

Earth Excavation and Reclamation Regulations



Antrim, New Hampshire

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TOWN OF ANTRIM NEW HAMPSHIRE
EARTH EXCAVATION AND RECLAMATION REGULATIONS

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TOWN OF ANTRIM NEW HAMPSHIRE

EARTH EXCAVATION AND RECLAMATION REGULATIONS

SECTION I: AUTHORITY

In accordance with the provisions of New Hampshire Revised Statutes Annotated, Chapter 155-E, the Antrim Planning Board adopts the following regulations governing the excavation of earth and the restoration of excavation sites in the Town of Antrim, New Hampshire.

SECTION II: PURPOSE AND SCOPE

For the purpose of identifying and utilizing existing sources of necessary construction materials, as recognized by the New Hampshire State Legislature, while at the same time minimizing safety hazards which can be created by open excavations and ensuring that the public health and welfare will be safeguarded and natural resources and the environment protected, no earth materials shall be removed except in conformance with these regulations. The scope of this Regulation does not include the stockpiling or recycling of off-site materials brought to the site unless they are being used to process on-site materials. Any such use would be subject to other applicable approvals, including Site Plan Review from the Planning Board.

SECTION III: DEFINITIONS

- A. ABUTTER: 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 the 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.
- B. APPLICANT: The record owner of the excavation site at the time of application or said owner's designee.
- C. APPLICATION: A complete submission of information and plans as required by Section VII, Application Procedure.
- D. AQUIFER: A water-bearing stratum of permeable rock, sand, or gravel. These areas appear on statewide mapping prepared by the United States Geological Survey entitled "Availability of Ground Water".
- E. COMMERCIAL: Any use of earth material for sale or resale on or off the excavation site. An excavation shall be considered commercial if earth materials are transported to other sites.
- F. DIMENSION STONE: 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.

- F. EARTH: Sand, gravel, rocks, soil or construction aggregate produced by quarrying, crushing, or any other mining material or such other naturally occurring unconsolidated materials that normally mask the bedrock (RSA 155-E: 1, I).
- G. EXCAVATION: A land area that is used or has been used for the commercial taking of earth, including all slopes.
- H. EXCAVATIONS, EXISTING: Those excavations that lawfully existed and operated on or before August 24, 1979.
- I. EXCAVATION PERMIT: The permit to conduct earth removal activities issued by the Antrim Planning Board pursuant to and in conformance with RSA 155-E and these regulations.
- J. EXCAVATION PIT AGREEMENT: An agreement between the excavation site owner and the contractor describing the terms and procedures for material excavation.
- K. EXCAVATION SITE: Any area of contiguous land in common ownership upon which excavation is presently taking place, has taken place, or is intended to take place.
- L. EXPANSION: The removal of topsoil from a new area of the excavation site.
- M. PLAN: EXCAVATION AND RECLAMATION: The maps or drawings on which the plans for excavation and for reclamation are presented to the Planning Board.
- N. RECLAMATION: The restoring of an excavation site to a minimum standard as outlined in Section X of these regulations.
- O. RECLAMATION BOND: A surety, in the amount determined by the Planning Board, to guarantee the restoration of all or part of an excavation site and any Town roads or facilities that may have been damaged by the transportation of earth materials.
- P. STATIONARY MANUFACTURING AND PROCESSING PLANTS: Plants which are permanently placed and which grade, crush and stockpile excavated earth.
- Q. VEGETATIVE BUFFER: Trees, shrubbery, grass, or other vegetation appropriate for the site and situation.

SECTION IV: PERMIT REQUIRED

An excavation permit must be obtained from the Antrim Planning Board for the following excavation operations:

- A. Those that have lawfully operated since August 24, 1979.
- B. Any excavation proposing to begin operation after the effective date of these regulations.
- C. Those that have lawfully operated prior to August 24, 1979 and wish to expand 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 property tax purposes as part of the same tract.
- D. The expansion of any excavations that are not in conformance with local zoning regulations in effect as of August 4, 1989.

SECTION V: PROJECTS EXEMPT FROM A PERMIT

- A. Excavation incidental to construction or alteration 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. (Section RSA 155-E-2-a,I(a).
- B. Excavation incidental to agriculture/silviculture activities, normal landscaping or minor topographical adjustment. (Section RSA 155-E-2-a,I(b))
- C. Excavation for Highway Construction: 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, subject to the following:
 - 1. A copy of the pit agreement executed by the owner, the agent and the governmental unit shall be filed with the Antrim Planning Board prior to the start of excavation.
 - 2. Such excavation shall not be exempt from the Operational and Reclamation standards of RSA 155-E:4-a, 155:e-5, 155-E:5-a or from the Antrim Zoning Ordinance or other applicable Town Ordinances unless an exemption is granted to the Department of Transportation as provided in RSA 15S-E:2,IV(c) for a Class I, II, III highway.

