

3.1.2 Local Excavation Standards

3.1.2.1 Objectives and Characteristics:

- 3.1.2.1.1 The purpose of this section is to establish regulations for the removal of sand, gravel, rock, loam, construction aggregate and other materials from a site for commercial purposes. These standards will minimize any adverse effects on the land caused by the excavation activities..

3.1.2.2 General Requirements:

- 3.1.2.2.1 Excavation is an allowed use in all zones, except the Conservation Overlay District, in accordance with the Section 3.1.2 of the Zoning Ordinance, as most recently amended...
- 3.1.2.2.2 Permanent Manufacturing Plants for the purpose of rock crushing are allowed in the C-I, C-II, I-I, and I-II zones.
- 3.1.2.2.3 Temporary Manufacturing Plants for the purpose of rock crushing are allowed in all zones except the Conservation Overlay District.

3.1.2.3 Definitions pertaining to excavation. The following words or phrases are selected to clarify their common usage in the interpretation of this section..

- 3.1.2.3.1 **Earth:** "soil" (see below) and bedrock .
- 3.1.2.3.2 **Excavation:** means a land area which is used or has been used for the commercial taking of earth including all slopes.
- 3.1.2.3.3 **Loam:** defined in paragraph 2.1 of Section 641 of the *Standard Specifications for Road and Bridge Constructions* of the State of New Hampshire, Department of Public Works and Highway, 1974, or as most recently published.
- 3.1.2.3.4 **Pit Agreement:** the documentation identified in Section 106 of the *Standard Specifications for Road and Bridge Constructions* of the State of New Hampshire, Department of Public Works and Highway, 1974, or as most recently published.
- 3.1.2.3.5 **Permanent Manufacturing Plant:** a rock crushing plant that operates for more than sixty (60) days. It is usually set on a concrete foundation.
- 3.1.2.3.6 **Soil:** "overburden" as described in *Basic Soils Engineering*, by B.K. Hough, Second Edition, 1969, a copy of which is on file with the Department of Public Works.
- 3.1.2.3.7 **Temporary Manufacturing Plant:** a temporary rock crushing plant used to produce crushed gravel or crushed stone product to be permitted in operation for not more than sixty (60) days.

3.1.2.4 Permit Required & Exemptions.

- 3.1.2.4.1 No owner shall excavate or allow any excavation of earth on his premises without first obtaining a permit.
- 3.1.2.4.2 Exemptions to this permit requirement are:
 - 3.1.2.4.2.1 Excavation for eventual residential occupancy or use that is exclusively incidental to the lawful construction or alteration of a building or structure or the lawful construction of a parking lot or way, including a driveway, on a portion of the premises where removal occurs.
 - 3.1.2.4.2.2 Excavation for the eventual nonresidential occupancy or use that is in conformance with a site plan approved and pursuant to the Londonderry Site Plan Regulations
 - 3.1.2.4.2.3 Excavation for subdivision roadway construction that is in accordance with an approved subdivision plan on record in the Rockingham County Registry of Deeds.

