
TOWN OF HOLLIS, NEW HAMPSHIRE

***EXCAVATION, REMOVAL OR MOVEMENT OF EARTH
REGULATIONS***



June 5, 2001

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SECTION I. AUTHORITY

Pursuant to the authority vested in the Hollis Planning Board by the voters of the Town of Hollis, and in accordance with Section IV.A of the Hollis Zoning Ordinance, as amended, and Chapter 155-E of the New Hampshire Revised Statutes Annotated (RSA), as amended, the Hollis Planning Board adopts the following regulations which shall govern the excavation of earth materials from land situated within the Town of Hollis.

SECTION II. PURPOSE AND SCOPE

- A. For the purposes of minimizing the recognized safety 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; no earth materials shall be removed and no excavation shall be made except in conformance with these regulations.
- B. No owner of land shall, within the Town of Hollis, excavate earth materials or allow the excavation of earth materials, unless exempt from the scope for these regulations, according to Section IV, without first obtaining a permit from the Hollis Planning Board pursuant to these regulations.

SECTION III. DEFINITIONS:

- A. **ABUTTER** shall mean any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the 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 land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective or association, as defined in RSA 356-B:3, XXIII.
- B. **APPLICANT** shall mean the owner of the property to be excavated or the owner's agent, so designated in writing as part of the excavation application.
- C. **EARTH MATERIALS** shall mean sand, gravel, rock, soil, or construction aggregate.
- D. **EXCAVATION** shall mean:
 - 1. the land area from which earth materials are excavated; or
 - 2. the act of removing earth materials for commercial taking, sale, or use on other premises for the purpose of enhancing the value of the land to which excavated earth materials are transported.
- E. **EXCAVATION PERMIT** shall mean the permit to conduct earth removal activities issued by the Hollis Planning Board pursuant to and in conformance with RSA 155-E, Hollis Zoning Ordinance and these regulations. Such permits shall expire three (3) years from the date of issuance unless otherwise specified and are subject to renewal as prescribed herein.
- F. **EXCAVATION PERMIT APPLICATION** shall mean a form and associated documents, maps, diagrams and information regarding proposed excavation activities submitted to the Hollis Planning Board and Conservation Commission with the required fees, as defined below.
- G. **FEES** shall include both types defined below:
 - 1. **PERMIT FEES** shall mean the required fee, to be paid upon submission of an excavation permit application to the Hollis Planning Board, or \$25.00 to defray the cost to the Town of processing and reviewing the application, plus \$1.60 for notification of each legal abutter.
 - 2. **EXCAVATION FEES** shall mean fees submitted by applicant to the Hollis Planning Board, as a prerequisite to the issuance of a permit, to defray the costs of permit compliance inspections, as determined by the Permit Fee Schedule herein contained as Section IX.E.
- H. **REGULATOR** shall mean the Hollis Planning Board hereafter.
- I. **STATIONARY MANUFACTURING AND/OR PROCESSING PLANTS** shall mean structural improvements which are permanently placed upon the site for the purposes of sorting, washing, screening, crushing, classifying,

drying or processing excavated earth materials.

SECTION IV. EXCAVATION PROJECTS EXEMPT FROM PERMIT REQUIREMENTS

For the purpose of these regulations and pursuant to RSA 155-E, the following earth excavation activities shall not require a permit, notwithstanding any other provision of these regulations and the subdivision regulations of the Town of Hollis.

- A. Excavation that is incidental to:
 - 1. the lawful construction or alteration of a building or structure; or
 - 2. the lawful construction or alteration of a parking lot or way including a driveway on a portion of the premises where removal occurs; or
 - 3. movements of earth materials within a subdivision approved by the Hollis Planning Board.
- B. Excavation that is incidental to agricultural or silva-cultural activities, normal landscaping or minor topographical adjustment.
- C. Excavation from an area contiguous to or from contiguous land in common ownership with, stationary manufacturing and processing plants in operation as of the effective date of RSA 155-E which use earth obtained from such areas.
- D. Excavation from a granite quarry.
- E. Excavation performed exclusively for the lawful construction, reconstruction or maintenance of a class I, II, III, IV or V highway by a unit of government having jurisdiction for the highway or an agent of the unit of government which has a contract for the construction, reconstruction or maintenance of the highway, provided that a copy of the pit agreement executed by the owner, the agent and the governmental unit shall be filed with and accepted by the regulator prior to start of excavation but such excavation shall not be exempt from the provisions of RSA 155-E:4 and 155-E:10.

