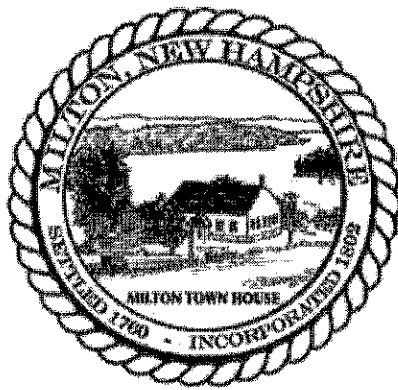


**EARTH  
EXCAVATION  
REGULATIONS  
of the Town of  
MILTON,  
NEW HAMPSHIRE**



**REVISED BY THE  
PLANNING BOARD  
on January 20, 1998**

## **Table of Contents**

ARTICLE I. – AUTHORITY

ARTICLE II. – DEFINITIONS

ARTICLE III. – APPLICATION FOR EXCAVATION PERMIT

- A. General Procedures
- B. Exempted Projects
- C. Prohibited Projects
- D. Submission Requirements
- E. Application for Amendment
- F. Permit Fees
- G. Public Hearing: Timing of Consideration

ARTICLE IV. – SITE RESTORATION

ARTICLE V. – SITE REQUIREMENTS

ARTICLE VI. – PERFORMANCE SECURITY

ARTICLE VII. – ADMINISTRATION

## **ARTICLE I AUTHORITY**

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

## **ARTICLE II DEFINITIONS**

In this Ordinance, unless the context requires otherwise, the following terms have the meanings indicated:

1. **ABUTTER** – Any person who owns land within 200 feet of the boundaries of the land under consideration. A way as defined in RSA 259:1. XXXV; shall not be considered to be a barrier, but shall be included in the distance requirement for purposes of determining whether a person is an abutter.
2. **APPLICANT** – The owner of the excavation site or person designated by the owner, in writing, at the time of application.
3. **APPLICATION** – A complete submission of information and plans as required by Statute RSA 155-E local regulations and in the excavation permit application.
4. **AQUIFER** – For the purpose of this Ordinance, aquifer means a geologic formation, group of formations, or part of a formation that is capable of yielding quantities of groundwater usable for a municipal or private water supply.
5. **EARTH** – Means clay, sand, gravel, rock, soil, or construction aggregate.
6. **EXCAVATION** – Means a land area which is used or has been used for the commercial taking of earth, including all slopes.
7. **EXCAVATION PIT AGREEMENT** – An agreement between the excavation site owner and the contractor describing the terms and procedures for material excavation.
8. **STATIONARY MANUFACTURING and PROCESSING PLANTS** – Structures that are permanently placed and that are integral to the grading, crushing, and stockpiling of excavated material.

## **ARTICLE III**

### **APPLICATION FOR EXCAVATION PERMIT**

#### **A. GENERAL PROCEDURES:**

Except where specifically exempted by Article III (B) of these regulations, an excavation permit must be granted by the Milton Planning Board prior to the start of any commercial earth excavation or land clearing in preparation of such excavation.

Any landowner or landowner's agent who proposes to excavate, shall apply for an Earth Excavation Permit, to the Planning Board, using the application form supplied by the Board.

No excavation permit shall be issued before a duly notified Public hearing has been held on the application, nor before a completed application has been received containing all of the following, in satisfactory form:

1. Current names and mailing addresses of all abutters as herein defined.
2. Site Excavation Plan.
3. Site Restoration Plan.
4. Performance Security
5. Copies of any Federal and State permits required.
6. All applicable fees.

#### **B. EXEMPTED PROJECTS:**

The following activities are exempted from the permit requirements except where prohibited by Article III (C).

1. Excavation that is incidental to the lawful construction or alteration of a building or structure, including a parking lot or driveway.
2. Excavation that is incidental to agricultural or silvacultural activities, normal landscaping, or minor topographical adjustment.
3. 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.
4. Excavation from a granite quarry.
5. Excavation performed exclusively for the lawful construction, reconstruction, or maintenance of Class I, II, II, IV, or V Highway by a unit of government, having jurisdiction for the highway or their contracting agent, 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.

### C. PROHIBITED PROJECTS:

The Planning Board shall deny all excavation applications in the following circumstances:

1. 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.
2. For excavation within 75 feet of the boundary of a disapproving abutter, or within 25 feet of the boundary of an approving abutter, unless approval is requested by said abutter.
3. When the excavation is not permitted by zoning or other applicable ordinance.
4. When the issuance of the permit would be unduly hazardous or injurious to the public welfare.
5. Where existing visual barriers in the areas specified in RSA 155-E:3, III would be removed, except to provide access to the excavation.
6. Where the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey (USGS).
7. When excavation is planned beneath or adjacent to inland surface waters 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 fill, or other State or Federal agencies with jurisdiction over the premises: but the regulator may approve the application when all necessary permits have been obtained.
8. Where the project cannot comply with the restoration provisions of Article IV of these regulations.