- 3.1.2.4.2.4 Excavation that is incidental to agricultural or silvicultural activities, normal landscaping, or minor topographical adjustment.
- 3.1.2.4.2.5 Excavation from an area contiguous to or from contiguous land in common ownership with stationary manufacturing and processing plants which were operating on January 1, 1979, provided that such excavation was then permitted, or exempted from permit, by the Board of Selectmen pursuant to the Londonderry Zoning Ordinance.
- 3.1.2.4.2.6 Excavation performed exclusively for the lawful construction, reconstruction, or maintenance of a Class I, II, III, IV, or V Highway, as defined in RSA 230, by the Town of Londonderry or the State of New Hampshire, to a contracted agent of either governmental unit, which has jurisdiction for said highway, provided that any pit agreement entered in conjunction with said excavation shall be filed with and accepted by the Planning Board prior to the start of excavation; such excavation, however, shall not be exempt from the provisions of the express operational standards of RSA 155-E:4-a and the express reclamation standards of RSA 155-E:5 and 155-E:5a.
- 3.1.2.4.2.7 Excavation less than 500 cubic yards of earth provided that:
 - 3.1.2.4.2.7.1 Following excavation, restoration of the area shall be in accordance with Section 3.1.2.8.
 - 3.1.2.4.2.7.2 All excavating, handling, processing, and storing facilities are removed from the site.
 - 3.1.2.4.2.7.3 The site is cleared of all stumps, logs, and boulders.
 - 3.1.2.4.2.7.4 The site is regraded to the approximate level of the adjoining land.
 - 3.1.2.4.2.7.5 The site is in accordance with Section 3.1.2.8.1.7
 - 3.1.2.4.2.7.6 The duration of the excavation process, including land restoration, is less than ninety (90) days.
- 3.1.2.5 **Application for Permit.** Any owner will apply to the Planning Board prior to excavation of his land and send a copy of the application to the Conservation Commission. The application form shall be supplied by the Planning Board.
- 3.1.2.6 **Excavation for which Permits will not be granted**
The Planning Board shall not grant a permit:
 - 3.1.2.6.1 Where an excavation is proposed below road level within fifty (50) feet of any highway, unless such excavation is for purpose of said highway.
 - 3.1.2.6.2 When excavation is within the required boundary of a disapproving abutter or within ten (10) feet of the boundary of an approving abutter, unless approval is requested by said abutter.
 - 3.1.2.6.3 When the issuance of the permit would be unduly hazardous or injurious to the public welfare.
 - 3.1.2.6.4 Where existing visual barriers in the areas specified in RSA 155-E:3(III) would be removed, except to provide access to the excavation.
 - 3.1.2.6.5 Where the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey and the Town of Londonderry Water Resource Management and Protection Plan dated Feb. 1991, or as most recently amended
 - 3.1.2.6.6 When the excavation requires land use permits from state or federal agencies; but the Planning Board may approve the application when all necessary land use permits have been obtained.
 - 3.1.2.6.7 Where the project cannot comply with the restoration provisions of Section 3.1.2.8.

3.1.2.7 **Minimum and Express Operational Standards**

The following are the general conditions with which all excavation work must comply, following issuance of a permit:

- 3.1.2.7.1 No excavation shall be permitted below road level within fifty (50) feet of the right of way of any public highway as defined in RSA 229:1 unless the excavation is for the purpose of said highway.
- 3.1.2.7.2 If the project site abuts a zoned Residential, Commercial III, or Commercial IV: No excavation shall be permitted within seventy-five (75) feet of the boundary of a disapproving abutter, within one thousand (1000) feet of any building which either existed or for which a building permit has been issued at the time the excavation is commenced.
- 3.1.2.7.3 If the site abuts a lot zoned Commercial I, II or Industrial: No excavation shall be permitted within fifty (50) feet of the boundary of any disapproving abutter, within one thousand (1000) feet of any dwelling unit which either existed or for which a building permit has been issued at the time the excavation is commenced, within one hundred (100) feet of any other building which either existed or for which a building permit has been issued at the time the excavation is commenced.
- 3.1.2.7.4 No excavation will be permitted within seventy-five (75) feet of any great pond, navigable river, or other standing body of water ten (10) acres or more in area or within twenty-five (25) feet of any other stream, river, or brook which normally flows throughout the year, or any naturally occurring standing body of water less than ten (10) acres, Named Wetland from Section 2.6.3.9, prime wetland as designated by RSA 482-A15, or any other wetland greater than five (5) acres in area as defined by the Wetlands Board.
- 3.1.2.7.5 Vegetation shall be maintained or provided within the peripheral areas as required by paragraphs 3.1.2.7.1 through 3.1.2.7.4.
- 3.1.2.7.6 Drainage shall be maintained so as to prevent the accumulation of free-standing water for prolonged periods. Excavation practices which result in continued siltation of surface water supplies are prohibited.
- 3.1.2.7.7 No fuels, lubricants, or other toxic or polluting materials shall be stored on site unless in compliance with state laws or rules pertaining to such materials .
- 3.1.2.7.8 Where temporary slopes will exceed a grade of 1:1, a fence or other suitable barricade shall be erected to warn of danger or limit access to the site.
- 3.1.2.7.9 All original topsoil shall be stockpiled on the site and spread on the final slopes. No original topsoil, including loam, may be removed from the site unless written permission therefore is given by the Planning Board.
- 3.1.2.7.10 Interim, i.e., daily, and final slopes shall not be left steeper than three to one (3:1), unless written permission is obtained from the Planning Board, who may require specific soils data to be obtained at the expense of the owner.
- 3.1.2.7.11 If the slope intervals are higher than twenty (20) feet they shall be terraced at intervals of twenty (20) feet, terraces to be at least five (5) feet wide.
- 3.1.2.7.12 Hours of excavation shall be limited, such that no work shall take place prior to 7:00 a.m., after 7:00 p.m.; prior to 9:00 a.m., after 5:00 p.m. on Saturdays; or on Sundays or holidays.
- 3.1.2.7.13 Blasting shall be in accordance with the Town of Londonderry Regulations.
- 3.1.2.7.14 All structures and processing equipment shall be setback a minimum of one thousand (1000) feet from a building which either existed or for which a building permit has been issued at the time the excavation is commenced, two hundred fifty (250) feet from all property lines.
- 3.1.2.7.15 Maximum height of structures and processing equipment shall be fifty (50) feet from the ground surface where the equipment is located.

