

# **TOWN OF PITTSFIELD PLANNING BOARD**

## **EARTH EXCAVATION AND RESTORATION REGULATIONS**

### **SECTION I. AUTHORITY**

In accordance with the provisions of New Hampshire Revised Statutes Annotated, Chapter 155-E:11, the Pittsfield Planning Board adopts the following regulations in implementation thereof to govern the excavation sites in the Town of Pittsfield, New Hampshire.

### **SECTION II. DEFINITIONS**

- 2.1 Abutter: Means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. 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 of a hearing hereunder before the Regulator where an abutting property is under a condominium or other collective form of ownership, the term “abutter” means the officers of the collective or association as defined in RSA 356-B:3 XXIII.
- 2.2 Applicant: The record owner of the excavation site at the time of application or said owner’s designee in writing.
- 2.3 Application: A complete submission of information and plans as required by RSA 155-E:3 and by Section IV, Application Procedure, below, necessary for the issuance of a permit for excavation of earth.
- 2.4 Aquifer: A water-bearing stratum of permeable rock, sand, or gravel. Aquifers appear on statewide mapping prepared by the United States Geological Survey entitled “Availability of Ground Water”.
- 2.5 Earth: Means sand, gravel, rock, soil or construction aggregate.
- 2.6 Excavation: Means a land area, which is used, or has been used, for the commercial taking of earth, including all slopes.

- 2.7 Stationary Manufacturing and Processing Plants: Plants which are permanently placed and which are integral to the grading, crushing and stockpiling of excavated earth.
- 2.8 Regulator: Means the Pittsfield Planning Board.
- 2.9 Excavation Pit Agreement: An agreement between the excavation site owner and the contractor describing the terms and procedures for material excavation.

### **SECTION III. PERMIT REQUIREMENTS AND EXCEPTIONS**

No excavation of earth shall take place in the Town of Pittsfield without the record owner of the excavation site or his designee in writing first obtaining a permit therefore from the Regulator, except:

- 3.1 Excavation that is 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. (RSA 115-E:2 II).
- 3.2 Excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment. (RSA 155-E:2 II).
- 3.3 Excavation from an area contiguous to or from contiguous land in common ownership with, stationary manufacturing and processing plants in operation as of August 24, 1979, which use earth obtained from such areas. (RSA 155-E:2 III). For the purpose of this exception, an area or land separated from such plant by a street or other public right-of-way shall not constitute a contiguous area or contiguous land.
- 3.4 Excavation from a granite quarry. (RSA 155-E:2 IV).
- 3.5 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 of 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. (RSA 155-E:2 V).

- 3.6 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 appropriate local official. (RSA 155-E:2 VI).

## **SECTION IV. APPLICATION PROCEDURE**

### 4.1 General Procedure

Whenever any earth excavation for commercial purposes is proposed, before any land clearing is begun or the removal of any sand, gravel, soil or construction aggregate and before any permit for earth excavation is granted, the owner of the proposed excavation site or his designee in writing shall submit an application for a permit for excavation of earth to the Regulator. The Applicant shall use an application form supplied by the Regulator, which shall be signed and dated by the applicant. A copy of the application must also be contemporaneously sent to the Pittsfield Conservation Commission.

### 4.2 The Completed Application shall include:

- A. The application form supplied by the Regulator containing the name(s) and address(es) of the record owner of the excavation site, the person or entity that will actually do the excavating, and all abutters of the premises on which excavation is proposed; and at least the following information:
1. A sketch and description of the location and boundaries of the proposed excavation, the number of acres to be involved in the project and the section(s) of Pittsfield in which the project lies;
  2. A sketch and description of the access and visual barriers to public highway to be utilized in the proposed excavation;
  3. The breadth, depth and slope of the proposed excavation and the estimated duration of the project;
  4. The elevation of the highest annual average ground water table within or next to the proposed excavation; and
  5. A plan for the restoration of the area affected by the excavation

at least in compliance with RSA 155-E:5, including a timetable therefor as to fully depleted sites within the excavation area during said project.

- B. The Submission Documents set forth in Section V, below.
- C. Copies of related permit approvals or other documents necessary for the excavation proposal. Thus, may include the following:
  - 1. Written permission from the Water Supply and Pollution Control Commission under RSA 149:8a.
  - 2. Dredge and fill permit as required by RSA 483-A.
  - 3. Corps of Engineers Form 4345 on flow rates.
  - 4. Any applicable Air Resource Agency permits or evidence of satisfaction of Agency requirements.
  - 5. Timber Cutting Permit.
  - 6. Any other permit or approval required for such excavation or restoration by any Federal, State or local body.
- D. Such other information as the Regulator may reasonably require as set forth in the application form supplied by the Regulator or after the submission of the application and in response thereto.