SECTION V. PROHIBITED PROJECTS

Pursuant to the Hollis Zoning Ordinance and RSA 155-E:4, no permits shall be granted for the following prohibited projects:

- A. Excavations proposed below road level within one hundred (100) feet of any highway or public road right-of-way, unless such excavation is for construction, alteration or maintenance of said highway or public road;
- B. Excavations proposed to take place within seventy-five (75) feet of the boundary line of any abutting land owner's property;
- C. Excavations not permitted by zoning or any other applicable ordinance;
- D. When the issuance of a permit would be unduly hazardous or injurious of the public welfare;
- E. Where existing visual barriers to the area, specified in RSA 155-E:3, III would be removed, except to provide access to the excavation site;
- F. Where the excavation would substantially damage or pose a valid threat to a known aquifer or known major water supplies of the Town of Hollis, so designated by the U.S. Geological Survey;
- G. When excavation is planned or proposed beneath or adjacent to inland surface waters in such a manner that a permit is required from state and federal agencies with jurisdiction over such water bodies or their shores, such as the N.H. Water Supply and Pollution Control Commission (WSPCC), the N.H. Water Resources Board, the Special Board of Dredge and Fill, or the U.S. Army Corps of Engineers. The Regulator may approve applications for such excavations when all necessary State and Federal permits; and
- H. Where the project cannot, for any reason, comply with the restoration provisions of RSA 155-E:5 and these regulations.

SECTION VI. APPLICATION FOR EXCAVATION

The applicant for an excavation permit shall submit to the Regulator a completed permit application form, all required submission documents as enumerated and defined below, and the required permit fee. A copy of the completed application

form and all submission documents shall also be submitted to the Hollis Planning Board for review by the Hollis Conservation Commission.

Submission documents include the following:

- A. APPLICATION FORM** to be supplied by the Regulator or its designated agent.
- B. EXCAVATION PLAN** which contains the following information:
 - 1. a locus or perimeter map or plan of the entire parcel with the proposed excavation/removal areas delineated.
 - 2. the name and address of the owner of the land proposed for excavation, the person (s) who will actually perform the excavation work, and the names and addresses of all abutters of the premises.
 - 3. lot lines, public streets and zoning district boundaries located within two hundred (200) feet of the proposed work area.
 - 4. lakes, ponds, rivers, streams, wetland areas and any other significant natural features including the location of groundwater aquifers, as identified and delineated by the U.S. Geological Survey within two hundred (200) feet of the proposed work area.
 - 5. location of man-made features such as buildings, structures, power lines and other utilities, and private roads or drives.
 - 6. location and nature of proposed visual barriers of the site.
 - 7. the elevation of the highest annual average groundwater table within, or next to, the site and the location of test pit.
 - 8. existing topography of the site drawn on a map or maps with a horizontal scale of no less than 1" = 100', with contour intervals or vertical scale of 1" = 10' (1" = 50' suggested horizontal scale).
 - 9. the location of proposed topsoil storage areas or sites during the excavation phase.
 - 10. estimates of the site acreage to be excavated and of the volume of earth material to be removed from the site.
 - 11. locations of proposed buildings, structures and operating machinery to be used on the site.
 - 12. proposed locations of and provisions for vehicular traffic, service roads, controls for entrance and exit, parking, and fencing or work area.
 - 13. a surface water run-off or drainage plan and the location(s) of any proposed water retention ponds necessary to minimize erosion and sedimentation.
 - 14. a narrative description of:
 - a. project duration and phasing
 - b. hours of operation
 - c. proposed methods of disposal of boulders, stumps, vegetation and other debris
 - d. proposed use of explosives and their means of storage
 - e. routing and means (including limits) for transportation of materials from the site, establishing load limits and vehicle trips per day.
 - 15. the Regulator shall require the preparer of a plan to be a licensed land surveyor or a licensed professional engineer. The Regulator may additionally require the review of proposed excavations by a professional hydrologist or engineer to resolve questions regarding the excavation's impact upon groundwater aquifers and water supply.
- C. RESTORATION PLAN.** All applications for an Excavation Permit shall include a restoration plan for the site of excavation work which shall contain the information required below. Additionally, pursuant to Chapter 481:3, New Hampshire Laws of 1979 (effective August 24, 1979), existing operations in use as of the effective date may continue operation without a permit but shall perform restoration in compliance with RSA 155-E:5 within a

reasonable period following the intended cessation of the excavation or any completed section thereof. The Regulator shall notify the owner(s) of all existing excavation operations of their restoration responsibilities.

