

TOWN OF EFFINGHAM
NEW HAMPSHIRE

REGULATIONS GOVERNING EARTH EXCAVATIONS

SECTION 1: 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 Effingham and RSA 155-E, the Planning Board adopts the following regulations to govern the excavation of earth materials in aggregate amounts of greater than 1000 cubic yards in the Town of Effingham

SECTION 2: 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.

Whenever any excavation governed by these regulations is proposed; before any land clearing or excavation is begun, the owner of the property or authorized agent shall apply for and secure from the Planning Board approval of such proposed excavation in accordance with procedures outlined in this document and with Major Site Plan Review regulations.

SECTION 3: DEFINITIONS

3.1 ABUTTER as defined by RSA672:3 means:

- 3.1.1 Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration.
- 3.1.2 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.
- 3.1.3 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.
- 3.1.4 In the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1,II, the term “abutter” includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.
- 3.1.5 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.

3.1.6 APPROVING ABUTTER means an abutter who registers his or her approval to the Board during the public hearing process for the excavation permit. Absent such notice of approval, all abutters shall be considered disapproving abutters for the purposes of determining excavation setbacks.

- 3.2 AGRICULTURAL EXCAVATION means excavation of earth by the owner of the land to be used on the owners' land exclusively for agricultural use
- 3.3 AGRICULTURAL USE means land used for agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, silviculture and animal and poultry husbandry, as defined in RSA 21:34-a, as amended.
- 3.4 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.
- 3.5 APPROVAL means recognition by the Planning Board, certified by written endorsement on the Plan, that the final plan submission meets the requirements of these regulations, applicable permits have been received, and in the judgment of the Board satisfies all conditions of approval.
- 3.6 BOARD means the Planning Board of Effingham.
- 3.7 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.
- 3.8 COMMERCIALLY USEFUL means the amount of excavated earth deemed by the Regulator to be commercially useful which has been determined to be 1,000 cubic yards or more.
- 3.9 CONTIGUOUS means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town.
- 3.10 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.
- 3.11 EARTH means sand, gravel, rock, topsoil, 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.
- 3.12 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.
- 3.13 EXCAVATION means a land area which is used, or has been used, for the commercial taking of earth, including all slopes.
- 3.14 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.
- 3.15 EXCAVATION SITE means any area of contiguous land in common ownership upon which excavation takes place.

- 3.16 **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).
- 3.17 **EXPANSION** means excavation and disturbance of earth beyond the limits as shown on the plan as approved by the Regulator.
- 3.18 **INCIDENTAL EXCAVATION** means excavation that is subordinate or accessory to a primary use located on the same lot and conducted immediately prior to initiating the primary use. Incidental uses shall meet all of the following criteria: 1. will be completed within 90 days; 2. will involve the removal from the site of less than 2,000cy; 3. for which all required permits, including those for the proposed primary use have been obtained prior to commencing the incidental excavation. Excavation that results in a high level of intensity or potential for safety concerns shall not be considered incidental.)
- 3.19 **INSPECTION** means the periodic review of the improvements shown on the approved plan.
- 3.20 **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
- 3.21 **NORMAL LANDSCAPING** means the on-site alteration and contouring of the land exclusively devoted to improving the functional utility and planting of the grounds
- 3.22 **PLAN** means the final plan, with all required data, maps and narrative materials on which the applicant's plan is presented to the Board for approval and includes the Site Survey Plan which, if signed by the Board, will be recorded in the Carroll County Registry of Deeds.
- 3.23 **RECLAMATION** means the restoration of an excavation site to an acceptable standard as determined and approved by the Regulator.
- 3.24 **REGULATOR** means the Planning Board of the Town of Effingham, or its designee.
- 3.25 **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.
- 3.26 **VISUAL BARRIER** means a human-made structure or natural vegetative growth, or a combination thereof, to provide a year-round method to absorb, neutralize, minimize and conceal visual, noise, dust or other impacts. This includes but is not limited to natural or planted, berms, walls or opaque fences, vegetated fence rows, forested land whether managed or undisturbed

SECTION 4: PROJECTS REQUIRING A PERMIT

Any excavation of earth requires a permit unless specifically exempted by either RSA 155-E:2 or specifically excepted in Section 5 of these regulations.

