

# Town of Eaton

## Excavation Regulations



**2018**

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# TOWN OF EATON 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 Eaton and RSA 155-E, the Eaton Planning Board adopts the following regulations to govern the excavation of earth materials and reclamation of excavation sites in the Town of Eaton.

## Section II: Purpose and Scope

The goals of this regulation are: to provide for reasonable opportunities for excavation while coping with the recognized hazards which open excavations create; to safeguard the public health and welfare; to preserve our natural assets of soil, water, forests and wildlife; to maintain aesthetic features of our environment; to prevent land and water pollution; and to promote soil stabilization; as enabled in RSA 155-D (Chapter 481 of the 1979 Session Laws). For the purpose of achieving these goals, no earth materials in the Town of Eaton shall be removed except in conformance with these regulations.

## Section III: Definitions

In addition to those definitions listed below, the definitions in Eaton's Subdivision Regulations are hereby incorporated by reference. If there are conflicting definitions, those listed below shall supersede those of the Subdivision Regulations.

**Abutter** means any person whose property, located in New Hampshire, adjoins or is directly across the street or stream and any property sharing common boundaries with contiguous parcels and any property within 200 feet from the land under consideration by the local land use board. For 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/her land will be directly affected by the proposal under consideration. 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 Planning Board. In the case of an abutting property being under condominium or other collective form of ownership, the term "abutter" means president or registered agent of the collective or association, as defined in RSA 356-B:3 xxiii.

**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.

**Aquifer** means a geologic formation, group of formations, or part of a formation, that is capable of yielding quantities of ground water usable for a municipal or private water supply so designated by the United States Geological Survey.

**Board** means the Planning Board of Eaton

**Commercial Excavation** means excavation of earth intended for commerce, excluding excavation that is strictly conducted for the purpose of alteration, renovation, improvement to or construction on the property on which the excavation takes place. Any material leaving the property for whatever reason is considered to be a commercial operation.

**Contiguous** means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town, except in the case of stationary manufacturing plants, whose perimeter is not defined by town boundaries.

**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.

**Earth** means sand, gravel, rock, topsoil, 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.

**Excavation** (for the purpose of this regulation) means a land area which is used, or has been used, for the commercial taking of earth, including all slopes.

**Excavation Area** means the surface area within an excavation site where excavation has occurred or is eligible to occur under the provisions of RSA 155-E. This is also known as the pit area.

**Excavation Buffer Area** means that area surrounding an excavation site which is not excavated and which naturally or through modification, offers abutters and those passing the site protection from visual and noise impacts.

**Excavation Site** means any area of contiguous land in common ownership upon which excavation takes place.

**Existing Excavation** means any excavation 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.

**Expansion:**

- (a) Of existing excavations means excavation beyond the limits of the Town and the area which on August 24, 1979 had been contiguous to and in common ownership with the excavation site and has been appraised and inventoried for tax purposes as part of the same tract as the excavation site.
- (b) Of stationary manufacturing plants means to any contiguous lands which were in common ownership with the site of the plant on August 4, 1989.

**Reclamation** means the restoring of an excavation site to a standard at least equal to those outlined in Section X of these regulations.

**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. Those that commenced operations since August 24, 1979 without first obtaining a permit, unless specifically exempted by Section V below.
- 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 the excavation area beyond the limits contained in the report submitted in accordance with RSA 155-E:2, I(d).
- D. Those excavations from an area which on August 4, 1989 was contiguous to or was contiguous land in common ownership with stationary manufacturing and processing plants which were in operation as of August 24, 1979 and wish to expand.

**Section V: Projects Exempt From a Permit**

- A. The following projects do not require a permit, but are nevertheless subject to Sections VII, IX, X and XI (RSA 155-E:4-a, 155-E:5 and 155-E:5-a) of these regulations. In the event of a question regarding compliance, the Planning Board may require the owner/operator to come before the Planning Board and submit such information as may be necessary to demonstrate compliance with said standards.
  - 1) Existing Excavations provided that:
    - a) At the time operation began it was in compliance with any local ordinances that may have been in effect;

