

Chapter 201 EARTH MOVING

**HISTORY: Adopted by the Planning Board of the Town of Henniker 5-22-1989.
Amended 9-26-2012.**

~ 201-1. Authority.

Pursuant to the authority vested in the Henniker Planning Board by the voters of the Town of Henniker at the 1981 Town Meeting (Article 32) and Chapter 155-E:11 of the New Hampshire Revised Statutes Annotated, the Henniker Planning Board adopts the following regulations, which shall govern the excavation of earth materials from land within the Town of Henniker. These Regulations shall be in addition to those requirements set forth in RSA 155-E.

~ 201-2. Purpose and scope.

- A. **Purpose.** The purpose of this regulation is to minimize hazards, which open excavations create, to:
- (1) Safeguard the public health and welfare.
 - (2) Preserve our natural assets of soil, water, forests and wildlife.
 - (3) Maintain aesthetic features of our environment.
 - (4) Prevent land and water pollution.
 - (5) Promote soil stabilization.
- B. **Scope.** Unless specifically noted as being exempt under the provisions of RSA 155-E, no owner of land in the Town of Henniker shall allow or conduct the excavation of earth materials without first obtaining Planning Board approval and a permit from the Regulator.

~ 201-3. Definitions.

In addition to the definitions specified in RSA 155-E, the following terms shall have the meanings indicated:

ABUTTER -- Defined in NH RSA 672:3

APPLICANT -- The owner of the property to be excavated or the owner's agent as designated in the excavation application.

EXCAVATION PERMIT -- The permit to conduct earth removal activities issued by the Regulator.

EXCAVATION PERMIT APPLICATION -- A form and associated documents, maps, diagrams and information regarding proposed excavation activities submitted to the Regulator with the required fees.

EXPANSION -- An excavation operation that exceeds the limits of the current permit.

FEE (APPLICATION) -- The required fee to be paid upon submission of an excavation

permit application to the Regulator as determined by the Board from time to time.

REGULATOR -- The Henniker Planning Board.

STATIONARY MANUFACTURING AND/OR PROCESSING PLANTS -- Structural improvements, which are placed upon the site for the purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated earth materials.

~ 201-4. Application for excavation.

- A. The applicant for an excavation permit shall submit to the Regulator a completed permit application form, all required submission documents as enumerated and defined below and the required permit fee. Submission documents include, but are not limited to, the following:
- (1) Application form to be supplied by the Regulator or its designated agent.
 - (2) Excavation plan which contains the following information:
 - (a) A locus or perimeter map or plan of the entire parcel with the proposed excavation/removal areas delineated.
 - (b) The name and address of the owner of the land proposed for excavation, the person(s) who will actually perform the excavation work and the names and addresses of all abutters of the premises.
 - (c) Lot lines, public streets and zoning district boundaries located within 200 feet of the proposed work area.
 - (d) Lakes, ponds, rivers, streams, wetland areas and any other significant natural features within 200 feet of the excavation. This distance may be waived if access is denied to an adjoining property not owned by the applicant.
 - (e) Location of man-made features within 250 feet of the limit of excavation, such as buildings, structures, power lines and other utilities, and private roads or drives. This distance may be waived if access is denied to an adjoining property not owned by the applicant.
 - (f) Location and nature of proposed visual barriers of the site. Such visual barriers shall consist of vegetation that provides year round screening.
 - (g) The elevation of the highest annual average groundwater table within, or next to, the site and the location of test pits or borings to four feet below the planned excavation level.
 - (h) Existing and proposed topography of the site drawn on a map with a horizontal scale of no less than one inch equals 100 feet, with five-foot contour intervals or vertical scale of one inch equals 10 feet (one inch equals 50 feet suggested horizontal scale). Benchmarks shall be clearly shown and located.
 - (i) The location of proposed topsoil storage areas or sites during the excavation phase.
 - (j) Estimates of the site acreage to be excavated and of the volume of earth material to be removed from the site.
 - (k) Locations of proposed buildings, structures and operating machinery to be used on the site, including designated refueling and maintenance area with pollution control plan.

