

TEMPLE SITE PLAN REVIEW

REGULATIONS REGARDING EXCAVATIONS

Revised November 15th, 2022

SECTION 1 GENERAL AUTHORITY

Chapter 155-E of the New Hampshire Revised Statutes requires that, with several exceptions, all mining and excavation operations in the State obtain prior approval and a permit from the local municipality in which the operation is to occur.

SECTION 2 PURPOSE

The purpose of the Statute is to minimize safety hazards created by open excavations; 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.

SECTION 3 DEFINITIONS. In this regulation:

- I. "Earth" means sand, gravel, rock, soil or construction aggregate.
- II. "Excavation" means a land area which is being used, or has been used, for the commercial taking of earth, including all slopes.
- III. "Commercial" shall mean any use of any earth materials for sale or resale on or off site of the excavation area. Excavations which use earth materials in the processing of other materials such as, but not limited to, concrete, asphalt, and other building materials shall be considered commercial.
- IV. "Application" means a completed application for an excavation permit. An application shall not be considered complete until all of application and review checklist items have been completed and accepted to the satisfaction of the Planning Board in addition to any other requirements of this regulation. In addition, an application shall not be considered complete until a receipt of completed application has been issued by the Planning Board.

SECTION 4 PERMIT REQUIRED. No owner shall permit any excavation of earth on their premises without first obtaining a permit therefor, except:

- I. Excavation that is exclusively incidental to the lawful construction or alteration of a building or structure or the lawful construction or alteration of a parking lot or way including a driveway on a portion of the premises where removal occurs. This excavation cannot be started, however, until all required state and local permits necessary for the construction or alteration of the building, structure, parking lot, or way have been issued.
- II. Excavation that is incidental to agricultural or silvacultural activities, normal landscaping or minor topographical adjustment.
- III. Excavation from an area contiguous to or from contiguous land in common ownership with, stationary manufacturing and processing plants in operation as of the August 24, 1989 which use earth obtained from such areas. Land which is acquired after that date which is contiguous to and in common ownership with stationary manufacturing and processing plants shall not be excepted from the requirements of this regulation.
- IV. Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E.
- V. 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 Planning Board prior to the start of excavation but such excavation shall not be exempt from the provisions of sections 7 and 13 of this regulation.

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- VI. 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.
- VII. Any owner of an existing excavation in regular commercial use since before August 24, 1979 and which is otherwise subject to these regulations may continue such existing excavation 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.

SECTION 5 APPLICATION FOR PERMIT. Any owner or owner's designee subject to this regulation shall, prior to excavation of their land, apply to the Planning Board for a permit for excavation. The applicant shall also send a copy of the application to the Temple Conservation Commission. Such application shall be signed and dated by the applicant and shall contain at least the following information (The Planning Board may waive one or more of the requirements):

- I. The applicant shall submit five (5) copies of an Excavation Plan and of a Restoration Plan at a scale of no more than fifty feet to the inch prepared by a professional engineer or by a land surveyor registered under the laws of the State of New Hampshire which show the following:

Names and addresses of the owner as shown on the most recent tax list, and of the operator of the excavation.

Tax map and lot number

The boundary lines of the lot.

Location of permanent boundary markers, which must be set if not already in existence.

Names and addresses of all abutters as shown on the most recent tax list

Location of all structures, roads and easements on the parcel or within 200 feet of the parcel.

North Point, date, scale, bar scale, name and stamp of engineer and/or surveyor.

Locus map showing location of pit, limit of property, and all public roads within 1/2 mile of proposed excavation.

In addition the Excavation Plan shall show the following:

Location of 50' wide visual buffer area screening excavation from view along public ways and property lines, as well as measures to be taken if existing topography and vegetation are not adequate to screen view. All natural vegetation shall be retained within this area.

Current topography of land within 200 feet of the area to be excavated and the access road with contour lines at five (5) foot intervals. Contours interpolated from the USGS geodetic survey will not be accepted.