- b) The owner or operator of such an excavation area shall have filed an excavation report per RSA 155-E: 1 (d) with the Planning Board no later than August 4, 1991. Any existing excavation that failed to file this report shall no longer be considered to be grandfathered and must obtain a permit from the Board before continuing excavation of the site.
- B. The following projects do not require a permit, but are nevertheless subject to Sections VII, IX, X and XI (RSA 155-E:4-a, 155-E:5 and 155-E:5-a) of these regulations. Compliance with these standards is mandatory in order to retain the non-permit status. Loss of such non-permit status can occur only after the Board has given written notice that the excavation is not in compliance and the owner has failed to bring it into compliance within 30 days of receipt of such notice.
- 1) Excavations from a site which on August 4, 1989 was contiguous to or was contiguous land in common ownership with stationary manufacturing and processing plants which were in operation as of August 24, 1979 and which use earth obtained from such excavation site.
  - 2) Excavations from a site which on August 4, 1989 was contiguous to, or contiguous land in common ownership with stationary manufacturing and processing plants for which local or state permits have been granted since August 24, 1979 and before August 4, 1989, which used earth obtained from such site.
  - 3) An excavation performed exclusively for the lawful construction, reconstruction, or maintenance of a Class I, II, III, IV, or V highway. A copy of the pit agreement executed between the pit owner and the governmental unit shall be filed with the Planning Board; in addition, compliance with the provisions of Sections VII, IX, X and XI (RSA 155-E:4-a, 155-E:5 and 155-E:5-a) of this regulation.
- C. 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 any required state and local permits have been issued.
  - 2) Excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment. 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 Planning Board.

## **Section VI: Abandoned Excavations**

- A. Any excavation, except for those associated with stationary manufacturing plants, for which the affected area has not been brought into complete compliance with the reclamation standards of this regulation shall be considered abandoned if:
- 1) No material of sufficient weight or volume to be commercially useful has been removed from the site during any 2-year period either before, on, or after August 4, 1989. The time period may be extended if, prior to the end of the time period, the Planning Board approves a reclamation timetable, and a bond or other surety is posted in a form and amount prescribed by the Board sufficient to cover the costs of reclaiming the entire site.
  - 2) The excavation is in use, but either has not been brought into compliance with the incremental reclamation standards of this regulation, or a bond has not been posted and a reclamation timetable has not been approved by the Planning Board.
  - 3) The owner or operator of the excavation has neither secured a permit pursuant to these regulations nor filed an excavation report with the Planning Board within the prescribed period.
- B. In the event the Planning Board determines that any abandoned excavation presents a hazard to the public health, safety or welfare, the owner may be required, following a public hearing, to file a reclamation timetable and to comply with the bonding requirements outlined in Section VI, A(1), or to complete reclamation within a reasonable period of time. Should reclamation not be completed, the Planning Board may request the Town to authorize reclamation at the Town's expense. The Town's costs shall constitute an assessment against the owner, and shall create a lien against the property. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.
- C. If the Planning Board has determined that a danger to public health or safety exists from any excavation which ceased commercially useful operation prior to August 24, 1977, for which the affected area has not been brought into compliance with the minimum and express reclamation standards in Section X, the Planning Board shall state so in writing and the provisions of Section VI, B of this regulation shall apply (RSA 155-E:5).

## **Section VII: Prohibited Projects**

- A. Where excavations are within 50 feet of the boundary of a disapproving abutter or within 10 feet of an approving abutter.
- B. Where existing visual barriers would be removed, except to provide access to the excavation.

- C. Where the issuance of the permit would be unduly hazardous or injurious to the public welfare. The Board shall give particular consideration to such factors as noise, traffic, dust, fumes, or danger from operation.
- D. Where the excavation would substantially damage a known aquifer, as designated by the United States Geological Survey.
- E. When the excavation cannot receive necessary approvals from state or federal agencies, such as Alteration of Terrain or Wetlands permits.
- F. Where the excavation is not permitted by zoning or other applicable ordinances, provided, however, that reasonable opportunities for excavation exist in town, as described in RSA 155-E: 4, III.
- G. Where the project cannot comply with the requirements of Sections IX, X and XI of these regulations.
- H. 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 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.
- I. Where the project cannot comply with the restoration provisions of RSA 155-D:5.

