

TOWN OF ENFIELD, N.H.
LOCAL EXCAVATION REGULATIONS

SECTION 1: DEFINITIONS. In this chapter:

"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 regulator.

"Earth" means sand, gravel, rock, soil or construction aggregate.

"Excavation" means a land area which is used, or has been used, for the commercial taking of earth, including all slopes.

"Regulator" means the Planning Board of the Town of Enfield.

SECTION 2: PERMIT REQUIRED. No owner shall permit any excavation of earth on his premises without first obtaining a permit therefore, except:

- I. Excavation that is 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.
- II. Excavation that is incidental to agriculture or silviculture activities, normal landscaping or minor topographical adjustment.
- III. Excavation from a granite quarry.
- IV. 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 having 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 a copy of the pit agreement executed by the owner, the agent and the governmental unit shall be filed with and accepted by the regulator prior to start of excavation but such excavation shall not be exempt from the provisions of Section 4, 5 and 11.
- V. 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.

SECTION 3: APPLICATION FOR PERMIT. Any owner or owner's designee subject to this chapter shall, prior to excavation of his land, apply to the regulator for a permit for excavation. The applicant shall also send a copy of the application to the Conservation Commission of the Town. Such application shall be signed and dated by the applicant and shall contain at least the following information.

- I. 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;
- II. A sketch and description of the location and boundaries of the proposed excavation, the number of acres to be involved in the project and the towns in which the project lies;
- III. A sketch and description of the access and visual barriers to public highways to be utilized in the proposed Excavation;
- IV. The breadth, depth and slope of the proposed excavation and the estimated duration of the project;
- V. The elevation of the highest annual average ground water table within or next to the proposed excavation;
- VI. A plan for the restoration of the area affected by the excavation at least in compliance with including a timetable therefore as to fully depleted sites within the excavation area during said project.

SECTION 4: PROHIBITED PROJECTS. The regulator shall not grant a permit:

- I. Where an excavation is proposed below road- level within 50 feet of any highway right-of-way unless excavation is for the purpose of said highway.
- II. For excavation within 100 feet of the boundary.
- III. When the excavation is not permitted by zoning or other applicable ordinance;
- IV. When the issuance of the permit would be unduly hazardous or injurious to the public welfare;
- V. Where existing visual barriers in the areas specified in Section 3 III would be removed except to provide access to the excavation.

- VI. Where the excavation would substantially damage a known aquifer, so designated by the United States Geological Surveyor or any other source;
- VII. When excavation is planned beneath or adjacent to inland surface waters in such manner that a permit is required from the Water Supply and Pollution Control Commission, the Water Resources Board, the special board on dredge and fill or other state or federal agencies with jurisdiction over the premises; but the regulator may approve the application when all necessary permits have been obtained;
- VIII. Where the project cannot comply with the restoration provisions; or
- IX. When excavation is planned less than 150 feet from any body of water, flood way, flood plain or wetlands.

SECTION 5: RESTORATION. Within 12 months after the expiration date in the permit therefore or the completion of the excavation, whichever first occurs, the owner of the excavated land shall restore, or cause to be restored, the area affected by the excavation to meet each of the following minimum conditions:

- I. Except for exposed rock ledge, said area shall be covered with a top layer of arable soil to retain a depth of 5", reseeded, mulched in a quantity that will establish a firm cover of vegetation sufficient to prevent erosion.
- II. Debris resulting from the excavation shall be buried or removed.
- III. All slopes shall be graded to natural repose for the type of soil of which they are composed; and
- IV. The elimination of any standing bodies of water created in the excavation project as may constitute a hazard to health and safety unless the regulator specifies different restoration.

SECTION 6: 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 restoration, the owner shall submit an application for amendment of his excavation permit which application shall be subject to approval in the same manner as provided for an excavation permit.

SECTION 7: IMPACT STUDY. An impact study may be required. The results of the study may be used in evaluating the merits of the application. The regulator

will determine the need for an impact study, the applicant will be responsible for the cost incurred.

SECTION 8: HEARING:

- I. Prior to the regulator approving an application for an excavation permit or an application for an amended excavation permit, a public hearing shall be held within 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 and place and at least 14 days notice of the time and place of such hearing shall be published in a paper of general circulation in the city, town or unincorporated place where the proposed excavation is to be located and a legal notice thereof shall also be posted in at least 3 public places in such town. The 14 days shall not include the day of publication nor the day of the meeting but shall include any Saturdays, Sundays and legal holidays within said period. Within 20 days of said hearing or any continuation thereof, the regulator shall render a decision approving or disapproving the application, giving reasons for disapproval.
- II. All fees for mailing notices to abutters and the legal notice in the newspaper shall be paid when the application is presented to the regulator or its duly authorized agent. Applications without full payment will be considered incomplete.

SECTION 9: ISSUANCE OF PERMIT. If the regulator after the public hearing approves the application for a permit, upon receipt of an excavation fee of \$50 and the posting of a bond with the municipal treasurer in an amount, as it requires, reasonably sufficient to guarantee compliance with the permit, grant a permit to the applicant for excavation. A copy of the permit shall be prominently posted at the excavation site or the principal access thereto. A permit shall not be assignable or transferable without the prior written consent of the regulator. A permit shall specify the date upon which it expires. The regulator may include in a permit such reasonable conditions as are consistent with the purpose of this chapter including the provision of visual barriers to the excavation.

SECTION 10: APPEAL. If the regulator 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 10 days of the date of the decision appealed from. The regulator shall either grant or deny the request for rehearing within 10 days, and if the

request is granted a rehearing shall be scheduled within 30 days. Any person affected by the regulator's decision on a motion for rehearing to the regulator may appeal a conformity with the procedures specified in RSA 677:4-15.

SECTION 11: ENFORCEMENT.

- I. The regulator or its duly authorized agent may suspend or revoke the permit of any person who has violated any provision of his permit or this chapter or made a material misstatement in the application upon which the permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with Section 10.
- II. The regulator or a person affected thereby may seek an order from the superior court that the violator cease and desist from violation of any provision of his permit or this chapter and take such action as may be necessary to be in compliance with his permit and this chapter. If the superior court issues such an order, the regulator or the person affected as the case may be, shall have judgment for all costs and attorney fees in seeking such an order.
- III. To ascertain if there is compliance with this chapter, a permit issued hereunder or an order issued hereunder, the regulator or its duly authorized agent 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 RSA 155-E (1979).