### D. SUBMISSION REQUIREMENTS:

The application permit shall be signed and dated by the applicant. The completed submission shall contain the following:

1. The name and address of the owner of the land to be excavated. The name and address of the person who will actually do the excavation. The current names and addresses of all abutters of the land on which the excavation is proposed.
2. Excavation Plan: An excavation plan prepared by a Licensed Professional Engineer shall be submitted which indicates the specific location and extent of the proposed excavation project. The plan shall be prepared at a scale not to exceed 1" = 50". The plan shall contain the following additional information:
  - a. Location of property lines, their dimensions and bearings.
  - b. Tax Map reference: map and lot/parcel numbers.
  - c. Date, north arrow, and locus map.
  - d. Parcel size (in acres); extent of parcel to be excavated (in acres).
  - e. topographic plans showing existing contours and planned excavation, contours at two foot intervals: benchmark from U.S.G.S. datum where

required by the Planning Board.

- f. The planned sequence of excavation, indicating approximate areas and dates of excavation.
  - g. Cross section or sections showing existing and excavated site topography.
  - h. Location of existing or proposed easements and existing or proposed access roads leading to and from the excavation site.
  - i. The distance between excavation areas and closest property line.
  - j. Location of existing or proposed visual barriers to be retained between the excavation areas and public roadways or abutting property owners.
  - k. Known limits of any aquifer areas, as identified by the U.S.G.S. Also, indicate any surface water, body or streams, adjacent to the proposed excavation.
  - l. The elevation of the highest seasonal high water table within or next to the proposed excavation.
  - m. Erosion and sediment control plan indicating project phasing and the type and location of erosion and sediment control measures to be used during excavation.
3. Restoration Plan: The restoration plan shall be drawn at the same scale and shall use the same base survey information as that utilized in the preparation of the excavation plan. The restoration plan shall contain the following information:
- a. Restored topography and drainage.
  - b. The phasing of site restoration, indicating areas and dates that restoration will be completed.
  - c. Cross section or sections showing restored topography configuration.
  - d. Indicate soil fertilization, seeding and mulching specifications, and plant material to be used in restoration, their size and quantities.
  - e. Erosion and sedimentation control plan indicating the type and location of erosion and sedimentation control methods to be incorporated in the restoration design.
4. Performance security as required in Article VI of these regulations.
  5. Copies of applicable State and Federal permits which may be required including Dredge and Fill Permits required under NH RSA 483-A, and excavation permits required under RSA 149:8a.
  6. Such other information as the Planning Board may reasonably require to adequately evaluate the permit application.

#### E. APPLICATION FOR AMENDMENT:

Whenever alterations in the excavation project are anticipated (such as size, location, rate of removal, or changes in restoration plan), the land owner or person designated by the owner shall submit to the Planning Board, an application for amendment of his excavation permit. The

application for amendment is subject to the same approval procedure as the original excavation permit.

#### F. PERMIT FEES

A permit application filing fee of \$500.00 (payable to the Town of Milton) plus abutters' notification fee of \$8.00 per abutter, shall accompany the excavation application.

Reasonable fees in addition to the above may be imposed to cover the costs of special investigative studies, review of documents, and other matters which may be required by particular applications.

#### G. PUBLIC HEARING: TIMING OF CONSIDERATION

Prior to the approval of an application for an excavation permit, or an application for an amendment excavation permit, a Public hearing shall be held as required by the provisions of RSA 155-E:7.

A notice of said Hearing shall be sent to all abutters at least ten (10) days before the hearing date. The hearing notice shall also be posted in at least three (3) public places and published in a newspaper of general circulation at least fourteen (14) full days before the Hearing date.

The Public Hearing shall be held within thirty (30) days of receipt of a completed application submission including all required related materials. Completed applications may only be received at a Public Meeting of the Planning Board. The Planning Board shall approve or disapprove the application within twenty (20) days of the hearing, giving reasons for disapproval.

### **ARTICLE IV SITE RESTORATION**

Within eight (8) months after the expiration date in the permit therefore, 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 each of the following minimum conditions:

- A. Except for exposed rock ledge, said area shall be covered with vegetation suitable to prevent erosion and with soils suitable to sustain such vegetation.
- B. Debris resulting from the excavation shall be buried or removed.
- C. All excavated areas shall be graded to slopes sufficient to permanently sustain vegetation. Slopes shall not exceed 2:1.
- D. The elimination of any standing bodies of water created in the excavation project, as may

constitute a hazard to health and safety, unless the regulator specifies different restoration.

## **ARTICLE V SITE REQUIREMENTS**

### **A. TOPSOIL:**

Prior to excavation of material, all topsoil shall be stripped and stored on-site for site restoration upon the completion of the excavation project. This shall be done in a phased manner to minimize possible erosion.