### **Section VIII: Criteria For Non-Conforming Expansions**

Expansion of existing excavations located in an area in which excavations are no longer permitted by local zoning that was in effect on August 4, 1989 may be restricted or modified with conditions by the Board, if after notice to the owner and a public hearing, the Board finds that the expansion will have a substantially different and adverse impact on the neighborhood. Impacts will vary depending upon the particular neighborhood; nevertheless, the following criteria will be taken into consideration:

- A. The excavation will not cause a diminution in area property values or unreasonably change the character of the neighborhood.
- B. The excavation will not create any nuisance or create health or safety hazards.
- C. The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof.

## Section IX: Operational Standards

- A. For excavations not requiring a permit, the following standards apply. For those excavations requiring a permit, these standards as considered to be the minimum; more stringent standards such as are consistent with the purpose of these regulations may be applied, as deemed necessary by the Board.
1. No excavation shall be permitted 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.
  2. 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.
  3. Vegetation shall be maintained or provided within the peripheral areas of Items 1 and 2 of this section.
  4. 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.
  5. 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.
  6. Appropriate drainage shall be provided to prevent the accumulation of freestanding water for prolonged periods.
  7. Excavation practices which result in continued siltation of surface waters or any degradation of water quality of any public or private water supplies are prohibited.
  8. No excavation shall be permitted within seventy-five (75) feet of any great pond, navigable river or any other standing body of water ten (10) acres or more in area, or of any other stream, river or brook which normally flows throughout the year, or any naturally-occurring standing body of water less than ten (10) acres, prime wetland as designated in accordance with RSA 482-A:15-I, or any other wetland greater than five (5) acres in area as defined by the Wetlands Board.
  9. Nothing herein contained shall be construed to forbid the creation of a lake or pond, provided that adequate provision has been made for the runoff of water in such manner as will not injure any roads, highways or abutting property and all relevant State and Federal Permits are acquired. If more than one thousand (1,000) cubic yards of earth will be removed from the parcel as a result of the project, an excavation permit shall be obtained. All ponds shall have a slope no less than 2:1 or based on individual site characteristics.

**B. Processing**

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 material shall be stock-piled or located outside the permit area.
3. No blasting shall occur without receiving approval during the permitting process.
4. Crushing shall not occur without receiving approval following a written request by the applicant to the Planning Board and a public hearing is held.

**C. 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.
2. Stumps and slash generated during the site preparation shall be chipped on site and the resulting chips used on site for erosion control or removed from the site or land-filled if said disposal site is approved by the State of NH per RSA 149:M(1) or current State regulation.
3. The site shall not be used for the storage of junk vehicles, machinery, tires, appliances, etc., as defined in RSA 236:112.

**Section X: Site Reclamation Standards**

- A. For excavations not requiring a permit, the following standards apply. For excavations requiring a permit, these standards are considered to be the minimum; more stringent standards such as are consistent with the purpose of these regulations may be applied, as deemed necessary by the Board.
- B. Within 12 months following the expiration date of a permit issued under these regulations, or the completion of any excavation, whichever occurs first, the excavated area shall be reclaimed in accordance with the following standards:
1. 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.
  2. Except for exposed rock ledge, 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.
  3. All earth and vegetative debris resulting from the excavation shall be removed or otherwise disposed of lawfully.

4. All slopes, except for exposed ledge, shall be graded to natural repose for the type of soil 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 Board. Changes of slope shall not be abrupt, but shall blend with the surrounding terrain.
5. All finish grade elevations shall maintain a minimum six (6) foot separation above the seasonal high water table, except when a pond is created or an exception is granted by the Planning Board. The Planning Board may grant an exception when presented with affirmative evidence that risk to ground water contamination is mitigated.
6. Any standing bodies of water created by the excavation that are judged to constitute a hazard to health and safety shall be eliminated.
7. 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.
8. 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 Board.

## **Section XI: Incremental Reclamation**

Except for excavation sites of operating stationary manufacturing plants, any excavated area of 5 contiguous acres or more which is depleted of commercial earth materials, 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 non-use, regardless of whether other excavation is occurring on adjacent land in contiguous ownership. A reclamation plan, including a reclamation timetable for the depleted areas within the reclamation site, shall be submitted to the Board for approval.

## **Section XII: Performance Guarantee**

- A. Prior to the granting of any permit, or to the removal of topsoil or other overburden material from a new area within an existing excavation site, the applicant shall submit to the Selectmen a bond with 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 form of a performance bond, irrevocable letter of credit or any other form approved by the Board. The surety may be phased to coincide with the phasing of work, in an amount sufficient to guarantee reclamation of the applicable section, to be released as sections are completed. Prior to a new section being opened, new securities shall be posted. The surety shall not be released until the Board is satisfied that all conditions of the site reclamation plan have been met.