SECTION 5: EXCEPTIONS FROM AN EXCAVATION PERMIT

The following projects are deemed to be an exception from a permit as Per RSA 155-E:2:
Effingham Excavation Regulations Adopted 06/25/2020

- 5.1 Site development, construction activities, or alteration of a building or structure or lawful construction or alteration of a parking lot or way including a driveway or other projects, that require excavation of earth and will not remove more than 1,000 cubic yards of earth from the site. This excavation will be considered incidental provided that all required state and local permits have been issued prior to commencement of excavation.
- 5.2 Excavation of earth that is a result of agricultural use, normal landscaping or minor topographical adjustment as defined in Section 3 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 Regulator shall determine what is incidental.
- 5.3 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).
- 5.4 An excavation performed exclusively for the lawful construction, reconstruction, or maintenance of a class I, II, III, IV, or V highway by a unit of government which has jurisdiction for the highway or an agent of the unit of government which has a contract for the construction, reconstruction, or maintenance of the highway, provided that:
- A copy of the pit agreement executed by the owner, the agent and the governmental unit shall be filed with and accepted by the Regulator prior to the start of excavation; and such excavation shall not be exempt from the provisions of Sections 6, 7, 8, and 9 of this regulation, nor from any other land use regulations of the municipality. In addition, a plan must be filed with the Regulator which identifies and limits the exemption granted to only that portion of the pit that is necessary for the public highway project. Failure to file a copy of the pit agreement or the above referenced plan with the municipality or to comply with the terms of the agreement constitutes a violation enforceable under the provisions of Section 14 of these regulations.
- 5.5 The New Hampshire Department of Transportation or its agent may apply to the appeals board created under RSA 21-L to be exempted from the provisions of local land use regulations. The appeals process includes a formal public hearing in the affected municipality as set forth in RSA 155-E:2, IV(c).
- 5.6 Such exempted excavation shall comply with Section 6 and Section 7 herein.
- 5.7 Existing excavations as defined in RSA 155-E:2, I, including the quarrying or crushing of bedrock do not require a permit, but are nevertheless subject to the Operational and Reclamation Standards of these regulations. Compliance with these Standards is mandatory in order to retain the non-permit status. The Board may require the owner/operator to come before the Board and submit such information as may be necessary to demonstrate compliance with said standards.

SECTION 6: PROHIBITED PROJECTS

The Regulator shall not grant a permit if the application does not meet the requirements outlined in this regulation, and RSA 155-E:4, including the following:

- 6.1 When the excavation cannot receive necessary approvals from local, state, and federal agencies, such as, but not limited to the Effingham Conservation Commission, and the N.H. Department of Environmental Services Alteration of Terrain or Wetlands permits.
- 6.2 Where the excavation is not permitted by zoning or other applicable local ordinances and a special exception or variance has not been obtained.

- 6.3 Within a Historic District.
- 6.4 No excavation shall be permitted within fifty (50) feet of an approved road, within fifty (50) feet of the boundary of an abutter or within one hundred fifty (150) feet of a dwelling of an abutter, or a dwelling for which a building permit has been issued at the time excavation is commenced.
- 6.5 Where the excavation would violate the operations standards of RSA 155-E:4-a.
- 6.6 Where the issuance of a permit would be unduly hazardous or injurious to the public welfare. The Board shall give particular consideration to such factors as noise, dust, traffic, fumes or danger from operation.
- 6.7 Where the project cannot comply with the requirements of the Reclamation standards of RSA 155-E:5 and sections of these regulations.
- 6.8 Where the excavation would substantially damage a known aquifer, so designated by the US Geological Survey.