- D. Existing Excavations: Excavating from an existing excavation which lawfully existed and was in use on or before August 24, 1979, subject to the following:
1. The existing excavation shall be exempt from the Antrim Zoning Ordinance if it was a lawful nonconforming use on November 8, 1988.
 2. Such existing excavation shall be performed in compliance with the Operational Standards of RSA 155-E:4-a and the Reclamation standards of RSA 155-E:5 and 155-E:5-a.
 3. The existing excavation does not constitute an Abandoned Excavation as defined in RSA 155-E:2,II.

SECTION VI: PROHIBITED PROJECTS

No permits shall be granted for the following projects:

- A. Where an excavation is proposed below road level within fifty (50) feet of any highway right of way unless such excavation is for the purpose of said highway.
- B. For excavation within fifty (50) feet of the boundary of a disapproving abutter or within ten (10) feet of the boundary of the approving abutter unless approval is requested by said abutter. In either case a vegetated buffer will be provided, as determined by the Planning Board during application review.
- C. When the excavation is not permitted by zoning or other applicable ordinance.
- D. When the issuance of the permit would be unduly hazardous or injurious to public welfare.
- E. Where existing visual barriers would be removed, except to provide access to the excavation.
- F. Where the excavation would substantially damage quality of the groundwater and/or reduction in the long-term volume of water of a known aquifer, so designated by the United States Geological Survey.
- G. When excavation is planned beneath or adjacent to inland surface water in such manner that a permit is required from the Water Supply and Pollution Control Division, 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.

H. Where the project cannot comply with the provisions of Sections IX, X, and XI of this Regulation.

SECTION VII: SUBMISSION PROCEDURES

Prior to the Planning Board rendering a decision for an excavation permit, a public hearing on the application shall be held, with due notification to all abutters and the public not less than fourteen (14) days before the public hearing. All costs for notification shall be borne by the applicant. Notification costs and application fees must be paid prior to the public hearing. Failure to do this is a valid reason for the Board to disapprove the application.

The applicant for an excavation permit shall submit to the Planning Board a completed application form, signed release for inspection of the property, all other submission documents as requested and the filing fee. All submitted plans shall be of a quality that is easily understood and of an accuracy that compliance can be easily checked. Three (3) 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.

For a new or original application, all of the submission items contained in Paragraphs A, B, and C below are required, unless waived by the Planning Board. For subsequent applications of previously-permitted operations, the applicant will submit:

- (1) All of the information that was provided in the original application.
- (2) A report and/or plans showing the current conditions of the site, if different from the approved plans.
- (3) Updated documents, if any.

A. APPLICATION FORM, signed and dated by the applicant.

B. EXCAVATION PLAN, containing, in the form of maps and narrative, where applicable, the following information for the proposed project; these same requirements shall also apply to any existing excavation on the same parcel:

1. Names and addresses of the owner(s), excavator (if different), all abutters and map number and lot numbers.
2. Seal and signature of a surveyor/or an engineer licensed in the state of New Hampshire.
3. Sketch and description of the location and boundaries of the proposed excavation, at an appropriate scale, the number of

acres involved and the municipalities and counties in which the project lies.

4. Lot lines, public streets, driveways, intersections and rights-of-way; easements above, on or below the ground; and zoning district boundaries of the proposed area and within two hundred (200) feet of the boundary.
5. Topography at contour intervals of five (5) feet or less, based on mean sea level.
6. The breadth, depth and slope of the proposed excavation and the estimated duration of the project.
7. All surface drainage patterns including wetlands and standing water.
8. The elevation of the highest annual average ground water table within or next to the proposed excavation.
9. Wooded and heavily vegetated areas.
10. Test pits that extend to either the seasonal high water table, ledge, or a minimum of six (6) feet below the maximum proposed excavation depth, including location and soils data; boring logs may be submitted as a separate document.
11. Location and extent of any stonewalls, ledge outcroppings, wells, existing buildings, septic systems, utilities and the like.
12. All accessory facilities and/or activities, including parking areas.
13. A sketch and description of the access to public roads, including width and surface types.
14. Proposed fencing, buffers or visual barriers, including height and materials.
15. Storage areas for any stockpiled topsoil that is to be used in reclamation.
16. All measures to control erosion, sedimentation, water pollution, air pollution, and hazards to human safety.
17. The location of existing buildings, structures, septic systems and wells within one hundred fifty (150) feet of the property boundary.
18. Copies of any required state and Federal permits.