### **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 Board may, upon application and following a duly-noticed hearing, grant any exception in writing to the standards contained in Sections IX, X, XI, and XII for good cause shown. The written decision shall state specifically what requirements are being waived and include any reasonable alternatives.

### **Section XIV: 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. Filing of the Application**

1. Applications for excavation permits shall be filed with the Board at a regularly-scheduled meeting.
2. The application will be reviewed with the applicant at the meeting, and scheduled for Public Hearing if it is found to meet all submission requirements for a completed application. Should the application not be complete, another meeting may be scheduled for submission, unless missing items are submitted within 10 days. No Public Hearing will be scheduled unless all required materials are submitted.

#### **B. Board Action on Application**

1. Upon a finding by the Planning Board at a regularly-scheduled meeting that the application meets the submission requirements, the Planning Board will vote to accept the application as complete and a Public Hearing on the merits of the proposal will follow immediately. At that Public Hearing, the Planning Board may require additional materials as it deems necessary to determine whether a permit shall be issued. The Planning Board may also, at the applicant's cost, consult with an engineer or other expert to determine permit compliance.

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 72 hours.
3. The applicant shall receive a written copy of the minutes along with the decision. 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 public hearing on the application. Names and addresses of abutters must be taken from town records not more than 5 days before filing the application.
2. Public notice will appear in a newspaper of general circulation and will be posted on the meeting notice boards at Town Hall and on the notice board at the Eaton Center Post Office not less than ten (10) days prior to the public meeting.
3. The notice must include the applicant's name, location and general description of the proposal, as well as the date, time and place of the meeting.
4. The 10 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.

D. Fees

1. Filing fees as listed on the application shall be paid upon submission of an application to defray the costs of posting notice for the Public Hearing. Failure to pay such cost shall constitute grounds for the Planning Board to not accept the application.
2. A permit fee of \$200 shall be paid upon the issuance of a permit to defray the costs of permit compliance.
3. A fee payable to the Carroll County Registry of Deeds shall be paid upon approval for the filing of the plan.
4. Additional reasonable fees shall be charged should the Planning Board require the advice of an engineer or other expert to review plans or inspect the site to determine permit compliance.

## **Section XV: Application Submission Items**

The applicant shall submit at least six (6) copies of an Excavation and a Reclamation Plan; one copy shall be sent to the Conservation Commission. The plans shall be at a

scale appropriate for the land area involved. The Board may, upon good cause shown, waive any of the items in Paragraphs A or B.

A. Excavation Plan

The excavation plan shall address specific actions to be taken on the site relative to fuel and chemical handling and storage, blasting, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons. The plan shall show or be accompanied by the following items:

1. Name and address of the owner(s), the excavator (if different) and names and addresses of all abutters.
2. Name, address, seal and signature of the NH licensed surveyor or engineer preparing the plan; date, bar scale, north arrow and parcel size.
3. Zoning district boundaries of the proposed area and within 200 feet of the boundary of the project.
4. Sketch and description of the location and boundaries of the proposed and any existing excavations; the area in square feet and acre; and affected Towns.
5. The location of property lines, dimensions, existing buildings, structures, septic systems, and wells within two hundred (200) feet of the boundary.
6. Lot lines; Town, State and private roads; driveways; intersections; rights-of-way; and all easements within two hundred (200) feet; road network to be affected; intended transportation routes to be used.
7. Topography at existing and planned contour intervals of two (2) feet and known limits of any aquifer areas.
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.
14. All measures to control erosion, sedimentation, water pollution, air pollution, and any hazards to human safety.
15. Plans for stormwater management.
16. Plans for equipment maintenance.
17. Methods to prevent materials from the site from being tracked onto public roadways.
18. Planned sequencing for extraction activities including approximate dates and areas.
19. Information for truck traffic, designated routes, hours of operation, maximum number of daily trips and weight limits.
20. Copies of all necessary State and Federal permits.

