

TOWN OF ORFORD
NEW HAMPSHIRE

EXCAVATION REGULATIONS

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 authority vested in the Planning Board by the voters of the Town of Orford and RSA 155-E, the Planning Board adopts the following regulations to govern the excavation of earth materials in the Town of Orford. The applicant is responsible to be familiar with RSA 155-E.

SECTION II: PURPOSE AND SCOPE

The goals of this regulation are to: provide for reasonable 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 the purpose of achieving these goals, no earth materials in the Town shall be excavated except in conformance with these regulations.

SECTION III: DEFINITIONS

- A. **ABUTTER** means (1) any person whose 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. **AGRICULTURAL EXCAVATION** means excavation of earth by the owner of the land to be used on the owners land exclusively for agricultural use.
- C. **AGRICULTURAL USE** means land used for agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, silviculture and animal and poultry husbandry.
- D. **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.
- E. **BOARD** means the Planning Board of Orford.

- F. **COMMERCIAL EXCAVATION** means excavation of earth intended for commerce, this may also include excavation that is strictly conducted for the purpose of alteration, renovation, improvement or construction to the property on which the excavation takes place. Any commercially useful earth material leaving the property for whatever reason is considered to be a commercial operation.
- G. **COMMERCIALLY USEFUL** means the amount of excavated earth deemed by the Planning Board to be commercially useful which has been determined to be 1,000 cubic yards or more.
- H. **CONTIGUOUS** means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town.
- I. **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.
- J. **EARTH** means sand, gravel, rock, top 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.
- K. **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.
- L. **EXCAVATION** means a land area which is used, or has been used, for the commercial taking of earth, including all slopes.
- M. **EXCAVATION AREA** means the 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.
- N. **EXCAVATION SITE** means any area of contiguous land in common ownership upon which excavation takes place.
- O. **EXISTING EXCAVATION** means any excavation, as described in RSA 155-E:2, I, which lawfully existed as of 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 and had submitted the report as required by RSA 155-E:2, I, (d).
- P. **EXPANSION** means excavation and disturbance of earth beyond the limits as shown on the plan as approved by the Planning Board.
- Q. **INCIDENTAL EXCAVATION** means excavation of earth which has been granted an exception from an excavation permit by the Planning Board. (RSA 155:E:2-a I.)

- R. **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.
- S. **NORMAL LANDSCAPING** means the on-site alteration and contouring of the land exclusively devoted to improving the functional utility and planting of the grounds.
- T. **RECLAMATION** means the restoration of an excavation site to an acceptable standard as determined and approved by the Planning Board.
- U. **PLANNING BOARD** means the Planning Board of the Town of Orford.
- V. **SEASONAL HIGH WATER TABLE** means the depth from the mineral soil surface to the upper most soil horizon that contains 2% or more distinct or prominent redoximorphic features that increase in percentage with increasing depth as determined by a licensed soil scientist or other professional as determined by the Planning Board. (NH DES Env-Wq 1002.78)
- W. **STATIONARY MANUFACTURING AND/OR PROCESSING PLANTS** means facilities which are placed on a site for the purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated earth materials.

SECTION IV: PROJECTS REQUIRING A PERMIT

- A. Any excavation of earth unless specifically exempted by either RSA 155-E:2 or specifically excepted in Section V of these regulations.

SECTION V: EXCEPTIONS FROM AN EXCAVATION PERMIT

- A. The following projects are deemed to be an exception from a permit:
 - 1) Site development, 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. In the event that the project will result in the removal from the site more than 1,000 cubic yards, the project will be considered incidental provided that all of the required state and local permits have been issued.
 - 2) Excavation of earth that is a result of agricultural use, normal landscaping or minor topographical adjustment as defined in Section III of these regulations. In the event that the project will result in the removal of more than 1,000 cubic yards from the site, 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).

SECTION VI: PROHIBITED PROJECTS

- A. 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.
- B. Where the excavation is not permitted by the Floodplain Management Ordinance or other applicable local ordinances and variance has not been obtained.
- C. Where the planned excavation will be in violation or RSA 155-E:4.