C. RECLAMATION PLAN, which shall contain, in the form of maps and narrative, where applicable:

1. Seal and Signature of a surveyor or an engineer licensed in the state of New Hampshire.
2. All boundaries of the area proposed for reclamation, and the land within two hundred (200) feet of the boundary of this site.
3. Final topography of the area proposed for reclamation, and the land within two hundred (200) feet of the boundary of this site.
4. Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities.
5. Schedule of final reclamation activities including seeding mixtures, cover vegetation, fertilizer types and application rates.
6. Photographs of the site before excavation (from at least two (2) different vantage points).
7. Subsequent use of the site, if known or anticipated.

D. OTHER INFORMATION

The Planning Board reserves the right, per RSA 676:4,1(g), to request any special studies or other information it deems necessary to make an informed decision. Such information shall be provided at the applicant's expense.

SECTION VIII: OPERATIONAL STANDARDS

For excavations not requiring a permit, the following standards apply. For those that require a permit, these standards are considered to be the minimum.

- A. No excavation shall be permitted closer than one hundred fifty (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 fifty (50) feet of the right-of-way of any public highway as defined in RSA 229:1 unless such excavation is for the purpose of said highway.

- C. Vegetation shall be maintained or provided within the peripheral areas of Paragraphs A and B above, as determined by the Planning Board during application review.
- D. 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.
- E. Where temporary slopes will exceed a 1:1 grade, a fence or other suitable barricade shall be erected to warn of danger and/or limit access to the site.
- F. Appropriate drainage shall be provided to prevent the accumulation of freestanding water for prolonged periods.
- G. Projects requiring a permit from the Division of Water Supply and Pollution Control pursuant to RSA 149:8-(a) shall file a copy of said permit with the Planning Board prior to receiving excavation approval.
- H. Appropriate erosion, sedimentation, air and water quality measures shall be demonstrated in the plan.
- I. 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.
- J. No excavation shall be permitted closer than four (4) feet above the seasonal high water table or to bedrock (as indicated by the required boring test pits), nor which would preclude the subsequent reuse of the site in accordance with existing public health standards, zoning requirements and the Master Plan.
- K. All temporary structures required during excavation operations shall be removed from the site within one year after such operations cease.
- L. All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.
- M. No excavation shall disturb the groundwater flow.

SECTION IX: SITE RECLAMATION STANDARDS

For excavations not requiring a permit, the following standards apply. For those that require a permit, these standards are considered to be the minimum.

- A. All disturbed areas shall be spread with topsoil or any other soil capable of maintaining vegetation, and shall be planted with seedlings or grass suitable to prevent erosion.
- B. 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.
- C. All earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of.
- D. All slopes shall be graded to natural repose for the soil type. With no exception shall any slope be left steeper than 2:1. 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 is 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 Department of Environmental Services, the provisions of RSA 149:8-a shall supersede this regulation. Copies of all such permits shall be filed with the Planning Board.
- H. If deemed necessary by the Planning Board, suitable trees or shrubs shall 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 adequate erosion control devices.
- I. Abandoned Excavations:
 - a. Any excavation for which the affected area has not been brought into complete compliance with reclamation standards on this regulation shall be deemed abandoned if excavation occurred on the site subsequent to August 24, 1979 and:
 - (1) No earth material has been removed from the site during any three (3) year period either before or after August 4, 1989; the owner or operator may, however, extend the period by submitting a timetable for reclamation to the Planning Board and posting a bond or other surety sufficient to cover the costs of reclamation in a form and amount prescribed by the Planning Board; or

- (2) The excavation is still in use, but the owner or operator has not brought the affected areas into compliance with the incremental reclamation requirements of this regulation within three (3) years of August 4, 1989 or posted a bond or other surety sufficient to cover the costs of reclamation; or
 - (3) The owner or operator of the excavation has neither secured a permit pursuant to these regulations nor filed a report of an existing excavation within the prescribed time period.
- b. 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 constitute an assessment against the owner, and shall create a lien against the real estate on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

SECTION X: INCREMENTAL RECLAMATION

Any excavated area of five (5) contiguous acres or more, which either is depleted of commercial earth materials, excluding bedrock, or from which no earth materials have been removed for a two (2) year period, shall be reclaimed in accordance with this section, within one (1) year following such depletion or the period of nonuse.

A. Size and Reclamation Time Limit on New Excavations

No excavation of a new area shall exceed five (5) acres in size at any one time. In addition, the size of the area for any permitted excavation shall not exceed that area which can be excavated and reclaimed according to the approved application within a five (5) year period.

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

No expansion and reclamation of an existing excavation shall exceed the area of the existing excavation plus five (5) acres. However, the entire excavation shall not exceed that area which can be excavated and reclaimed according to the approved application while the permit is in effect. If an existing excavation operating at the time of adoption of this regulation cannot be reclaimed within one (1) year, no additional or new

excavation into an undisturbed area shall be permitted until the existing excavated area is reclaimed based on an approved permit as required by this regulation.