Location and direction of flow of all natural water courses, brooks, streams and drainage ditches as well as ponds, swamps, wetlands, and low areas subject to flooding. The location of the 75 foot setback from all wetlands (poorly and very poorly drained soils), streams and open bodies of water.

Location and extent of any stone walls, ledge outcroppings, wells, utilities, septic systems, etc.

Engineering calculations used to determine drainage requirements before excavation begins based upon a 25 year storm.

Areas to be worked outlined and sequence of operations shown. Acreage of area to be excavated.

Location and design of all erosion control and siltation control measures.

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A log of borings or 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, soils data, observed water levels etc.

The total volume of earth material to be removed in cubic yards.

The maximum rate of removal in cubic yards per day, cubic yards per week and cubic yards per month.

The maximum depth of removal.

Existing and proposed access roads, parking areas, and any onsite facilities.

Area for topsoil reserved for future restoration.

In addition the Restoration Plan shall show the following:

Topography of land as it will exist when the proposed excavation is completed with contour lines at five (5) foot intervals. The maximum slope of the restored surface.

Location and direction of flow of all natural and proposed water courses, brooks, streams, detention basins, culverts and drainage ditches as well as ponds, swamps, wetlands, and low areas subject to flooding as they will exist after restoration is completed.

Engineering calculations used to determine drainage requirements after restoration based upon a 25 year storm, and drainage provisions when excavation is completed.

The measures to be taken in restoring the site after the excavation is completed, including thickness of loam, type and quantity of plant materials to be used, and other erosion control, flood control, and soil stabilization measures to be taken.

Areas expected to be excavated under future permits.

Location of proposed accesses to lot.

- II. No permit application shall exceed five (5) acres to be active or unrestored at any point in time. If an excavation has not been completed within the time specified in the permit, the owner may apply to renew the existing excavation permit under the plans filed with the previous application, so long as no new area of excavation is proposed beyond that previously permitted. If an existing operating excavation at the time of adoption of this regulation cannot be restored within two years no additional new excavation into an undisturbed area shall be permitted until the existing excavated area is restored based on an approved permit as required by this regulation.

If restoration of the site is not completed within one year of the expiration of the permit or within one year of the end of excavations the town may declare part or all of the bond forfeit and use these monies to restore the site, in addition to the requirements of Section 9 (Issuance of Permit). No additional permits on a single lot of record shall be issued until any prior permitted excavation is restored to the satisfaction of the Planning Board. At no time shall more than one permit be allowed on a lot of record.

- III. Hauling information, including routes to be utilized, the type and weight of the vehicles to be used, and the frequency and schedule of operations shall be provided to the Planning Board with the application. The applicant shall show that the traffic resulting from the excavation is compatible with local traffic conditions and road construction, and will not create an increased hazard on public streets or cause undue damage to public streets. The Planning Board reserves the right to conduct a traffic and road impact study at the applicant's expense to ensure that this condition can be met. The Planning Board may require any measures necessary to ensure that the condition of all town roads that will be affected by the excavation and hauling activities, will be maintained or upgraded to sufficient road standards established by the Select Board or shown necessary by the road impact study. The Planning Board may place conditions upon such operations depending on road conditions.

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SECTION 6 GENERAL REQUIREMENTS.