SECTION 7: EXCAVATION EXPANSION

- 7.1 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 special exception or variance, the proposed changes must first be approved by the Zoning Board of Adjustment Refer to RSA 155-E:4 III a,b,c,d for Special Exception guidelines.
- 7.2 Expansion of existing excavations 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:
 - 7.2.1. The excavation will not cause a diminution in area property values or unreasonably change the character of the neighborhood.
 - 7.2.2. The excavation will not create any nuisance or create health or safety hazards.
 - 7.2.3. The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof.
- 7.3 No excavation shall be expanded beyond the limits of the Town in which it is situated and at all times subsequent has been contiguous to and in common ownership with the excavation site, and appraised and inventories for property tax purposes as part of the same tract as the excavation site.

Excavation Requirements

Type of Operation	No Permit Required	Permit Required	Eligible For Exception	Must Comply w/Standards M-Minimum Stan E-Express Stan A-Add'l Stan C-Exception Cond	Must Reclaim	Must Post Reclamation Security	Should Have Filed Excavation Report RSA 155-E:2.1(d)
1. Existing as of August 24, 1979	√	For Expansion		E	√	Unexcavated As of 8/24/1979	√
2. Commenced Operations since August 24, 1979		√		M,E,A	√	√	
3. Stationary Manufacturing and Processing Plants	√	If non-compliant with standards		E	√		
4. Non-conforming as of August 4, 1989	√	For Expansion		E	√	For Expansion	
5. In Connection with Highway Excavations	√			E	√		
6. Incidental to Building and Agriculture	√		√	C			
7. Cutting of Dimension Stone	√		√	C			
8. Stockpiling related to Gov. taking	√		√	C			
9. Abandoned for any 2-year period between August 24, 1977 and present					√		

10. Abandoned prior to August 24, 1977

NOT SUBJECT TO REGULATION BY THE BOARD

SECTION 8: OPERATIONAL STANDARDS

- 8.1 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.
- 8.2 No excavation covered under RSA 155-E shall be permitted closer than 50 feet of the boundary or 150 feet of an existing dwelling or to a dwelling for which a building permit has been issued at the time the excavation is begun for an abutter.
- 8.3 A visual barrier, no less than 6 feet in height, shall be maintained or provided within the buffer areas defined by Sections 8.1, 8.2, and 8.3. Natural vegetation adjacent to neighboring properties on which excavation is not intended shall be maintained for the purposes of erosion control, dust control, screening, noise reduction, and property valuation. The Regulator shall have the authority to require additional screening (e.g. vegetation or fencing) where necessary. Where no effective barrier exists, planting or Regulator-approved fencing may be required.
- 8.4 Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process. Excavations shall comply with the Erosion and Sedimentation Control provisions in the Town's Subdivision Regulations.
- 8.5 Where the depth of excavation will exceed fifteen (15) feet and temporary slopes will exceed 1.5:1 in grade a fence or other suitable barrier shall be erected to warn of danger or to limit access to the site.