SECTION VII: EXCAVATION EXPANSION

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 variance, the proposed changes must first be approved by the board of adjustment.

SECTION VIII: OPERATIONAL STANDARDS

A. 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 Planning Board.
- 3) No blasting shall occur without receiving prior approval during the permitting process.
- 4) Crushing may not be introduced without either prior approval from to the Planning Board during the permitting process or by submitting a request to the Planning Board who will hold a public hearing and then rule.
- 5) The Planning Board will determine the acceptable hours of operation with consideration taken on resident's needs and the needs of the owner of the excavation.

B. On-site Storage – Solid Waste:

- 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 Planning Board. If approved by the Planning Board, the burial/storage site will be noted on the plan and performed in accordance with all local, state and federal regulations.

- 2) 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. The burial or storage will be performed in accordance with all local, state and federal regulations. The site plan and property deed will 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 areas(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.
- 3) The site will not be used for storage of junk vehicles, machinery, etc. as defined in RSA 236:112.

C. Backhauling, Importing, and Storage of Material:

- 1) 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 Planning Board.

D. Aquifers and Seasonal High Water Tables

- 1) No excavation shall be permitted within four 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, provided, however, that written notice of such 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 Planning Board.

SECTION IX: SITE RECLAMATION STANDARDS

- A. For excavations requiring a permit, the standards contained in RSA 155-E:5 are considered to be the minimum standards and the Planning 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.
- B. 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 restrictive, and not in conflict, with the AOT permit. Copies of all such AOT permits and update plans shall be filed with the Planning Board.

- C. Incidental excavations that have received an exception from the Planning Board to remove more than 1,000 cubic yards of earth shall reclaim the property in accordance with the specifications dictated by the Planning Board.

SECTION X: PERFORMANCE GUARANTEE

- A. Prior to the granting of any permit, the applicant shall submit to the Selectmen a bond or other sufficient surety as determined by the Planning Board. The purposes of the bond are to guarantee reclamation of 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.
- B. The surety may be in the amount and form acceptable to the Planning Board and its legal counsel. 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 Planning Board is satisfied that all conditions of the site reclamation plan have been complied with and that no erosion or die off has occurred.
- C. 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 Planning Board may require a performance surety to ensure compliance with reclamation specifications.

SECTION XI: APPLICATION PROCEDURES

Prior to the 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. Excavation Permit Application Review
 - 1) Applications for an excavation permit shall be filed with the Planning Board Clerk no later than 21 days before the next regularly scheduled Planning 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) The application will be reviewed with the applicant at the scheduled meeting. If the application is found to meet all submission requirements it will be accepted and voted by the Planning Board as complete and the hearing held. Should the application not be accepted as complete, another review meeting must be scheduled for re-submission as outlined in Section XI, A, 1.
- B. Board Action on Completed Application
 - 1) Upon acceptance of a completed application the Planning Board will hold a public hearing within 30 days to consider the application.

- 2) 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 144 hours.
- 3) 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 for Public Hearing

- 1) All abutters will be notified by certified mail, not less than 10 days prior to the meeting at which the application will be submitted for acceptance. Names and addresses of abutters must be taken from Town records not more than five (5) days before filing the application.
- 2) Public notice will appear in a newspaper of general circulation and in at least three public places not less than 10 days prior to the meeting.
- 3) The notice must include the location and general description of the proposal, as well as the date, time and place of the meeting.

D. Fees

An application fee of \$55 (which includes the public notice fee) plus \$7 per abutter for abutter notices will be due upon submission of the application. Failure to pay such cost shall constitute grounds for the Board to not accept the application.

SECTION XII: APPLICATION SUBMISSION ITEMS

The applicant for an excavation permit shall submit to the Planning Board Assistant a completed application form, including a current abutters list, an excavation and a reclamation plan, 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 regularly scheduled Board meeting, and one copy shall be sent to the Conservation Commission. The plans shall be at a scale of 1" = 100'.

A. Excavation Plan

The excavation plan shall address 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 of unauthorized persons. The plan shall, at a minimum, contain the following items:

- 1) Name and address of the owner, the excavator (if different) and all abutters.
- 2) Name, address and signature of the person preparing the plan; date, bar scale and north arrow.
- 3) Lot line boundaries of the proposed area and within 200 feet of the boundary of the project.