B. Reclamation Plan

The Reclamation Plan shall be drawn at an appropriate scale and use the same base survey information as the Excavation Plan. The reclamation plan shall address the effects of the proposed excavation on soil, surface and groundwater, vegetation, overburden, topography, and fill material, and should address future land use consistent with the Master Plan. The plan shall show or be accompanied by the following items:

1. Name, address and signature of the person preparing the plan; date, bar scale and north arrow.
2. All boundaries of the area proposed for reclamation and the land within 200 feet of the boundary of this site.
3. Final topography of the area proposed for reclamation, at contour intervals of two (2) feet or less along with cross section(s) showing restored topography at appropriate intervals.
4. Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities.
5. Phasing of the site restoration
6. Schedule of final reclamation activities including soil fertilization, seeding and mulching specifications, and plant and other landscaping material to be used in reclamation including size and quantities. The specific

vegetative reclamation elements shall be designed and approved by an agronomist, soil scientists, conservation district representative, or other specialist licensed by the State of New Hampshire or done in accordance with the guidelines set forth by the USDA-SCS manual "Vegetating New Hampshire Sand & Gravel Pits."

- a. Tree Seedling Specification: Tree seedlings shall be two (2) year old plants or plants furnished under standard nursery order. Seedlings without center buds and seedlings without pruned roots will not be accepted. Seedlings shall be set out in accordance with accepted horticultural practices at eight (8) foot spacing in both directions.
  - b. Seeding Procedures: All seeding shall be done in conformance with the State of NH Department of Transportation, Standard Specifications for Road and Bridge Construction, latest edition, Section 644-Grass Seed Sub-Sections 1.1 through 3.7.3 inclusive, or SCS Standards and Specifications. Certificates attesting to seed compliance with shall be mandatory.
  - c. Re-vegetation: All disturbed areas shall be spread with the original topsoil or sufficient topsoil to cover disturbed areas to a minimum depth of four (4) inches. At a minimum, area from which trees have been removed shall be replanted with white pine seedlings. At a minimum, areas where low brush or grass has been removed shall either be planted with seedlings or seeded with a seed mixture per the State of NH Department of Transportation slope-seed mix or SCS approved mixture.
7. Erosion and sedimentation control plan indicating the type and location of erosion and sedimentation control methods to be used. The New Hampshire Sediment and Erosion Guidelines Manual prepared by SCS shall be used at a minimum.

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 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 XVI: Site Standards and Requirements**

- A. As a condition of the issuance of an excavation permit, the applicant shall maintain the site according to the following standards:

1. **Topsoil:** Prior to excavation of materials, all topsoil shall be stripped and stored on-site for site reclamation upon the completion of the excavation project. This shall be done in a phased manner to minimize possible erosion. Topsoil, whether on-site or hauled in, shall consist of a loose friable soil with no admixture, refuse or material toxic to plant growth. Topsoil shall be free from stones, lumps, stumps or similar object, with no more than five percent (5%) to ten percent (10%) being greater than two (2) inches, but in no case, greater than four (4) inches. Prior to stripping material to be used as topsoil, it shall have demonstrated by the occurrence upon it of healthy crops, grass or other plant growth, that it is of good quality and reasonable free drainage. All topsoil material shall be approved for use by the Planning Board or its designated agent. All disturbed areas shall receive a minimum four (4) inch layer of reapplied topsoil.
2. **Visual Barriers:** A vegetative or topographical visual barrier or buffer shall be maintained between surrounding roads, commercial and residential land uses, and the excavation site wherever possible, and shall be indicated as such on the excavation plan.
3. **Aquifers:** No excavation shall take place within six (6) vertical feet of the seasonal high water table within the Ground Water Protection District.
4. **Access Roads:** Access roads leading to and from the excavation site shall intersect existing streets and roads at locations that have been duly approved by State and Town officials and in a manner that will not endanger the safety of highway users and local residents. The provisions of RSA 236:13 and 14 shall be adhered to by the applicant and shall be shown on the excavation plan. Access roads shall be obliterated upon depletion and/or completion of the pit unless requested to be retained by the Planning Board.
5. **Blasting:** If the excavation requires the blasting of materials, the applicant shall so indicate in the application and certify that all blasting operations shall conform to RSA 158:9(F), along with the rules and regulations for Explosives from the Division of State Police, NH Department of Safety. In particular pre-blast inspections shall be completed of all structures, not controlled by the blaster, within one hundred fifty (150) feet of the blasting operation. As part of this application, the blaster shall provide a copy of the State of NH blasting permit, a statement that he has met with the Freedom or Center Conway Fire Chief, a certificate of insurance, and a statement that he will comply with the National Fire Protection Association's Explosive Materials Code, 1992 edition. The Planning Board may require that a Performance Guarantee be provided.
6. **Waste Disposal:** No disposal of any waste material, including solid and/or hazardous waste, septage, dredge spoils, or organic waste and debris, shall be disposed of on the site without appropriate State approval per RSA 149:M.1 or other appropriate State regulations.