- I. No excavation shall operate outside of the hours of 7 A.M. to 5 P.M., Monday through Saturday. In addition no excavation operation shall be allowed on a legal holiday. Operation shall be considered to include all loading, excavating, truck movement, and any other activity related to the excavation involving equipment on the excavation site, or town roads. This includes starting, warming up and idling equipment.
- II. No actual excavation is to exceed five acres at one time unless specifically authorized by the Planning Board.
- III. Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process.
- IV. No excavation shall be permitted so close to the seasonal high water table or to bedrock (as indicated by the required borings or test pits) as would preclude the subsequent reuse of the site in accordance with existing public health standards, the Town of Temple Zoning Ordinance, and the Town of Temple Master Plan.
- V. Where depth of excavation will exceed 15 feet and temporary slopes will exceed 1:1 in grade, a fence or other suitable barricade shall be erected to warn of danger and limit access to the site.
- VI. No area shall be excavated which will cause the accumulation of free standing water for prolonged periods. Appropriate drainage shall be provided.
- VII. Topsoil shall be stripped from the excavation area and shall be stockpiled for use in subsequent restoration of the site. No topsoil shall be removed from the site unless the applicant shows to the Planning Board's satisfaction that available soils are more than adequate to restore the site.
- VIII. All temporary structures required during excavation shall be removed from the site within 90 days after operations cease.
- IX. All vehicles transporting excavated material shall utilize adequate covering and or sideboards to prevent dust and spillage when loaded. All State and local traffic laws shall be obeyed.
- X. No excavation or tree cutting shall be allowed within 75 feet of wetlands (poorly and very poorly drained soils), streams or open bodies of water. All natural vegetation shall be retained in this 75 foot buffer. A high density soil survey by a qualified soil scientist approved by the Planning Board, at the applicant's expense, may be required of the applicant if needed to accurately identify wetland areas. In addition, the setback area from the wetlands shall be clearly flagged with a minimum of one orange flagged stake per 50 feet along straight boundaries and 25 feet along curved boundaries. This flagging shall be done prior to any tree cutting or excavation.
- XI. No excavation or tree cutting shall be allowed within 50 feet of Town roads or the property of abutters, except as required for access roads as indicated on the excavation plan. All natural vegetation shall be retained in this 50 foot buffer. This setback area shall be clearly flagged with a minimum of one orange flagged stake per 50 feet along straight boundaries and 25 feet along curved boundaries. This flagging shall be done prior to any tree cutting or excavation. If the existing terrain and vegetation do not provide adequate screening the Planning Board may require additional screening measures, including fences, berms and or plantings.

SECTION 7 PROHIBITED PROJECTS. The Planning Board shall not grant a permit:

- I. Where an excavation is proposed below road level within 50 feet of any highway right of way unless such excavation is for the purpose of said highway.
- II. For excavation within 50 feet of the boundary of a disapproving abutter or within 10 feet of the boundary of an approving abutter unless approval is requested by said abutter.
- III. When the excavation is not permitted by zoning or other applicable ordinance;
- IV. When the issuance of the permit would be unduly hazardous or injurious to the public welfare;
- V. Where existing visual barriers in the areas would be removed, except to provide access to the excavation;

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- VI. Where the excavation would damage a known aquifer, so designated by the United States Geological Survey, or would be closer than 4 feet to the known aquifer or four feet of the identified seasonal high water table;
- VII. When excavation is planned adjacent to inland surface water and wetlands in such a manner that a permit is required from the water supply and pollution control commission, the water resources board, the special board on dredge and fill or any other local, state or federal agencies with jurisdiction over the premises; but the Planning Board may approve the application when all the necessary permits have been obtained; or
- VIII. Where the project cannot comply with the restoration requirements of RSA 155-E:5 and section 6 of this regulation.

SECTION 8 RESTORATION. Within 12 months after the expiration date in the permit therefor or the completion of the excavation, whichever first occurs, the owner of the excavated land shall restore, or cause to be restored, the area affected by the excavation to meet the following minimum conditions:

- I. Ground levels and grades shall be restored as show on the approved restoration plan as soon as is practical after site excavation has been completed. All slopes shall be graded to a grade of not more than 1:2 (vertical to horizontal);
- II. Debris, stumps and boulders resulting from the excavation shall be buried or removed as indicated in the restoration plan.
- III. Stockpiled topsoil, and additional topsoil if required, shall be spread over the disturbed area to a depth to allow and maintain vegetation. The disturbed areas shall be fertilized and seeded with a grass or grass-legume mixture.
- IV. If deemed necessary by the Planning Board, suitable trees or shrubs shall be planted in order to provide screening and erosion control. Such planted areas shall be protected from erosion during an appropriate establishment period by mulch and structural erosion control devices.
- V. Upon completion of the restoration process, 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.