- 3.1.2.7.16 The operation shall comply with all applicable federal, state, and local air pollution control laws and regulations. Dust shall be controlled so that there are no visible emissions present at the property boundary.
- 3.1.2.7.17 Devices to muffle equipment noise, landscape earth berms, screen planting, decorative screen walls or other barriers or devices shall be installed as necessary to achieve compliance with the Town of Londonderry noise control standards. At the property line, noise shall not exceed a maximum level of seventy-five (75) decibels.
- 3.1.2.7.18 Operation and other activities, other than blasting, shall cause no inherent or recurring generated vibrations perceptible without instruments at any point along the property line.

3.1.2.8 Minimum and Express Reclamation Standards

Within twelve (12) months after the expiration date in the permit or the completion of the excavation, whichever comes first, the owner of the excavated land shall restore the area affected by the excavation to meet each of the following standards:

- 3.1.2.8.1 Except for exposed rock ledge, said area shall be covered with vegetation suitable to prevent erosion and with soils suitable to sustain such vegetation, thus:
 - 3.1.2.8.1.1 No area shall be left in such a condition that erosion of the area after completion of the work may result in water pollution by silt or other deleterious substances.
 - 3.1.2.8.1.2 The area will be left in such shape and condition that material will not wash, block, or obstruct drainage ways.
 - 3.1.2.8.1.3 Unless the area is intended to serve as an approved pond for recreation purposes, the area shall be left as free draining as practicable.
 - 3.1.2.8.1.4 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.
 - 3.1.2.8.1.5 Unless otherwise allowed in writing by the Planning Board, all disturbed areas shall be spread with original topsoil or strippings, if any, to a minimum four (4) inch depth.
 - 3.1.2.8.1.6 Unless waived in writing or otherwise stipulated by the Planning Board, areas from which trees have been removed shall be planted with two-year old plants or plants furnished under a standard nursery order. Seedlings without center buds and seedlings with pruned roots will not be accepted. Seedlings will be set out under horticultural practice at eight-foot spacing in both directions, all as approved by the Planning Board.
 - 3.1.2.8.1.7 Areas from which low brush or grass has been removed shall be covered with material capable of supporting vegetation and seeded in accordance with *Vegetating New Hampshire Sand and Gravel Pits*, revised April 1991, or as most recently amended.
 - 3.1.2.8.1.8 Unless written permission has been obtained by the Planning Board to preserve fire or other access roads (paved or unpaved) to excavated areas, such roads shall be obliterated.
- 3.1.2.8.2 Earth and vegetative debris resulting from excavation shall be buried or removed.
- 3.1.2.8.3 The elimination of any standing bodies of water created in excavation project as may constitute a hazard to health and safety, unless the Planning Board specifies different restoration.

3.1.2.9 Amendment of Permit

If 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 restoration plan, the owner shall submit an application for amendment of his excavation permit, which application shall be subject to approval in the same manner as provided for an original excavation permit.

3.1.2.10 Hearing on Applications

Prior to the Planning Board approving an application for an excavation permit or an application for an amended excavation permit, a public hearing shall be held in accordance with RSA 155-E:7.