Restoration plans shall contain the following information:

1. a map or maps showing, at a horizontal scale not exceeding 1" = 100' and a vertical scale not exceeding 1" = 10', proposed topography after restoration of the site. (1" = 50' suggested horizontal scale, 2' contour intervals suggested).
 2. a map or maps at a horizontal scale not exceeding 1" = 100' which indicates the location(s) of all excavated areas where the seasonal high water table is less than twelve (12) inches from the new, restored surface, which shall then be designated as "wetland" and subject to the restrictions imposed upon wetland use by the Hollis Zoning Ordinance.
 3. a narrative description of the restoration process, including specifications of proposed soil conditioning methods, seeding and mulching methods, and the quantities, types and sizes of plant materials to be used in restoring the site.
 4. restoration plans must, at a minimum, meet the requirements set forth in RSA 155-E:5 and shall be designed so as to meet these minimum standards and requirements.
 5. a written estimate detailing the total costs of restoration, prepared by a professional landscaping firm.
- D. *REQUIRED STATE AND/OR FEDERAL PERMITS.*** Any excavation which requires permits from any State or Federal agency with regulatory jurisdiction over an area proposed for excavation shall submit, as part of the Application for Excavation Permit, the necessary State or Federal permits.
- E. *AUTHORITY TO WAIVE CERTAIN SUBMISSION DOCUMENTS.*** Due to the diverse nature of excavation operations in the Town of Hollis which vary in scale and scope, and due to varying conditions of the land to be excavated, the Regulator may, in its sole discretion, waive certain requirements of applications for proposed excavations where, in the opinion of the Regulator, strict application of these requirements would create an undue and excessive hardship for the applicant, and the proposed excavation will be of small-scale and have very limited impact on the site, its abutters, and the Town of Hollis. In no case may the minimum requirements of RSA 155-E:3 or RSA 155-E:5 be waived by the Regulator. Applicants must request in writing the waiver of specific requirements as part of their application.

SECTION VII. PROCEDURE OR EXCAVATION PERMIT APPLICATIONS

- A. Excavation permit applications shall be submitted in duplicate to the Regulator which, upon finding that any application is sufficiently complete so as to enable the Regulator to render an informed decision and having formally acted upon any waiver request made pursuant to subparagraph VI.E., above, shall accept said application and schedule a public hearing to be held within thirty (30) days of the Regulator's acceptance of the application.
- B. The Regulator shall solicit and consider the comments and opinions of the Hollis Conservation Commission, which make its comments at the public hearing on the application under consideration.
- C. Public notice of the hearing will be made and individual notice shall be made to all abutters by certified mail.
- D. The Regulator, in considering any application, shall be guided by considerations of the public health, safety and general welfare, giving particular consideration to the following factors:
 1. soil erosion due to water and/or wind.
 2. drainage.
 3. potential damage to surface and ground waters due to sedimentation, silting, and loss of recharge areas.
 4. lateral support slopes and grades to all adjacent properties.
 5. impacts to adjacent properties and land.
 6. the purposes of RSA 155-E, relevant zoning ordinances and regulations.
 7. such other factors which may relate to and impact upon the orderly, coordinated and harmonious physical development of the Town of Hollis.

- E. The Regulator shall, within twenty (20) days of the public hearing, or any continuance thereof, approve the application, subject to specified conditions or modifications, or disapprove the application. Notice of the Regulator's decision shall be recorded in the minutes of the meeting at which such action is taken and shall be forwarded to the applicant along with:
1. a statement of the decision approving the application; or
 2. a statement of the decision approving the application which contains the specific conditions of approval which, in the opinion of the Regulator, are necessary to protect the public health and safety and adjoining properties from potential hazards resulting from the applicant's activities under the permit, or other purposes of RSA 155-E; or
 3. a statement of the decision disapproving the application, giving the reasons for the disapproval.
- F. Upon approval by the Regulator of a written Application for Excavation Permit, and receipt of the required excavation fee and any bond required by the Regulator, an Excavation Permit shall be issued to the owner of record or his designated agent.