7. Vehicular Barrier: A barrier to prohibit vehicular access when the pit is not in operation shall be required.
8. Hours of Operation: Hours and days of operation shall be determined on a per application basis.
9. Dust Control: Dust control measures will be instituted at the direction of the Planning Board where and when necessary to protect abutting property owners.
10. Road Repair: The applicant shall be held liable for the repair of Town roads which are damaged as a result of hauling earth from the site. The Planning Board shall require the submission of a Performance Guarantee according to the provisions of Section XII of this regulation to ensure adequate repair of damaged road segments following site restoration.
11. Maintenance of Traffic: It shall be the applicant's responsibility to provide and bear the cost for adequate traffic control at all hours of operation. Traffic control shall include, but not be limited to, flag persons, signage, barriers, traffic details, warning flashers and lights, special duty police details, and gates. Adequate traffic control shall be determined by the Board of Selectmen or its duly authorized agent.
12. Maximum Excavation Limit: Final excavation grade shall not be less than six (6) feet to documented seasonal high water table.
13. Stump and Slash Disposal: Stumps and slash generated during the site preparation shall be chipped on site and the resulting chips used on site for erosion control or removed from the site or land-filled if said disposal site is approved by the State of NH per RSA 149:M (1) or current State regulation
14. Signage: All pits shall be properly identified by signs clearly stating the name, owner and permit number.
15. Fuel Storage and Refueling: All fuel storage and refueling shall take place in a secure and designated area constructed especially for said purpose. No underground storage of fuels shall be allowed. The Excavation Plan shall clearly show fuel storage and refueling areas and facilities.

## **Section XVII: 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 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 six (6) years and the expiration date shall be specified. A plan update shall be required every two (2) years to be verified by an independent engineer at the applicant's expense. A permit is automatically withdrawn if no substantial work is done on the site for a period of two (2) years from the date of the issuance of the permit
3. 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 by the Board of Selectmen.
4. The Board may include in the permit any such reasonable conditions as are consistent with the purpose of these regulations.
5. The Board will establish a schedule by which all permitted sites are inspected on a regular basis.

B. Amendments and Renewals

Permit holders wishing to alter the size or location of the excavation, the rate of removal or the plan for reclamation shall apply for a renewal or amendment, following the same procedures as those required for the original excavation permit.

C. Inspections

1. Representatives of the Planning Board and the Board of Selectmen, or its duly authorized agent, shall make, at a minimum, a scheduled annual inspection of all excavation sites to determine that the operations are in conformance with these regulations and the approved plans.
2. An unscheduled inspection may be made if the Planning Board or the Board of Selectmen, or its duly authorized agent, has a reasonable belief that a violation of law or these regulations has occurred or is occurring.
3. The Planning Board may contract with a qualified professional consultant as determined to be appropriate, at the expense of the applicant, to provide inspection services, testing services, and any other such services as the Planning Board may require to insure compliance with any permit to operate a gravel pit in the Town of Eaton.

D. Suspensions and Revocations

The 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 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 (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 17. Whoever violates any provision of this regulation, a permit or a valid order issued hereunder shall be guilty of a misdemeanor.

G. Suspension of Permit

The violation of any condition of the permit shall in conjunction with the above penalties, result in a two (2) week suspension of the permit for the first offense and a thirty (30) day suspension for a subsequent offense. Should the violation become chronic and repetitive, the Planning Board shall take appropriate legal steps to revoke the permit.

H. Adoption

These regulations shall take effect upon adoption and certification by the Planning Board and as amended. A copy of this regulation, and any subsequent amendments, shall be placed on file with the Board of Selectmen and the NH Office of Energy and Planning.

## **Section XVIII: 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 XIV: Effective Date**

Adopted: 1991; Amended: May 2018