- 8.6 Drainage shall be maintained so as to prevent the accumulation of free-standing water of prolonged periods of time. Excavation practices which result in siltation in streams or degradation of any water supplies are prohibited.
- 8.7 Topsoil shall be stripped from the excavation area and stockpiled for use in subsequent reclamation of the site. It shall be protected from erosion (e.g. by seeding, covering, or other acceptable practices). No topsoil shall be removed from the site without specific approval from the Regulator.
- 8.8 All processing machinery and temporary structures required during excavation operations shall be removed from the site within 30 days after such operations cease.
- 8.9 All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.
- 8.10 No fuels, lubricants or other toxic polluting chemicals or waste, building materials and rubble shall be stored or buried on-site unless in compliance with State and Federal laws or rules pertaining to fuels and lubricants, or other toxic or polluting chemicals.
- 8.11 Prior to the stripping of topsoil, removal of stumps, or other materials from a new excavation area, the excavator shall file a reclamation bond or other surety, as prescribed by the Regulator, sufficient to cover the cost of site reclamation and repairs to roads, bridges and public ways.
- 8.12 Access roads leading to and from the excavation site shall be paved a minimum of fifty (50) feet from the intersection of existing paved streets and roads at locations, that have been duly approved by state or local officials and in a manner that will not endanger the safety of highway users and local residents. The provisions of RSA 236:13-14 ("Highway Access") shall be adhered to by the applicant and shall be shown on the excavation plan.
- 8.13 The provisions for access under the Subdivision Regulations of the Town shall be adhered to by the Applicant and shall be shown on the excavation/reclamation plan. Access over Class VI roads, bridges or other public ways to be utilized in the proposed excavation shall be clearly shown on the excavation/reclamation plan. The maintenance and final condition of said roads, bridges and ways shall be defined in writing and made part of said plan.
- 8.14 Permit approval shall be conditioned on compliance by the applicant with federal, state, and local street and highway regulations.
- 8.15 No excavation shall substantially damage any aquifer identified on mapping by the U.S. Geological Survey. The Board shall determine whether or not substantial damage to the aquifer will be incurred by considering the following criteria:
 - 8.15.1 The excavation shall not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants,
 - 8.15.2 The excavation shall not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer.
 - 8.15.3 The Board may require that the applicant provide data or reports prepared by a professional ground-water consultant which assess the potential aquifer damage cause by the proposed excavation project.

- 8.16 The applicable state statutes and regulations pertaining to forest practice and timber harvesting shall apply to the removal of vegetative cover at excavation sites.
- 8.17 Trucks operating on any roads within the Town of Effingham, exclusive of State Highways, will be limited to the Town's roadway limitations. Start-up time for all machinery associated with a gravel or sand pit, or excavation, shall be no earlier than 7:00 a.m. and all machinery must be shut down by 5:00 p.m., Monday through Friday. Hours of operation other than those stipulated may be allowed if specifically authorized by the Regulator.
- 8.18 Excavation operations shall be set back at least 25 feet from wetlands (as defined in the Town's zoning ordinance) and it must be demonstrated that no sedimentation of the wetlands will occur as a result of the excavation. The Regulator shall have the authority to require greater wetlands setbacks in situations where it can be demonstrated that they will be required to protect the wetlands from degradation due to proposed excavation operations.
- 8.19 The maximum depth of excavation shall be a minimum of five feet above the seasonal high water table existing at the location in question before commencement of excavation. The subsurface information described above shall be derived from test pits and verified by the Regulator or its designee.
- 8.20.1 No earth material shall be stock piled or located outside the permitted area without prior approval by the Regulator.
- 8.21 No blasting shall occur without receiving prior approval during the permitting process.
- 8.22 Crushing may not be introduced without either prior approval from the Regulator during the permitting process, or by submitting a request to the Regulator who will hold a public hearing and then rule.
- 8.23 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, as per ENV-SW 810.09 and ENV-SW 810.03. The burial or storage will be performed in accordance with all local, state and federal regulations. The site plan and property deed will provide:
- 8.23.1 A statement that the property has been used for the disposal of stumps and tree parts;
- 8.23.2 The date the activity took place:
- 8.23.3 The location of the burial areas(s) with sufficient specificity as to allow an independent third party to locate the area(s); and
- 8.23.4 The estimated quantity of waste disposed on the property.
- 8.24 The site will not be used for storage of junk vehicles, machinery, etc. as defined in RSA 236:112.
- 8.25 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 Regulator.

SECTION 9: SITE RECLAMATION STANDARDS

For excavations requiring a permit, the standards contained in RSA 155-E:5 are considered to be the minimum standards and the Regulator 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.

The Regulator or its designee shall periodically inspect the operations and shall perform a final reclamation inspection in order to ensure that the approved plans have been followed.