SECTION VIII. CONDITIONS OF APPROVAL

- A. For any permit issued pursuant to the provisions of this regulation, the following conditions shall be presumed to apply unless, upon written request of the applicant, and agreement by the Regulator, specific conditions of approval are waived due to special site conditions, the unnecessary hardship they would impose, or because of the nature of the proposed excavation.
1. Removal and processing operations shall not be conducted below street grade closer than one hundred feet (100') to a public street.
 2. All equipment for sorting, washing, crushing, classifying, drying, processing and treating, if approved by the Board, shall not be used closer than one hundred (100) feet from any public street or from any adjoining lot line.
 3. Suitable off-street parking shall be provided.
 4. Any access to excavated areas or areas in the process of excavation will be adequately gated and posted with KEEP OUT-DANGER signs.
 5. Any workface or bank which slopes more than thirty (30) degrees downward will be adequately fenced at the top with a substantial fence at least four (4) feet in height, or a written request for a waiver stating the banking will be broken down at the end of each workday.
 6. Adequate provision is made for drainage during and after completion of the operations, however, the excavation shall proceed in a manner which will not allow it to hold standing surface water in excess of two inches (2") except as approved as part of a surface water absorption system designed to minimize surface water run-off.
 7. Explosives shall be used in accordance with the regulations for storage and handling of explosives as published by the State of New Hampshire, and then used only following a permit being obtained from the Fire Chief, Town of Hollis.
 8. Night operations are not permitted.
 9. No land shall be excavated below eight (8) feet above the seasonal high water table in aquifers and recharge areas except as part of an approved plan to develop water conservation or recreational uses, or in accordance with the reclamation plan approved by the Regulator.
 10. If removal/excavation operations stop for more than six (6) months and said stoppage is not in accordance with the approved excavation plan or due to bad weather, the Excavation Permit may be revoked and the performance bond forfeited with its proceeds used for reclaiming the land in accordance with the approved restoration plan.
 11. No topsoil in excess of fifty (50) cubic yards shall be removed from any site in one year without additional permit approval from the Regulator.
 12. All finished grades will in no case be greater than 2:1 (horizontal distance: vertical height) slope.

13. Upon completion of the permitted activities the entire site shall be respread with loam to a depth of four (4) inches unless otherwise specified in the approved plan. Loam sufficient to meet this requirement shall be stockpiled on the site.
14. All finished grades as specified in the approved plan shall have a permanent cover crop established, except when ledge rock is exposed, to assure adequate drainage and to prevent erosion.
15. Petroleum products cannot be stored on the premises in excess of one hundred (100) gallons.
16. Prior to the issuance of any permit, the applicant shall post a bond with sufficient surety with the Town Treasurer in an amount determined by the Regulator to be sufficient to cover all costs required for the restoration of the site to the specifications of the approved plan, and also including fair wear and tear of town roads when appropriate to any large commercial operation.
17. When the scope of a project for which a permit has been issued is proposed to be altered so as to affect either the size or location of the operation, the owner shall submit an application for amendment of the approved plan. Such application for amendment shall be subject to approval in the same manner as provided for an application for a permit in Sections VI and VII of this regulation.
18. In any event the permit holder shall, within twelve (12) months after the expiration date in the permit therefore, or upon completion of the excavation, whichever first occurs, restore, or cause to be restored, the area affected by the excavation to meet the standards set forth in this regulation.
19. The Regulator will determine and include as a condition of permit approval the amounts of land area which may at any one time be unrestored or under active excavation. Excavation operations are hereby encouraged to restore excavated areas of the site as they are completed.

SECTION IX. ADMINISTRATION AND ENFORCEMENTS

- A. **PERMITS:** The issuance of a permit pursuant to this regulation shall be only to the owner of record or his agent and shall not be transferable. A permit shall specify the date upon which it expires and renewal of the permit shall be contingent upon satisfactory compliance with the conditions of approval and adherence to the specifications of the approved plan.
- B. **INSPECTIONS:** The Building Inspector of the Town of Hollis is hereby designated as the enforcement agent of the Regulator. The Building Inspector shall make periodic inspections of all permitted operation sites to determine if said operations are in conformance with these regulations and the approved plan. If nonconformance is certified by the Building Inspector, written notice shall be forwarded to the owner/agent, return receipt requested, which shall identify all violations and non-conformance with the approved plan. Five business days after notification of non-conformance has been received by the owner/agent, the Building Inspector shall re-inspect the excavation site. If the violations and non-conformances identified in the notice of non-conformance have not been corrected, the Building Inspector shall notify the Regulator which shall suspend the excavation permit until the conclusion of a hearing called by the Regulator to consider revocation of the excavation permit.