In the case of an excavation in operation at the time of adoption of this ordinance that is not being expanded, the permit period allowed for reclamation shall be up to six (6) years.

C. Effect of Bond

If reclamation of the site for either new or existing excavations is not completed within the required time period, the Town may declare part or all of the bond forfeit, and use these moneys to reclaim the site. If, however, the operator can demonstrate to the Planning Board that it is his or her intention to continue the operation and submits an alternative schedule for reclamation for Board approval.

SECTION XI: ADDITIONAL REQUIREMENTS

A. Non-Conforming Excavation Sites

Existing excavations that were not allowed by the Town of Antrim Zoning Ordinance effective on or before August 4, 1989 are considered to be non-conforming. 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:

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

B. Hours of Operation

The hours of operation shall be determined by the Planning Board during the permitting process. The level of operation and the type of neighborhood affected shall be taken into consideration in establishing these hours.

C. Hauling Information

Written approval from the Antrim Road Agent including routes to be utilized, the type and weight of vehicles involved, and the frequency and schedule of trips shall be provided to the Planning Board prior to the issuance of a permit. The Planning Board may require modifications of the proposed hauling plans and/or may place conditions upon the number of trips, depending on surrounding land uses and road conditions. The Planning Board reserves the right to require a traffic study at the applicant's expense, to ensure that public safety, neighborhood compatibility, road capacity and condition have been properly considered and optimized in the hauling plan.

SECTION XII: RECLAMATION BOND

Prior to the removal of any topsoil, the applicant shall submit to the Selectmen 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 be for a period consistent with the permit.

SECTION XIII: EXCEPTIONS

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 Planning Board may, in its discretion, waive certain standards contained in Sections VIII, IX, X, XI, XII and 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 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: BOARD ACTION ON APPLICATION

- A. Providing that the application is complete, the Board votes to accept the application for review. If the application is not accepted as complete the hearing must be continued or another public hearing may be required.
- B. Within twenty (20) days of the hearing, 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.

- C. 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.

SECTION XV: ADMINISTRATION AND ENFORCEMENT

A. Permits:

1. Permits shall be issued only to the owner or his agent
2. A permit shall be valid for up to ten (10) years and the expiration date shall be specified. When feasible, the Planning Board will seek to have its permit period consistent with a DES Alteration of Terrain permit, if applicable. Those operators that are subject to the DES permit will submit to the Land Use Office a copy of the information provided to DES and the approval of the permit.
3. The Board will conduct a site visit as part of the application process for a new permit. The Board may schedule another site visit at the five-year interim, or at any other time during the permit period if the Board deems it warranted.
4. During the permit period, the Board will conduct an annual review of the Excavation Reports and Intents to Excavate that are filed with the Town. This review should occur at the first opportunity following the submission of these reports. Based on the previous year's level of activity and/or the projected upcoming activity, the Board will determine whether the operator should come back to the Board at a regular meeting with an updated status report. One factor the Board will take into consideration in making this determination is whether the previous year's projected activity reached or exceeded the amount reported in the Intent to Excavate. If the Board determines during this review that there have been sufficient changes to warrant follow-up, a public hearing will be scheduled; if so, the following information, at a minimum, must be provided for that hearing:
 - a. If the operation is subject to an Alteration of Terrain Permit from DES, the same information that is provided to DES.
 - b. If the operation is not subject to an Alteration of Terrain Permit, then the following:
 1. The amount of material that has been removed.
 2. An estimate of how much material is remaining.
 3. An estimate of the duration of the operation.
 4. A description of what, if any, areas have been reclaimed.
 5. Updated photographs.

6. A description of BMP's employed that preserve the integrity of surface/groundwater resources.
 7. A description of effective measures (BMP's) that address or mitigate potential issues relative to neighbors and community.
4. Operating without a permit is considered a violation of these regulations. Once such a violation comes to the attention of the Board, the operator(s) will be issued a cease and desist order.
- B. Amendments: Permit holders wishing to 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 provided for an excavation permit. An application to increase the size of a permitted excavation may be allowed if at least one-half of the area covered by the existing permit is reclaimed in accordance with the approved Site Reclamation Plan.
- C. Inspections: The Planning Board or its designated agent may make periodic inspections of all permitted sites to determine if the operations are in conformance with these regulations and the approved plan.
- 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 those 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 of that decision. Any person affected by the Board's decision on a motion for rehearing may appeal in accordance with RSA 677.
- F. Fees: Fees shall be assessed against all applications, granted permits, and excavation operations, that the Town may recover all reasonable costs of administration of these regulations.
- 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 valid order issued hereunder shall be guilty of a misdemeanor.

SECTION XVI: SEPARABILITY

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

SECTION XVII: EFFECTIVE DATE

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