- 9.1 No slope in soil material shall be left steeper than 3:1 (three horizontal feet for each one foot of vertical drop) unless it can be demonstrated by the applicant that a steeper grade can be adequately vegetated and stabilized. In no case shall a soil material slope be left steeper than 2:1. Changes in slope shall not be abrupt, but shall blend with the surrounding terrain.
- 9.2 All debris, stumps, boulder, etc., shall be lawfully disposed of in a manner acceptable to the Regulator or its designee.
- 9.3 Ground levels and grades shall be established as shown on the approved reclamation plan as soon as practical during site excavation, but not later than one year after excavation has been completed.
- 9.4 Stockpiled topsoil shall be spread over the disturbed area to a depth sufficient to allow establishment and maintenance of vegetation. Areas posing the most critical problems for revegetation shall be given first priority should available topsoil be limited. The disturbed area(s) shall be limed and fertilized, if necessary, and seeded with a grass or grass-legume mixture.
- 9.5 If deemed necessary by the Regulator, suitable trees or shrubs may 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 mulch and structural erosion control devices.
- 9.6 The responsible party shall not be released from its performance commitment (reclamation bond) until the Regulator certifies compliance with all terms of the Excavation Plan and the Reclamation Plan.
- 9.7 Any excavated area of 5 contiguous acres or more, which is either fully excavated per the approved plan (excluding bedrock), or from which no earth materials have been removed for a two year period, shall be reclaimed in accordance with Sections 4 and 9 and within one year following such full excavation or two year period, regardless of whether other excavation is occurring on adjacent land in contiguous ownership.
- 9.8 Except for exposed rock ledge, all areas which have been affected by the excavation or otherwise stripped of vegetation shall be spread with topsoil or strippings, if any, but in any case covered by soil capable of sustaining vegetation, and shall be planted with seedlings or grass suitable to prevent erosion.
- 9.9 Earth and vegetative debris resulting from the excavation shall be buried, removed, or otherwise lawfully disposed of.
- 9.10 The Regulator may require the elimination of any standing bodies of water created in the excavation project that may constitute a hazard to health and safety.

- 9.11 Upon completion of the reclamation operations, 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. For excavation projects which require a permit from the N.H. Department of Environmental Services (NHDES) pursuant to RSA 485-A:17, the provisions of that statute, and rules adopted under it, shall supersede this paragraph as to areas of excavation sites covered thereby. The excavator shall file a copy of permits issued under RSA 485-A:17 with the Regulator.

- 9.12 The character of the restored landscape shall blend with the surrounding natural features.
- 9.13 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 Regulator.
- 9.14 Incidental excavations that have received an exception from the Regulator shall reclaim the property in accordance with the specifications dictated by the Regulator.

SECTION 10: ABANDONED EXCAVATIONS

The permit and zoning exemptions under Sections 4 and 5 shall not apply to any abandoned excavations as defined in Section 10.1.

- 10.1 Any excavation for which the affected area has not been brought into complete compliance with the reclamation standards of this regulation (Section 9) shall be deemed abandoned if excavation occurred on the site subsequent to August 24, 1979, and:
- 10.1.1 no earth material has been removed from the excavation site during any three (3) year period; the Regulator may extend the 3 year period if the owner/operator submits an acceptable time table for reclamation to the Regulator and posts a bond or other surety in a form and amount prescribed by the Regulator sufficient to cover the costs of reclamation; or
 - 10.1.2 the excavation is still in use, but the owner or operator has not brought the affected area 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 cost of reclamation; or
 - 10.1.3 the owner or operator of the excavation has neither secured a permit pursuant to this regulation nor filed a report of an existing excavation within the prescribed time period specified in 3.1.5.
- 10.2 The Regulator, after notice and hearing pursuant to RSA 155-E:7, may order the owner of any land containing an abandoned excavation to either file a reclamation time table and bond or other surety within six months of notification by the Regulator to do so, or to complete the reclamation in accordance with this regulation within one year of notification. The time periods stated above may be changed for particular applications only if specifically authorized in writing by the Regulator.