#### 4.3 Action on Application

The completed application shall be formally accepted at a regularly scheduled meeting of the Regulator. Within thirty (30) days thereafter and prior to the Regulator approving an application for an excavation permit or an amended excavation permit, a public hearing shall be held thereon, and all abutters notified in accordance with RSA 155-E:7 (See § 6.1, A, Below).

Within twenty (20) days after the said hearing, or any continuation thereof, the Regulator shall render a decision approving or disapproving the application.

Excavation permit approval by the Regulator shall be in the form of a memorandum setting forth such reasonable conditions consistent with the purpose of RSA 155-E as the Regulator shall have imposed, accompanied by a weather able permit sign depicting the location of the excavation site,

the signature(s) of the Regulator and the permit expiration date. The permit sign shall be prominently posted in a secured manner at the excavation site near the entrance thereto. The permit shall not be assignable or transferable without the prior written consent of the Regulator which may hold a public hearing thereon. If the application is disapproved, the owner and the applicant shall be notified, in writing, by the Regulator giving reasons for the disapproval.

#### 4.4 Permit Expiration

The excavation permit shall be valid only until the date specified by the Regulator in said permit.

The permit may be suspended or revoked by the Regulator for failure to pay annual inspection fees. See § 11.1, below.

### **SECTION V. SUBMISSION DOCUMENTS**

#### 5.1 Excavation Plan

The Applicant shall submit a plan describing the specific location and extent of the proposed excavation project. The excavation plan shall include existing topographic and site boundary information compiled and prepared by a Licensed Land Surveyor. Other information which must be contained in the plan is:

- A. proposed topography at the completion of excavation (prior to restoration),
- B. distances between disturbed areas and closest property lines,
- C. zoning district(s),
- D. existing visual barriers to be retained or visual barriers to be constructed,
- E. aquifer limits/location as identified by the U.S. Geological Survey,
- F. lakes, streams, wetlands, other bodies of surface water and significant natural and man-made features,
- G. a description of project duration and phasing,

- H. the names and addresses of all abutters,
- I. notations for each type of material as to excavation site acreage and volumes of material to be removed,
- J. the location and design of site access roads leading to and from public highways, and the public highways that will be used in connection with the operation of the site (also see § 7.2, below),
- K. the elevation of the seasonal high groundwater table within or next to the proposed excavation,
- L. topsoil storage sites during the excavation phase,
- M. any easements encumbering the excavation site,
- N. photographs of the site as it exists at the time of application to provide a baseline record,
- O. a list of all equipment proposed to be used in connection with the operation, including the loaded weight of trucks and the specification of any crushers to be used or machine shop to be operated at the site,
- P. any water supply to be developed at or brought to the excavation site and its disposal,
- Q. the locations of any stockpiles of gravel to be established at the site.

The plan shall be drawn at a scale of 1" – 50' and have a contour interval of such scale as shall provide the Regulator with a thorough understanding of project scope. Sectional drawings may be required by the Regulator.

(See same of site excavation plan shown in Appendix A.)

## 5.2 Restoration Plan

The Applicant and all existing excavation site owners who are subject to RSA 155-E and these Regulations shall submit excavation site restoration plans.

As required by Chapter 481:3, New Hampshire laws of 1979, the owners of existing excavation operations must perform restoration in compliance with RSA 155-E:5. Owners of existing excavation operations shall submit a restoration plan and appropriate bonding to the Regulator within six (6) months of their registration under § 10.1 below, of these Regulations, or within one year of the effective date of these Regulations, whichever is earlier. The Excavation Permit Application Form shall be used for this submission.

The restoration plan shall meet, at a minimum, the requirements set forth in RSA 155-E:5. The character of the restored landscape shall blend with the surrounding natural features. The restored site shall be rendered in a condition that will not preclude its future use in a manner consistent with the Zoning Ordinance and map, if applicable.

The restoration plan, which shall also be submitted to the Merrimack County Conservation District for its review and comment, shall be prepared by a Licensed Land Surveyor and 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:

1. Restored topography and sub and surface drainage at the completion of the restoration phase,
2. The phasing of site restoration showing designated area and completion dates,
3. Soil conditioning specifications\*,
4. Seedling and mulching specifications\*, all seeding shall be done between loss of snow cover and June 13<sup>th</sup> or between August 30<sup>th</sup> and September 30<sup>th</sup>,
5. The plant materials to be used in restoration, their quantities and sizes, and,
6. Sections showing existing, excavated and restored topography configuration.

\*SEE APPENDIX B

## **SECTION VI. FEE SCHEDULE AND BOND**

### 6.1 Fees

- A. Hearing Fees: Applicant shall submit with his application the funds necessary to comply with the notice requirements of RSA 155-E:7, namely: that 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 fourteen (14) days' notice of the time and place of such hearing shall be published in a paper of general circulation in Pittsfield and a legal notice thereof shall also be posted in at least three public places in Pittsfield; the fourteen (14) 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.
- B. Excavation Fee: An excavation fee of \$50.00 shall be paid to the Regulator by the Applicant prior to issuance of an excavation permit pursuant to RSA 155-E:8.
- C. Annual Inspection Fee: An annual inspection fee which shall not exceed Five Hundred Dollars (\$500.00) shall be charged by the Regulator to defray the actual costs of such inspection.

### 6.2 Bond

A performance bond shall be required prior to the issuance of an Excavation permit. The bond must be sufficient to guarantee:

- A. Compliance with the permit.
- B. Restoration of the area to be excavated on a yearly basis in accordance with § 7.8 of these Regulations.
- C. Maintenance and/or restoration of access roads in accordance with § 7.2 of these Regulations.

The amount of the bond shall be set by the Regulator at the time of the permit issuance and will be based on current per acre costs of restoration projected to the time of restoration plus the cost of road maintenance for the duration of the permit. All bonds are to be made payable to and posted with the Town Treasurer and shall be in the amount of not less than 100% of the estimated costs and may be in an amount of



up to 125% of such costs to allow for estimation errors in cases of projects permitted for periods of excess of three years.

The bond shall not be released until after the Regulator has made a site inspection and certified the completion of the required restoration in accordance with the restoration plan. This site inspection shall occur not less than twelve (12) months after the initial seeding has been completed.

## **SECTION VII. SITE REQUIREMENTS**

The following site performance standards shall be incorporated by reference into the site excavation plan and conditions for permit approval and must be complied with in performing any excavation subject to RSA 155-E or these Regulations.

### **7.1 Depth of Excavation**

The excavation shall not go deeper than five (5) feet above the seasonal high groundwater table.

### **7.2 Excavation Site Access Roads**

Access roads leading to and from the excavation site shall intersect existing streets and roads at locations that have been duly approved by State 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 and 14 and the provisions for access under the Subdivision Regulations of the Town of Pittsfield shall be adhered to by the Applicant. Access over Class VI roads, bridges or other public ways to be utilized in the proposed excavation shall be clearly shown on the excavation/restoration plan. The maintenance and final condition of said roads, bridges and ways shall be defined in writing and made a part of said plan.

### **7.3 Topsoil**

Prior to the excavation of earth at a new excavation site, all topsoil material shall be stripped and stored for use in restoring the site upon the completion of excavation at that site. The removal of topsoil should be undertaken in a phased manner to minimize erosion potential.

### **7.4 Timber Removal**

The applicable New Hampshire Statutes and Regulations pertaining to forest practice and timber harvesting shall apply to the removal of vegetative cover at excavation sites.

#### 7.5 Visual Barriers

A vegetative or topographical buffer of a minimum of fifty (50) feet shall be maintained between surrounding streets, highways, commercial, and residential land uses and the excavation site. The Regulator shall direct the applicant as to specific requirements for the proposed excavation site and may in its discretion waive or alter the fifty (50) feet requirement in unusual situations. Existing visual barriers shall be retained to the extent possible and should be augmented where necessary in the conduct of the excavation project.

#### 7.6. Slopes

The Regulator may in its discretion specify excavation slopes that will provide a slope to minimize erosion from restoration work or heavy rain or snow load. A slope no steeper than 3:1 (i.e., 33%) will generally be considered acceptable, except for a long slope where a bench may be required. For shorter slopes when the soil is suitable a 2:1 (i.e., 50%) slope may be deemed acceptable.

#### 7.7 Standing Water

No excavation may cause or create, directly or indirectly, any standing body of water. The Regulator may grant, in writing, a special exception to allow same provided that the public health, safety and welfare will not be adversely affected. Such body of water shall be indicated on the plan and the exception noted.

#### 7.8 Rate of Restoration

All excavation must be restored so as to comply with RSA 155-E:5 and these Regulations by the end of the calendar year following the termination of the excavation. The Regulator may waive this requirement in cases of unusual hardship.

#### 7.9 Debris

Debris resulting from the excavation shall be buried or removed consistently with applicable State Regulations.

## 7.10 Waste Material

Excavation site shall be kept free of all discarded waste material; i.e., machine parts, cables, cans, etc.

## 7.11 Setback

If the proposed site is close to surface water, such as a stream, river or pond, particular attention shall be paid to the setback of the excavation from the water. The Regulator will need to be assured that, even in the case of a flood, the setback will be sufficient to prevent any water, which may have entered the excavation, from re-entering the surface water source.

## 7.12 Off-Site Highways

Off-site highways used in connection with the excavation site and its operation shall be used in compliance with applicable judicial, State and Town laws, ordinances and regulations.