SECTION 9 APPLICATION FOR AMENDMENT. When the scope of a project for which an excavation permit has been issued is proposed to be altered so as to affect either the size or location of the excavation, the rate of removal or the plan for restoration, the owner shall submit an application for amendment of their excavation permit. The amended application shall be subject to approval in the same manner as provided for an excavation permit. An application for amendment to increase the size of a permitted excavation may be allowed if at least one half of the area covered by the prior permit is restored to the Planning Board's satisfaction. In no case will more than five acres be in an unrestored condition at any time on any lot of record.

SECTION 10 HEARING. Prior to the Planning Board approving an application for an excavation permit, or an application for an amended permit, a public hearing shall be held within 30 days on such application. A notice of said hearing shall be sent to all abutters and shall specify the grounds for the hearing as well as the date, time, and place and at least 10 days notice of the of the time and place of such hearing shall be published in a paper of general circulation in the Town of Temple and a legal notice thereof shall also be posted in at least 3 public places in the Town of Temple; 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. Within 20 days of said hearing or any continuation thereof, the Planning Board shall render a decision approving or disapproving the application, giving reasons for disapproval.

SECTION 11 ISSUANCE OF PERMIT. If the Planning Board after the public hearing approves the application for a permit and determines that it is not prohibited by RSA 155-E:4 or Section 5 of this regulation it shall, upon receipt of an excavation fee determined by the Planning Board not to exceed \$50.00 plus the amount of any expenses incurred by the Planning Board in processing and evaluating the application including fees of any outside consultants deemed necessary and the posting of a bond or other surety with the municipal treasurer in an amount

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determined by the Planning Board to be reasonably sufficient to guarantee compliance with the permit, grant the permit to the applicant for an excavation. The performance bond or other surety shall be held by the town until completion of restoration. A portion of the bond or surety may be withheld until restoration is successful. A copy of the permit shall be prominently posted at the excavation site or the principal access thereto. A permit shall not be assignable or transferable without the prior written consent of the Planning Board. A permit shall specify the date upon which it expires. The Planning Board may include in a permit such reasonable conditions as are consistent with the purpose of this regulation including the provision of visual barriers to the excavation.

SECTION 12 APPEAL. If the Planning Board disapproves or approves an application for an excavation permit or an application for an amended permit, any interested person affected by such decision may appeal to the Planning Board for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall fully specify every ground on which it is alleged that the decision or order complained of is unlawful or unreasonable and said appeal shall be filed within 10 days of the date of the decision appealed from. The Planning 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 30 days. Any person affected by the Planning Board's decision on a motion for rehearing to the Planning Board may appeal in conformity with the procedures specified in RSA 677:4-15.

SECTION 13 ENFORCEMENT.

- I. The Planning Board or its duly authorized agent may suspend or revoke the permit of any person who has violated any provision of their permit or this regulation or made a material misstatement in the application upon which their permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with Section 10. Failure to file for a permit as required by this regulation shall be considered a violation subject to the enforcement provisions of this regulation.
- II. The Planning Board or a person affected thereby may seek an order from the Superior Court that the violator cease and desist from violation of any provision of their permit or this regulation and take such action as may be necessary to be in compliance with their permit and this regulation.
- III. To ascertain if there is compliance with this regulation, a permit issued hereunder or an order issued hereunder, the Planning Board or its duly authorized agent may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since August 24, 1979.

SECTION 14 SEPARABILITY CLAUSE.

The invalidity of any provisions of this regulation shall not affect the validity of any other provision.

SECTION 15 AMENDMENT

These Regulations on Excavations may be amended by a majority vote of Planning Board members. The Board shall hold a public hearing prior to adoption of new regulations or amendment of existing regulations. Notice for the time and place of the hearing shall be as provided in NH RSA 675:7. The amended procedures shall be filed with the Town Clerk.