Failure to complete said reclamation within the prescribed time period may result in the Regulator requesting the governing body to cause reclamation to be completed at the expense of the municipality. The municipality's costs shall create a lien against the real estate on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

SECTION 11: PERFORMANCE SECURITY

- 11.1 Prior to the granting of an excavation permit, the applicant shall submit to the Board of Selectmen, to be held by the Treasurer, sufficient surety, as determined by review of an engineer using current costs plus a contingency factor, to guarantee reclamation of the land area to be excavated per 155-E:4-a, VII.; repair of Town roads, if damaged as a result of the excavation; off-site improvements if required during the application process; inspections; and compliance with the permit.
- 11.2 The surety shall be in the form of a:
- 11.2.1 Certified check, bank check, irrevocable letter of credit; or
 - 11.2.2 Surety bond issued by a surety company authorized to do business in New Hampshire, deemed acceptable by the Town, and issued to the Town of Effingham.
- 11.3 The surety may be phased to coincide with the phasing of the 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 sureties shall be posted.
- 11.4 The Performance Guarantee shall not be released until the Planning Board is satisfied, after inspection representatives of the Planning Board and the Board of Selectmen, or its duly authorized agent or engineer, at the applicant or owner's expense, that all conditions of the reclamation plan and necessary repairs have been completed.

SECTION 12: 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:

12.1 Excavation Permit Application Review

- 12.1.1 Applications for an excavation permit shall be filed with the Planning Board Clerk no later than twenty-one (21) days before the next regularly scheduled Planning Board meeting. A completed application sufficient to meet the requirements to initiate formal review shall consist of a completed application signed by all property owners including a plat and description of the project, an abutter list, agent form as appropriate, fees, and any requested waivers.
- 12.1.2 Application submission shall include the original application form, ten copies of the application form, one (1) set of full size plats, and ten (10) 11" x 17" copies of all plats.
- 12.1.3 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 Regulator 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.

12.2 Board Action on Completed Application

- 12.2.1 Upon acceptance of a completed application the Planning Board will hold a public hearing within thirty (30) days to consider the application.

- 12.2.2 Within twenty (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 five (5) business days.
- 12.2.3 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.

12.3 Notices Required for Public Hearing

- 12.3.1 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.
- 12.3.2 Public notice will appear in a newspaper of general circulation and in at least two public places not less than 10 days prior to the hearing.
- 12.3.3 The notice must include the location and general description of the proposal, as well as the date, time and place of the hearing.

12.4 Fees

- 12.4.1 An Application Fee of \$150.00 per RSA 155-E:11 III Failure to pay such cost shall constitute grounds for the Board to not accept the application.
- 12.4.2 Upon Receipt of the excavation permit fee of \$50.00 and the Posting of bond or other surety the board shall grant a permit to the applicant for excavation.

SECTION 13: APPLICATION SUBMISSION ITEMS

The applicant for an excavation permit shall submit to the Planning Board 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 ten (10) copies of all plans shall be provided to 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'.

13.1 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:

- 13.1.1 Name and address of the owner, the excavator (if different) and all abutters.
- 13.1.2 Name, address and signature of the person preparing the plan; date, bar scale and north arrow.
- 13.1.3 Zoning district boundaries of the proposed area and within 200 feet of the boundary of the project.
- 13.1.4 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 may accept copies of engineering drawings required by NHDES in lieu of additional engineer drawings.

- 13.1.5 The location of existing buildings, structures, septic systems and wells within 200 feet of the boundary of the project.
- 13.1.6 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.
- 13.1.7 Topography at contour intervals of five feet or less.
- 13.1.8 All surface drainage patterns including wetlands and standing water.
- 13.1.9 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.
- 13.1.10 The breadth, depth and slope of the proposed excavation and the estimated duration of the project.
- 13.1.11 An estimate of the total volume of earth to be excavated.
- 13.1.12 The elevation of the highest annual average ground water table within or next to the proposed excavation.
- 13.1.13 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.
- 13.1.14 Proposed fencing, buffers and other visual barriers, including height (no less than 6ft) and materials.
- 13.1.15 All measures to control erosion, sedimentation, water pollution, air pollution, and any hazards to public safety.
- 13.1.16 Plans for storm water management.
- 13.1.17 Plans for equipment maintenance.
- 13.1.18 Methods to prevent materials from the site from being tracked onto public roadways.
- 13.1.19 Copies of all necessary state and federal permits.
- 13.1.20 Signed and dated by licensed soil scientist/engineer. Board may accept copies of engineering drawings required by NHDES in lieu of additional drawings.
- 13.1.21 Ability to provide bonding of excavation – should bond lapse or be cancelled, the Regulator shall impose a cease and desist order immediately.