# **SECTION VIII. PROHIBITED PROJECTS**

The Regulator shall not grant a permit:

- 8.1 Where an excavation is proposed below road level within fifty (50) feet of any highway right of way unless such excavation is for the purpose of said highway (RSA 155-E:4, I);
- 8.2 For excavation within fifty (50) feet of the boundary of a disapproving abutter or within ten (10) feet of the boundary of an approving abutter unless approval is requested by said abutter (RSA 155-E:4, II);
- 8.3 When the excavation is not permitted by zoning or other applicable ordinance (RSA 155-E:4, III);
- 8.4 When the issuance of the permit would be unduly hazardous or injurious to the public welfare (RSA 155-E:4, IV);
- 8.5 Where existing visual barriers in the areas specified in RSA 155-E:3, III would be removed, except to provide access to the excavation (RSA 155-E:4, IV);
- 8.6 Where the excavation would substantially damage quality of the ground

water and/or reduction in the long term volume of water of a known aquifer, so designed by the United State Geological Survey (RSA 155-E:4, VI); and accordingly the applicant shall at his expense submit to the Regulator evidence prepared by a qualified professional that:

1. The excavation will not detrimentally affect the quality of the ground water contained in the aquifer by directly contributing to pollution or by increasing the long term susceptibility of the aquifer to potential pollutants and
  2. The excavation will not cause a significant reduction in the long term volume of water contained in the aquifer or in the storage capacity of the aquifer, in cases where the Regulator determines there is the potential for damage to an aquifer by the proposed excavation;
- 8.7 When excavation is planned beneath or adjacent to inland surface waters in such manner that a permit is required from the Water Supply and Pollution Control Commission, the Water Resources Board, the Wetlands Board 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 (RSA 155-E:4, VII); or
- 8.8 Where the project cannot comply with the restoration provisions of RSA 155-E:5 (RSA 155-E, VIII).

## **SECTION IX. RENEWAL AND AMENDMENT OF EXCAVATION PERMIT**

### **9.1 Permit Renewal**

The applicant may renew the excavation permit and continue excavation operations by making application to the Regulator in the manner set forth in Section I of these Regulations. The excavation permit application need only supply that information which has changed from the previous application submission. Fees and bonding will be established by the Regulator for the renewal period.

### **9.2 Permit Amendment**

If adherence to the permit conditions (including the excavation/restoration plans) cannot be maintained, the owner shall apply to the Regulator for a permit amendment. An application shall be completed and submitted to the Regulator in the manner provided in Section IV of these Regulations

but need only supply that information, which has changed from that, previously supplied the Regulator.

## **SECTION X. EXCAVATION SITES IN OPERATION AS OF AUGUST 24, 1979**

- 10.1 All existing excavations in use as of August 24, 1979 must be registered with the Regulator if the owner thereof intends to continue such existing excavation without a permit pursuant to N.H. Laws 1979, 481:3. Such registration shall be on a form provided for such purpose by the Regulator. The applicant must submit satisfactory evidence of the existing excavation being in use as of August 24, 1979. Said form shall require the name and address of the owner(s) of the property, the name and address of the party designated by the owner(s) to excavate, if applicable, and the location by Pittsfield Tax Map number and by reference to Merrimack County Registry of Deeds by Book and Page. Said registration must be completed with six (6) months after the effective date of these Regulations. Sites not so registered with the Regulator shall be considered not to have been existing sites in use on said date and therefore, must comply with the applicable requirements of RSA 155-E and of these Regulations as a new excavation prior to use.

The Regulator may extend the registration period up to an additional six (6) months in the case of hardship.

## **SECTION XI. ADMINISTRATION**

### **11.1 Enforcement**

- A. The Regulator or its duly authorized agent is responsible for the enforcement of these Regulations as provided by RSA 155-E:10 and may suspend or revoke the permit of any person who has violated any provision of his permit, these Regulations or RSA 155-E or made a material mis-statement in the application upon which his permit is 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. To ascertain if there is compliance with these Regulations or RSA 155-E, the Regulator 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 the effective date of RSA 155-E or these Regulations. (See RSA 155-E:10, III).

## **SECTION XII. MISCELLANEOUS**

### **12.1 Appeals**

A person, aggrieved by the official decision of the Regulator, may appeal for a rehearing on such decision or any matter determined thereby as provided by RSA 155-E:9 and within the ten (10) days' time period therein specified.

### **12.2 Other Regulations**

Where these Regulations are in conflict with other local ordinances and/or Regulations, the more stringent shall apply to the extent not inconsistent with RSA 155-E or the purposes thereof.

### **12.3 Severability**

The invalidity or unenforceability of any provision of these Regulations shall not render invalid or unenforceable any other portion of these Regulations, which shall be severable.

These Regulations shall be effective upon the filing of same with the Board of Selectmen and the Town Clerk following a Public Hearing on same and their formal adoption and certification by the Regulator.