If an unsafe or hazardous condition is determined to exist by the Building Inspector, then the Building Inspector may order an immediate suspension of excavation activities and establish a reasonable time by which the unsafe or hazardous condition must be corrected.

If the time set by the Building Inspector for correction of an unsafe or hazardous condition expires without said condition being corrected, the Regulator shall call a hearing to consider revocation of the permit and forfeiture of the bond with its proceeds used to correct the unsafe or hazardous condition and restore the site in accordance with the approved plan.

- C. **APPEALS:** Any interested person affected by the Regulator's decision to approve or disapprove an application for an excavation permit, or an amendment thereto or any suspension or revocation of an excavation permit, may appeal to the Regulator for a rehearing on such decision or any matter determined thereby. The motion for 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 Regulator shall within ten (10) days of the receipt of a motion for rehearing either grant or deny the request, 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 for rehearing may appeal such decision pursuant to the procedures in RSA 31:77-87.
- D. Any owner of an existing excavation lawfully in existence prior to the effective date of this regulation and which is subject to the provisions thereof may continue such existing operation with permit as granted by the Board of Selectmen, until expiration of such permit, provided such operation is not substantially altered or enlarged except in conformance with this regulation and further provided that the owner shall suitably restore said area of operation within one (1) year period following the intended cessation of the excavation or any completed section thereof so as to secure the area against any unsafe or hazardous conditions which may endanger the health and safety of the general public. Existing operations under permit from the Board of Selectmen shall comply with Section VI.C of these regulations and RSA 155-E:5.
- E. The following permit fee schedule shall be assessed against all applications for permit under this regulation that the Town may recover all reasonable costs of administration, as well as inspections, incidental thereto.
1. All excavation operators shall report the amount of gravel removed to the Building Inspector on a monthly basis. The Building Inspector shall determine if an on-site inspection is necessary.
 2. A ten dollar (\$10.00) fee will be charged per inspection.
 3. All excavation operations shall be inspected not less than once every six (6) months.
- F. **BONDING:** Prior to issuance of a permit by the Regulator, the applicant shall submit to the Selectmen a bond with sufficient surety in an amount determined by the Regulator sufficient to guarantee compliance with the permit. The Regulator shall, in determining the amount of bond required, consider factors including, but not limited to:
1. the estimated cost of restoration provided by the applicant in the restoration plan.
 2. the type(s) of soils and vegetation to be used in restoration.
 3. the nature of the excavation itself, proposed finished slopes, and elevations.
 4. the estimated cost of repairing 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.
- G. **EXCAVATION PERMIT AMENDMENTS AND RENEWALS:**
1. Permit holders wishing to amend or renew existing, lawfully issued permits shall follow the procedures outlined in Section VII, paragraphs A-F of these regulations. Applicants for renewal or amendment are urged to consult the Regulator to determine the information requirements of the Regulator in acting upon applications for renewal or amendment of excavation permits. Applicants should be aware that the process may require up to fifty (50) days and that it is incumbent upon applicants to submit required information in a timely manner.
 2. The Regulator may, in its sole discretion, waive certain requirements of Section VI, paragraphs A-D in acting upon requests for renewal or amendment of existing excavation permits. However, in no case may the minimum requirements of RSA 155-E:3 or RSA 155-E:5 be waived by the Regulator.
 3. Additional application fees, permit fees and bonding or other surety, sufficient to guarantee restoration, may be required by the Regulator in acting upon applications for renewal or amendment.

H. This regulations shall take effect upon adoption by the Regulator and as amended.

SECTION X. SEPARABILITY

The invalidity of any provision of these regulations shall not affect the validity of any other provisions.

SECTION XI. ENFORCEMENT

The Hollis Board of Selectmen are charged with the power and authority to enforce the provisions of these regulations.

SECTION XII. AMENDMENT

These Regulations may be amended by the Planning Board but only following a public hearing on the proposed amendment and such amendment shall not take effect until a copy of said amendment shall be certified by a majority of the Board and filed with the Hollis Town Clerk.

SECTION XIII. FILING

- A.** Upon enactment, these regulations shall be signed by the Chairman of the Board, endorsed by a majority of the Board and originals so exhibited shall be filed with the Hollis Town Clerk.
- B.** A copy of any amendments to these Regulations shall also be filed with the Office of State Planning in Concord, New Hampshire.

Chairman, Hollis Planning Board

Date