13.2 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:

- 13.2.1 Seal and signature of a licensed surveyor or engineer. Board may accept copies of engineering drawings required by NHDES in lieu of additional drawings.
- 13.2.2 All boundaries of the area proposed for reclamation and the land within 200 feet of the boundary of the project area.
- 13.2.3 Existing topography of the project area proposed for excavation, at contour intervals of five (5) feet or less.
- 13.2.4 Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities.
- 13.2.5 Timetable as to reclamation of fully-depleted sites within the excavation area.
- 13.2.6 Schedule of final reclamation activities including seeding mixtures, cover vegetation, fertilizer types, and application rates.
- 13.2.7 Final reclaimed topography of the excavation area at contour intervals of five feet or less.

13.3 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 14: ADMINISTRATION AND ENFORCEMENT

14.1 Permits

- 14.1.1 Permits shall be issued only to the owner or his agent and shall not be transferable without the prior written consent of the Regulator. A copy of the permit shall be prominently displayed at the site or the principal access to the site.
- 14.1.2 A permit shall be valid for up to five (5) years 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 (2) years from the date of the issuance of the permit.
- 14.1.3 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.
- 14.1.4 The Regulator may include in the permit any such reasonable conditions as are consistent with the purpose of these regulations.

14.2 Appeals

- 14.2.1 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.
- 14.2.2 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.
- 14.2.3 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.

14.3 Inspections

- 14.3.1 The Regulator will establish a schedule by which all permitted sites are inspected as needed or, at a minimum, on an annual basis, to determine if the operations are in conformance with laws, town ordinances, these regulations, the approved plans, or the exception criteria. Incidental excavation exceptions will have an inspection schedule as determined by the Regulator. A site inspection review letter will be sent to the owner citing any deficiencies and providing a timeline for correction of the deficiency.
- 14.3.2 An unscheduled inspection may be made if the Regulator, or its duly authorized agent, has a reasonable belief that a violation of the law or these Regulations has occurred or is occurring.
- 14.3.3 The Regulator may contract with a qualified professional consultant as determined to be appropriate, at the expense of the Applicant, to provide legal services, inspection services, testing services, and any other such services as the Regulator may require to ensure compliance with any permit to excavate.

14.4 Enforcement

- 14.4.1 These regulations shall be administered by the Planning Board and enforced by the Board of Selectmen as provided in RSA 676:15, RSA 676:17, 676:17-a and 676:17-b, inclusive and RSA 155-E:10, all as amended.
- 14.4.2 Right of Entry. As per RSA 155-E:10 III to ascertain there is compliance with these regulations, a permit issues hereunder or an order issued hereunder, the Town or its duly authorized agent may enter the land on which there is reason to believe an excavation is being conducted or has been conducted since August 24, 1979.
- 14.4.3 The Regulator may suspend or revoke a permit if the Regulator 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 Regulator may suspend or revoke the exception for incidental excavation if the Regulator 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

- 14.4.4 Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with these regulations.
- 14.4.5 Cease and Desist Order. A temporary cease and desist order may be issued to the property owner by the Board's Agent if the Agent determines that conditions at the site are in violation of any of the requirements of this regulation and the violation is either:
 - 14.4.5.1 An immediate threat to public health and safety; or
 - 14.4.5.2 The property owner has failed to take corrective action(s) identified in a written notice of violation issued under these regulations within the time frame specified.

14.5 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 15: 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 16: EFFECTIVE DATE

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

History of Changes: