

**Moultonborough Planning Board**  
**P.O. Box 548**  
**Moultonborough, NH 03254**

The Moultonborough Planning Board at its Regular Meeting of March 22, 1989 voted unanimously to adopt the Moultonborough Earth Excavation Regulations, dated 2/27/89, pursuant to the directive and vote given at Town Meeting on March 15, 1989. At its Regular Meeting of April 12, 1989 the Planning Board voted to amend the Regulations, Section IV, Paragraph A with regards to "Grandfather Clause Provisions."

R. Natt King, Chairman  
Pamela J. Cariello  
James M. Scott, Secretary  
Christopher Tremblay  
Richard A. Wakefield  
Russell Wakefield  
George Jones, Alternate  
Richard C. Patten, Alternate

# Earth Excavation Regulations

## Town Of Moultonborough, New Hampshire

### Section I: Authority

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

### Section II: Purpose

The purpose of these Regulations is to enable the Town of Moultonborough to cope with the recognized safety hazards which open excavations create; to safeguard the public health and welfare; to preserve the town's natural assets of soil, water, forests, and wildlife; to maintain existing aesthetic features of the town's environment; to prevent land and water pollution; and to promote soil stabilization. It is also the purpose of these Regulations to require Planning Board review of existing commercial excavation, started since the passage of RSA 155:E, and to limit the expansion of existing commercial excavations without Planning Board review.

### Section III: Definitions

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| <b>Abutter</b>     | Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from land under consideration by the Planning 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. |
| <b>Applicant</b>   | The owner of the excavation site or persons designated by the owner, in writing, at the time of application.  |
| <b>Application</b> | A complete submission of information and plans as required by RSA 155-E, local regulations, and in the excavation permit application.   |
| <b>Aquifer</b>     | For the purposes of this Ordinance, a geological formation, group of formations, or part of a formation that is capable of yielding quantities of groundwater used for a municipal or private water supply.   |

<b>Dimension Stone</b>	Rock that is cut, shaped, or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and used for exterior or interior parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which sections of dimension stone are to be produced. Dimension stone does not include earth as defined in RSA 155-E:1, I.
<b>Earth</b>	Sand, gravel, rock, soil, or construction aggregate produced by quarrying, crushing, or any other mining activity or such other naturally-occurring unconsolidated materials that normally mask the bedrock.
<b>Excavation</b>	A land area which is used or has been used for commercial taking of earth, including all slopes.
<b>Excavation Pit Agreement</b>	An agreement between the excavation and procedures for material excavation.

**Section IV: Application For Excavation Permit**

**A. General Procedures**

Except where specifically exempted by section IV.B of these Regulations, an Excavation Permit must be granted by the Moultonborough 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.

Any owner of an existing excavation in use as of the date of the Planning Board's adoption of this Ordinance may continue such excavation without a permit, provided that as of the date of the adoption of this Ordinance, the following circumstances exist:

1. The excavation activities were actively being pursued at the time the Ordinance was adopted;
2. The area that the owner desires to excavate was clearly intended to be excavated, as measured by objective manifestations of that intention;
3. The continued operations do not, and/or will not, have a substantially different and adverse impact on the neighborhood.

Where an excavation is ongoing without a permit, the Planning Board may request that a permit be obtained. Upon such request, the owner/applicant must demonstrate the existence of the three factors described above.

Regardless whether a permit is required for excavation, the owner/applicant must perform restoration in compliance with RSA 155-E:5 and with the terms of this Ordinance

regarding site restoration within a reasonable period following the intended cessation of the excavation or any completed section thereof.

Any commercial excavation shall also seek a Special Exception from the Zoning Board of Adjustment.

In an appropriate case of hardship, and where consistent with the spirit and intent of RSA 155-E and of these Regulations, the Planning Board may waive the application of one or more of the requirements of these Regulations.

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 (to be reviewed by Carroll County Conservation District).
4. Performance security/bond to be posted against the amount of land to be excavated.
5. Copies of any federal, state and local permits required.
6. All applicable fees.

At the time of submission, the applicant shall forward a copy of the permit application to the Moultonborough Conservation Commission.

#### **B. Exempted Projects**

The following activities are exempted from the permit requirements except where prohibited by Section IV.C:

1. Excavation that is incidental to the lawful construction or alteration of a building or structure, or of a parking lot, driveway, or swimming pool.
2. Excavation that is incidental to agricultural or silvacultural activities, normal landscaping, or minor topographical adjustment.
3. Excavation from a granite quarry for the purpose of producing dimension stone.
4. 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 their contracting agent, provided that a copy of the Excavation Pit Agreement executed by the owner, the agent, and the governmental unit shall be filed with and accepted by the Planning Board prior to start of excavation.

#### **C. Prohibited Projects**

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.
2. For excavation within twenty (20) feet of the boundary of an abutter.
3. When the excavation is not permitted by zoning or other applicable Ordinances.
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 and the Moultonborough Aquifer Map, or other groundwater source.
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 Special Board on Dredge and Fill, or other state or federal agencies with jurisdiction over the premises; but the Planning Board may approve the application when all necessary permits have been obtained.
8. Where the project cannot comply with the Restoration Provisions of Section V of these Regulations.

**D. Submission Requirements**

The application for a 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, and the current names and addresses of all abutters of the land on which the excavation is proposed.

**2. Site Excavation Plan.**

A Site Excavation Plan prepared by a registered land surveyor 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 and their dimensions and bearings.
- b. Tax map reference; map and parcel number.
- 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 (2) foot intervals; benchmark from U.S.G.S. datum.

- 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 United States Geological Survey and/or the Moultonborough Aquifer Map, any surface water body or streams adjacent to the proposed excavation, and any sources of groundwater located within two hundred (200) feet of 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. Site Restoration Plan**

The Site 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 Site Excavation Plan. The Site 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. Start at fifty percent (50%) of plan completion or after twelve (12) months of non-use, whichever occurs first.
  - c.** Cross-section of sections showing restored topography configuration.
  - d.** Indicated 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.
  - f.** Detailed estimate of costs of Site Restoration and road repair at current per-acre and per-foot prices, respectively. (See Section VII C)
- 4.** Performance security as required in Section VII 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 149:8,a.
6. Such other information as the Planning Board may reasonably require to adequately evaluate the permit application, including Special Investigative Studies.

**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 landowner or person designated by the owner shall submit to the Planning Board an application for amendment of his Excavation Permit. The application amendment is subject to the same approval procedure as the original Excavation Permit.

**F. Permit Fees**

A fee of one hundred dollars (\$100.00) for costs of the application and for a permit payable to the Town of Moultonborough, plus abutters notification fee of one dollar (\$1.00) 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 Amended 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 five (5) days before the hearing date. The hearing notice shall also be posted in at least three (3) public places in the town, 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.

**Section V: Site Restoration**

Within twelve (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 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 excavation areas shall be graded to slopes sufficient to permanently sustain Carroll County Conservation District approved 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 Planning Board specifies different restoration.

**Section VI: Site Requirements**

**A. Topsoil.**

Prior to excavation of material, sufficient (approved by Carroll County Conservation District) 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 site excavation plan.

**C. AQUIFERS**

Within the aquifer area, no excavation shall take place within eight (8) vertical feet of the seasonal high water table. Test pits will be required over known aquifers.

**D. 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 and 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 shall be adhered to by the applicant and all driveways, entrances, exits, or approaches governed by those sections shall be shown on the site excavation plan.

**E. 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.

**F. Barrier**

A barrier to prohibit vehicular access when the site is not in operation shall be required.

**G Hours Of Operation**

Hours of operation shall be stipulated at the time of approval by the Planning Board.

**H. Dust Control**



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

**I. Road Repair**

The applicant shall be liable for the repair of town maintained roads which are damaged as a result of hauling earth from the site, including the cost of reports concerning the condition of the roads. The Planning Board may require the submission of Performance Security according to the provisions of Section VI of the Regulations to insure adequate repair of damaged road segments following site restoration.

**Section VII: 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 and amount with surety and conditions 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 subparagraph 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 Moultonborough, but in no event shall a passbook be the exclusive form of security.
  - 2.** Security Bond issued by a Surety Company authorized to do business.
  - 3.** Irrevocable Letter Of Credit.
- 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 applicant shall file with the Board a detailed estimate of all costs of site restoration and road repair at current per-acre and per-foot prices, respectively. The Board, after considering these estimates, shall determine the amount of the Performance Bond required.
- 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 Section V, A through 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.

**Section Viii: 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 provision of his 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. It is not the intent of these Regulations to supersede or impair the exercise of any authority which may exist under RSA 31:41-B.

**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 Carroll County Registry of Deeds. A copy of the Regulations shall also be forwarded to the New Hampshire Office of State Planning.