- 4) Perimeter survey by a licensed engineer of the location and boundaries of the proposed and any existing excavation; the area in square feet and acre; and identification of any other municipalities involved. Board will accept copies of engineering drawings required by NHDES in lieu of additional engineer drawings.
- 5) The location of existing buildings, structures, septic systems and wells within 200 feet of the boundary of the project.
- 6) Public streets, lot lines, driveways, intersections, rights-of-way, and all easements within 200 feet; road network to be affected; intended transportation routes to be used.
- 7) Topography at contour intervals of five feet or less.
- 8) All surface drainage patterns including wetlands, standing water, floodplain, and shoreland protection area.
- 9) Sketch and description, and/or engineer surveyed map at the request of the Board, 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) An estimate of the total volume of earth to be excavated.
- 12) The elevation of the highest annual average ground water table within or next to the proposed excavation.
- 13) Test pit data 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.
- 14) Proposed fencing, buffers or other visual barriers, including height and materials.
- 15) All measures to control erosion, sedimentation, water pollution, air pollution, and any hazards to public safety.
- 16) Plans for storm water management.
- 17) Plans for equipment maintenance.
- 18) Methods to prevent materials from the site from being tracked onto public roadways.
- 19) Copies of all necessary state and federal permits.
- 20) Signed and dated by licensed soil scientist/engineer. Board will accept copies of engineering drawings required by NHDES in lieu of additional drawings.

- 21) Ability to provide bonding of excavation – should bond lapse or be cancelled, the Planning Board shall impose a cease and desist order immediately.

B. Reclamation Plan

The reclamation plan shall address the effects of the proposed excavation on soil, surface, and ground water, vegetation, overburden, topography, and fill material, and should address future land use consistent with the Master Plan. The plan shall, at a minimum, contain the following items:

- 1) Seal and signature of a licensed surveyor or engineer. 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.
- 8) Reclamation as specified in the Reclamation Plan is to be completed within 12 months of expiration date of permit or completion of excavation, whichever comes first.

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. According to the authority vested in the Board by RSA 155-E:11, III & RSA 676:4, I(g), 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: ADMINISTRATION AND ENFORCEMENT

A. Permits

- 1) Permits shall be issued only to the owner or his agent and shall not be transferable without the prior written consent of the Planning Board. A copy of the permit shall be prominently displayed at the site or the principal access to the site.

- 2) A permit shall be valid for up to five years or as determined by the Planning Board 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 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 Planning Board may include in the permit any such reasonable conditions as are consistent with the purpose of these regulations.
- 5) The Planning Board will establish a schedule by which all permitted sites are inspected on an annual basis. Incidental excavation exceptions that will remove more than 1,000 cubic yards will have an inspection schedule as determined by the Planning Board.

B. Bonding

Bonding will be reviewed at the time of periodic inspections.

C. Inspections

The Planning Board or its designee shall make an initial inspection of the site to document current conditions. Photographs of the site shall be taken from at least two angles. The Planning Board or its designee will make inspections at least once a year 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. A site inspection review letter will be sent to the owner citing any deficiencies and providing a timeline for correction of the deficiency.

D. Suspensions and Revocations

The Planning Board may suspend or revoke a permit if the Planning 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, or failure to correct any deficiency after notice. The Planning Board may suspend or revoke the exception for incidental excavation if the Planning Board determines that any provision of the exception has been violated, a material misstatement made in the exception application upon which an exception was granted, or any unsafe or hazardous conditions are determined by a site inspection to exist, or failure to correct any deficiency after notice. 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 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 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 677:4-15.

F. 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.

SECTION XIV: SEPARABILITY

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

SECTION XV: EFFECTIVE DATE

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

These regulations were adopted October 20, 2014 by the Orford Planning Board.

Planning Board Approval:

Ann Green, Chair

Andrew Schwaegler, Vice-Chair

Harry Osmer

Jim McGoff

Lawrence Hibbard

Chase Kling

Tom Steketee, Select Board
Representative