### **B. VISUAL BARRIERS:**

A vegetative or topographical visual barrier or buffer shall be maintained between surrounding roads. Commercial and residential land uses and the excavation site wherever possible, and shall be indicated as such on the excavation plan.

### **C. ACCESS ROAD:**

Access road leading to and from the excavation site shall intersect existing street and road, at locations that have been duly approved by State and Local officials, and in a manner that will not endanger the safety of highway users and local residents. The provision of RSA 236:13 and 14 shall be adhered to by the applicant and shall be shown on applicant's plans.

### **D. WASTE DISPOSAL:**

No disposal of any waste material, including solid and/or hazardous waste, septage, dredge spoils, or organic waste and debris, shall be undertaken on the excavation site.

### **E. VEHICULAR BARRIER:**

A construction type gate/fence with a secure lock, to prohibit vehicular access when the quarry is not in operation, shall be required.

### **F. HOURS OF OPERATION:**

All gravel or sand pits are allowed to operate between seven a.m. (7:00 am) and five p.m. (5:00 pm). These operating hours shall be for Mondays through Saturdays. No operation will take place on Sundays. Hours of operation other than those stipulated, may be permitted, if agreed upon in writing with the Planning Board.



#### G. DUST CONTROL:

Dust control measures will be instituted at the direction of the Planning Board or its duly authorized agent where necessary, to protect from nuisance abutting property owners.

#### H. ROAD REPAIR:

The applicant shall be held liable for the repair of Town maintained roads which are damaged as a result of hauling earth from the site. The Planning Board may require the submission of performance security, according to the provisions of Article VI, of these regulations, to insure adequate repair of damaged road segments following site restoration.

## **ARTICLE VI PERFORMANCE SECURITY**

The submission of a performance security shall be required of the applicant prior to the issuance of an excavation permit. The security shall be in a form amount with surety, and other conditions all satisfactory to the Board, to guarantee 1. The restoration of the excavation site in compliance with the approved restoration plan, and 2. The repair of Town maintained roads if damaged as a result of the excavation. The security shall remain valid and available until drawn upon by the Town or released in accordance with subparagraphs D and E below.

- A. Further to the above, the security shall be one of the following:
  - 1. Certified check, bank check, or savings account passbook properly endorsed to the Town of Milton.
  - 2. Security bond issued by a surety company, authorized to do business in New Hampshire, and issued to the Town of Milton.
- B. The performance agreement shall be reviewed and approved by Town Counsel as to proper legal form and enforceability. The cost of this review shall be borne by the applicant.
- C. The Board shall set the amount of performance bond required for site restoration, and a separate bond will be established for road repairs.
- D. The performance bond shall not be released until the board has certified, after inspection, that the restoration and repair, as required by RSA 155-E:5 and Article V, Sections A-D of these regulations, have been completed.
- E. All security shall be held by the Selectmen of the Town. The Selectmen shall not draw upon or release any security until they are in receipt of a resolution passed by a majority of the Planning Board, stating the purpose and amount to be drawn or released. The Selectmen shall enforce such securities by all appropriate legal and equitable remedies.

## **ARTICLE VII ADMINISTRATION**

### **A. ENFORCEMENT:**

The Planning Board or its duly authorized agent is responsible for the enforcement of these regulations as provided by RSA 155-E:10. The excavation permit may be suspended or revoked of any person who has violated any provisions of this permit, these regulations or of Chapter 155-E, or made a material misstatement in the permit application upon which his permit was granted. Such suspension or revocation shall be subject to a motion for a rehearing thereon and appeal in accordance with RSA 155-E:9.

### **B. APPEALS:**

Any person, aggrieved by the official decision of the Planning Board, may appeal for a rehearing on such decision as provided by RSA 155-E:9.

### **C. OTHER REGULATIONS**

Where these regulations are in conflict with other local ordinances and/or regulations, the more stringent shall apply.

### **D. ADOPTION**

These regulations shall become effective after a Public Hearing, adoption and certification by the Planning Board, and placed on file with the Board of Selectmen, The Town Clerk, and the Strafford Registry of Deeds.

## **Standard Excavation Conditions:**

---

\_\_\_\_\_ Hours of operation shall be noted on the plan.

\_\_\_\_\_ A 4-year bond shall be posted with the BOS, accepted by the BOS and put in place before the plan is signed.

\_\_\_\_\_ The property shall not be used for the storage or introduction of any foreign materials.

\_\_\_\_\_ Bonding shall be continued for 4 more years.

\_\_\_\_\_ The permit to operate shall expire in 3 years unless the owner obtains a renewal prior to the expiration date.

\_\_\_\_\_ The permit shall expire if the ownership changes.

\_\_\_\_\_ All previous conditions shall be maintained.

\_\_\_\_\_ The conditions shall be listed on the plans.

**Updated  
May 24, 2005**