3.1.2.11 Issuance of Permits; Prerequisites

If the Planning Board approves the application after a public hearing and determines it is not prohibited by Section 3.1.2.6 above, the Board shall grant an excavation permit only after:

- 3.1.2.11.1 Town Receipt of an excavation permit fee as shown in 3.1.2.15.
- 3.1.2.11.2 Unless waived by the Planning Board, receipt by Finance department of a bond or other surety in an amount computed by the Department of Public Works and approved by the Planning Board as being reasonably sufficient to guarantee permit compliance.
- 3.1.2.11.3 Unless waived by the Planning Board, receipt by the Planning Board of a letter by counsel for the Planning Board certifying all documents as to form, said counsel fees to be paid by the owner.

3.1.2.12 Posting, Transferability, Expiring Dating and Conditions on Permits

- 3.1.2.12.1 A copy of the permit shall prominently be posted at the excavation site or the principal access thereto.
- 3.1.2.12.2 A permit shall not be assignable or transferrable without the prior written consent of the Planning Board.
- 3.1.2.12.3 A permit shall specify the date upon which it expires.
- 3.1.2.12.4 The Planning Board may include in a permit reasonable conditions as are consistent with the purpose of RSA 155-E, including the provision of visual barriers to the excavation.

3.1.2.13 Rehearings

- 3.1.2.13.1 If the Planning Board disapproved 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 a rehearing shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable, and said appeal shall be filed within ten (10) days of the date of decision appealed from. The Planning Board shall grant or deny the request for rehearing within ten (10) days, and if the request is granted, a rehearing shall be scheduled within thirty (30) days.
- 3.1.2.13.2 Any persons 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 677:4-14.

3.1.2.14 Violation and Penalties; Enforcement

- 3.1.2.14.1 The Planning Board or its duly authorized agent may suspend or revoke the permit of any person who has violated any provision of his permit or this chapter or made a material misstatement in the application upon which his permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with Section 3.1.2.13.
- 3.1.2.14.2 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 his permit or this chapter and take such action as may be necessary to be in compliance with his permit and this chapter. If the Superior Court issues such an order, the Planning Board or person affected, as the case may be, shall have judgement for all costs and attorney fees in seeking such an order.
- 3.1.2.14.3 To ascertain if there is compliance with this chapter, a permit issued hereunder or an order issued hereunder, the Planning Board or its duly authorized agent may enter upon land on which there is reason to believe an excavation is being conducted or has been conducted since January 1, 1979.
- 3.1.2.14.4 Whoever violates any provision of this chapter, a permit issued hereunder or valid order issued hereunder shall be guilty of a misdemeanor, if a natural person, or guilty of a felony, if any other person.

- 3.1.2.15 **Fees:** The owner is responsible for fees in accordance with the requirements of the Londonderry Site Plan Regulations, as most recently amended.

3.1.2.16 Specifications for Plans and Documents

- 3.1.2.16.1 Specifications for plans and documents shall be in accordance with the Town of Londonderry Site Plan Regulations unless otherwise stated in this section.
- 3.1.2.16.2 Site Plan: the site plan shall consist of a development plan, mitigation plan, and reclamation plan. The site plan shall be processed in accordance with the Town of Londonderry Site Plan Regulations.
 - 3.1.2.16.2.1 **Development Plan:** The Development Plan shall show how the mining and excavation uses proposed on the site conform to Town Regulations. The Development Plan includes a site plan that shows the location of physical site features and extraction and processing features:

