation, or of the completion of any excavation, whichever occurs first., the owner of the excavated land shall have completed the reclamation of the area affected by the excavation to meet the following minimum standards or when such excavation is not subject to a permit under these regulations pursuant to Section IV, to meet each of the following express standards:

- A. Areas visible from a public way, from which trees have been removed, shall be replanted with tree seedlings, set out in accordance with acceptable horticultural practices.
- B. All disturbed areas shall be spread with topsoil or any other soil in quantities capable of maintaining vegetation, and shall be planted with seedlings or grass suitable to establish vegetation.
- C. All earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of.
- D. All slopes, except for exposed ledge, shall be graded to natural repose for the type of soils of which they are composed so as to control erosion or at a ratio of horizontal to vertical proposed by the owner and approved by the regulator. 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 are 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 Division of Water Supply and Pollution Control, the provisions of RSA 485-A": 17, shall supersede this regulation. Copies of all such permits shall be filed with the Planning Board.

SECTION XI: INCREMENTAL RECLAMATION

Any excavated area of five continuous acres or more, which either is depleted of commercial earth materials, excluding 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 Section X of these regulations, within 12 months following such depletion or 2-year non-use, regardless of whether other excavation is occurring on adjacent land in contiguous ownership. Each operator shall prepare and submit for the Planning Board's record a reclamation plan for the affected land, including a timetable for reclamation of the depleted areas within the reclamation site.

SECTION XII: RECLAMATION BOND

Prior to the removal of any topsoil, the applicant shall submit to the Treasurer 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 not only the cost of restoring the excavation site itself, but also the estimated costs of any potential damage to Town roads or facilities caused by the transportation of earth materials outside of the methods and limits authorized by the permit. The bond shall not be released until the Planning Board is satisfied that all conditions of the site reclamation plan have been complied with.

SECTION XIII: EXCEPTIONS

Due to the diverse nature of excavation operations which vary in scale and scope, and due to the varying condition of the land to be excavated, the Planning Board may, in its discretion, waive certain standards contained in Sections IX, X, XI and XII where, in the opinion of the Planning Board, the proposed excavation will be of small scale and have very limited impact on the site, its abutters, and the Town, and strict application of these requirements would create an undue and excessive hardship for the applicant. The applicant must request any waivers in writing as part of the application. The written decision shall state specifically what requirements are being waived and include any reasonable alternatives. The decision of the Planning Board may be appealed in accordance with RSA 155-E:9.

SECTION XIV: APPLICATION FOR EXCAVATION

The applicant for an excavation permit shall submit to the Planning Board a completed application form, an excavation and reclamation plan and any other submission documents as requested, and the filing fee. At least three 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. The plans shall be at a scale of 1" = 100'.

These same procedures and information requirements apply to operators who do not need a permit but do need to demonstrate to the Planning Board their compliance with the regulations. Submission documents shall include the following items:

- A. **APPLICATION FORM**, signed and dated by the applicant, and accompanied by any necessary state or federal permits.

B. EXCAVATION PLAN, which shall show:

1. Name and address of the owner, the excavator (if different) and all abutters;
2. Seal and signature of an engineer or surveyor licensed in the State of New Hampshire;
3. Sketch and description of the location and boundaries of the proposed and any existing excavations, the area in square feet and acres, estimate of cubic yardage of earth to be removed and the municipalities involved;
4. Zoning district boundaries of the proposed area and within 200 feet of the boundary of the project;
5. The location of existing buildings, structures, septic systems and wells within 200 feet of the boundary;
6. Lot lines, public streets, driveways, intersections, rights-of-way, and all easements within 200 feet;
7. Topography at contour intervals of five feet or less;
8. All surface drainage patterns including wetlands and standing water;
9. Sketch and description of existing and proposed access roads, including width and surface materials;
10. The breadth, depth and slope of the proposed excavation and the estimated duration of the project;
11. The elevation of the highest annual average ground water table within or next to the proposed excavation;
12. Test pits that extend to either the seasonal high water table, ledge, or a minimum of six feet below the maximum proposed excavation depth, including location and soils data; boring logs may be submitted separately;
13. Proposed fencing, buffers or other visual barriers, including height and materials, and,
14. All measures to control erosion, sedimentation, water pollution, air pollution, and hazards to human safety.

C. RECLAMATION PLAN, which shall show:

1. Seal and signature of a licensed surveyor or engineer;

2. All boundaries of the area proposed for reclamation, and the land within 200 feet of the boundary of the site;
3. Final topography of the area proposed for reclamation, 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 fully-depleted sites within the excavation area; and
6. Schedule of final reclamation activities including seeding mixtures, cover vegetation, fertilizer types, and application rates.
7. Such plan shall address the effects of the proposed excavation on soil, surface 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.