- 3.1.2.16.2.1.1 Lot boundary (metes and bounds)
 - 3.1.2.16.2.1.2 Area to be mined and excavated
 - 3.1.2.16.2.1.3 Existing topography at contour intervals of five or fewer feet, based on USGS
 - 3.1.2.16.2.1.4 Wooded and heavily vegetated areas
 - 3.1.2.16.2.1.5 The location and size of all underground and overhead utilities. The location of all manholes, transformer poles and other appurtenant facilities or structures shall be shown
 - 3.1.2.16.2.1.6 Location and extent of any stone walls, ledge outcroppings, wells, existing buildings, septic systems, etc.
 - 3.1.2.16.2.1.7 Existing and proposed fencing, buffers or visual barriers, including height and materials
 - 3.1.2.16.2.1.8 The location of existing buildings, structures, septic systems and wells within one hundred fifty (150) feet of the property boundary
 - 3.1.2.16.2.1.9 Any existing or proposed accessory facilities/activities
 - 3.1.2.16.2.1.10 The location of all driveways and road intersections within two hundred (200) feet of the property boundary
 - 3.1.2.16.2.1.11 Existing and proposed access roads, including width and surface materials
 - 3.1.2.16.2.1.12 Parking and loading areas
 - 3.1.2.16.2.1.13 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 locations and soil data
 - 3.1.2.16.2.1.14 The duration of operation, hours of operation, and the quantity of materials to be removed
 - 3.1.2.16.2.1.15 Proposed routes of truck traffic from the site within the Town of Londonderry.
- 3.1.2.16.2.2 **Mitigation Plan:** The Mitigation Plan relates to the development plan and includes a site plan, narrative and cross-section that explain, illustrate and show mining procedures, practices, policies and methods that meet operational standards. The Mitigation Plan shall be at the same scale as the development plan, and covering the same area. The Mitigation Plan shall include:
- 3.1.2.16.2.2.1 Elevations for the floor of the pit when mining is completed (prior to restoration)
 - 3.1.2.16.2.2.2 The cross-section of the anticipated depth of extraction and ground slope when mining is completed (prior to restoration)
 - 3.1.2.16.2.2.3 All stockpile areas on site
 - 3.1.2.16.2.2.4 Drainage study. The drainage study should be in accordance with the Town of Londonderry Site Plan Regulations
 - 3.1.2.16.2.2.5 Erosion and sedimentation plan. This plan shall illustrate how erosion, sedimentation and nonpoint source pollution and contamination of the water table, nearby water bodies, streams, rivers, etc. will be avoided
 - 3.1.2.16.2.2.6 A narrative explaining the actions the operator will take to reduce noise, dust, litter, and vibration. Also, where the operator will provide safety fencing and detail of the type of fencing
- 3.1.2.16.2.3 **Reclamation Plan:** The Reclamation Plan shows how the site is to be restored or redeveloped after all mining is concluded. The Reclamation

Plan shall show either the final reuse and site configuration after the mining and excavation is ended or the interim holding use of the site and ground surface treatment until a later end-state reuse of the site is identified. The Reclamation Plan shall be at the same scale as the development plan, and covering the same area. The Reclamation Plan shall include:

- 3.1.2.16.2.3.1 All boundaries of the area proposed for reclamation
- 3.1.2.16.2.3.2 Final topography of the area proposed for reclamation
- 3.1.2.16.2.3.3 Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities
- 3.1.2.16.2.3.4 The location of buried earth or vegetative debris
- 3.1.2.16.2.3.5 Schedule of final reclamation activities including seeding mixtures, cover vegetation, fertilizer types and rates
- 3.1.2.16.2.3.6 Subsequent use of the site, if known or anticipated.

3.1.2.17 Design Standards and Requirements for Improvements

Design standards and requirements for improvements shall be in accordance with the Town of Londonderry Site Plan Regulations unless otherwise noted in Section 3.1.2.

3.1.2.18 Assurances for Completion and Maintenance of Offsite Improvements

- 3.1.2.18.1 A financial security shall be submitted to the Town of Londonderry for the repairing of damage to public highways and infrastructure (bridges, culverts, etc.) caused by truck traffic to and from the site. The financial security shall be in accordance with the Town of Londonderry Site Plan Regulations.
- 3.1.2.18.2 A financial security shall be submitted for any offsite improvement associated with the approved plan. The financial security shall be in accordance with the Town of Londonderry Site Plan Regulations.

3.1.2.19 Reclamation Bond

The owner shall submit a financial security to the Town of Londonderry to insure the reclamation of the site. The financial security shall be in accordance with the Town of Londonderry Site Plan Regulations.

3.1.2.20 Annual Renewal

The owner shall complete and submit the *Excavation Renewal Form* (available in the Planning Department) on or before September 1 of each year. The Planning Board's duly authorized agent shall inspect the site, review the reclamation bond and submit a report to the Planning Board regarding the project's conformance with the approved site plan. The permit will be acted upon by the Planning Board on or before December 31 of each year.

3.1.2.21 Inspection

The Planning Board or its duly authorized agent shall have access to the excavation site at all times in order to inspect the site to insure compliance with the approved site plan.