D. ON-SITE NUISANCES

Specific actions to be taken by the applicant on the excavation site relative to fuel and chemical handling and storage, dust control, traffic, vibration and noise control and abatement, and comprehensive site safety of unauthorized persons.

E. OTHER INFORMATION

The Planning Board reserves the right, per RSA 155-E: 2, VII to request any other information it deems necessary to make an informed decision, or to have plans reviewed by an outside agency. Any expenses incurred for such information or reviews shall be borne by the applicant.

SECTION XV: ADDITIONAL PERMIT REQUIREMENTS

All existing, or grandfathered, operations are subject to the minimum standards of Section IX and X. Operations requiring a permit may be subject to additional conditions, including but not limited to the following, as deemed necessary by the Planning Board that are consistent with the purpose of these regulations.

- A. 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.
- B. 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, zoning requirements and the Master Plan.

- C. All temporary structures required during excavation operations shall be removed from the site within 30 days after such operations cease.
- D. All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.
- E. No excavation shall disturb the groundwater flow.
- F. Transportation of earth to or from the site shall not cause any damage to Town roads or facilities.

SECTION XVI: APPLICATION PROCEDURES

Prior to the Planning Board rendering a decision for an excavation permit, a public hearing shall be held with due notification of all abutters and the public. The procedure for holding these public hearings is as follows:

A. FILING OF THE APPLICATION

1. Applications for excavation permits shall be filed, along with a filing fee, with the Planning Board according to the form supplied by the Planning Board.
2. The applicant shall simultaneously send a copy of the application to the Conservation Commission.

B. BOARD ACTION ON APPLICATION

1. Upon receipt of a completed application the Planning Board will consider the application at the next regularly schedule meeting.
2. Providing that the application is complete, the Board shall vote to accept the application, after which time the Board has 30 days to schedule a public hearing.
3. Within 20 days of the close of the hearing on the application, 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 72 hours.
4. 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.

C. NOTICES REQUIRED

1. The Planning Board will notify the applicant and abutters of the time and place of the hearing by certified mail, return receipt requested, not less than 14 days prior to the hearing. Names and addresses of abutters will be supplied by the applicant and must be taken from Town records not more than five (5) days before filing the application.
2. Public notice of the hearing will appear in a local newspaper and in at least three (3) public places in Town not less than 14 days prior to the hearing.
3. The notice must include the location and general description of the proposal, as well as the date, time and place of the hearing.
4. All costs for notification shall be borne by the applicant. Failure to do this is a valid reason for the Board to disapprove the application.

SECTION XVII: ADMINISTRATION AND ENFORCEMENT

- A. PERMITS:** 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. A permit shall be valid for one (1) year and the expiration date shall be specified. A permit is automatically withdrawn if no substantial work is done on the site for a period of one (1) year. Failure to file for a permit shall be considered a violation and operators who fail to file will be issued a cease and desist order. The Board may include in the permit any such reasonable conditions as are consistent with the purpose of these regulations.
- B. AMENDMENTS AND RENEWALS:** Permit holders wishing to renew or 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 those required for an excavation permit.
- C. INSPECTIONS:** The Planning Board or its designated agent shall make periodic inspections of all excavation sites to determine if the operations are in conformance with these regulations and the approved plans.
- D. SUSPENSIONS AND REVOCATIONS:** 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 rehearing thereon and appeal in accordance with these regulations.
- E. APPEALS:** Any person affected by the Planning Board's decision to approve or disapprove an application or an amendment thereto or any suspension or revocation of a permit, may

appeal to the Planning 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 that the decision or order complained of is unlawful or unreasonable. 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 Board's decision on a motion for rehearing may appeal in accordance with RSA 677:4-15.

F. FEES: The Planning Board may develop a schedule of fees to be assessed against all applications, granted permits, and excavation operations, that the Town may recover all reasonable costs of administration of these regulations. Failure to pay these or any other costs associated with the application process shall be grounds for denial of the permit or approval.

1. A filing fee shall be charged for each excavation permit application, including a fee for each abutter notification, to cover the administrative costs of the Planning Board.
2. An excavation application fee of \$50 shall be charged upon the granting of an excavation permit.
3. Any other costs incurred to ensure compliance with the conditions of the permit or the approval, i.e., site inspections by a qualified engineer, etc.

G. 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 a valid order issued hereunder, shall be guilty of a misdemeanor.

SECTION XVIII: SEPARABILITY

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

SECTION XIX: EFFECTIVE DATE

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