- (l) Proposed locations of and provisions for vehicular traffic, service roads, controls for entrance and exit, parking and fencing of the work area. Site access (driveway) shall be designed to facilitate emergency access at all times with two-way traffic.
 - (m) A surface water runoff or drainage plan (including drainage calculations by a licensed professional civil engineer) and the location(s) of any proposed water retention ponds necessary to minimize erosion and sedimentation.
 - (n) A narrative description of:
 - [1] Project duration and phasing.
 - [2] Requested hours of operation.
 - [3] Proposed methods of disposal of boulders, stumps, vegetation and other debris.
 - [4] Proposed use of explosives and their means of storage.
 - [5] Routing and means (including limits) for transportation of materials from the site, establishing load limits and vehicle trips per day. The Regulator may require a traffic study and off site improvements if high traffic volumes are anticipated or if there are any traffic safety concerns on Town roadways that will be aggravated where vehicles entering/exiting the site are anticipated to travel.
 - (o) Consenting excavators whose excavations abut along a common boundary line may request a waiver of setback referenced in RSA 155-E above so the common boundary may be lowered. Such a request shall be made in writing and signed by both excavators. The Regulator shall acknowledge this agreement in writing to both excavators.
 - (p) The Regulator shall require the preparer of a plan to be a licensed land surveyor or a licensed professional civil engineer.
- (3) **Reclamation plan.** All applications for an excavation permit shall include a reclamation plan for the site of excavation work which shall contain the information required below:
- (a) Locations of permanent bounds of lot and tax lot number.
 - (b) A map or maps showing, at a horizontal scale not exceeding one inch equals 100 feet, all proposed topography after reclamation of the site.
 - (c) A narrative description of the reclamation process, including specifications of proposed soil conditioning methods, seeding and mulching methods and the quantities, types and sizes of plant materials to be used in restoring the site. All planting materials & seeding used in the reclamation process shall be suitable non-invasive species and the use of native species is encouraged wherever possible.
The New Hampshire Cooperative Extension Office should be consulted as a resource for appropriate planting & seeding species.
 - (d) Reclamation plans must, at a minimum, meet the requirements set forth in RSA 155-E, as well as providing a sufficient bond or other surety to the Town to ensure the reclamation is completed, and shall be designed so as to meet these minimum standards and requirements. Reclamation plans must include proposed finished

grades, site cross sections at 100 foot intervals (min.) that depict the existing and proposed conditions, any proposed permanent drainage facilities (such as swales, level spreaders, ponds, pipes, drainage structures and other drainage elements), planting and/or seeding specifications, erosion control measures, construction notes and details, maintenance requirements for any permanent drainage facilities, and other information to fully detail the proposed work to the satisfaction of the Town.

(e) A written estimate detailing the total costs of restorations, prepared by a licensed professional engineer.

(4) **Required state and/or federal permits.** Any excavation, which requires permits from any state or federal agency with regulatory jurisdiction over an area proposed for excavation, must submit, as part of the application for excavation permit, the necessary state or federal permits.

B. Authority to waive certain submission documents.

- (1) The Regulator may waive certain requirements of Chapter 201 for proposed excavations under the following conditions:
 - (a) Strict application of certain requirements would create an undue and excessive hardship for the applicant; or
 - (b) The proposed excavation would have very limited impact on the site, its abutters and the Town of Henniker.
- (2) Applicants must request in writing the waiver of specific requirements of Chapter 201 as part of their application.

~ 201-5. Procedure for excavation permit applications.

- A. Excavation permit applications shall be submitted to the Regulator. Upon finding that an application is sufficiently complete to enable the Regulator to render an informed decision and having formally acted upon any waiver request, the Regulator shall accept the application and schedule a public hearing to be held within 30 days of the date of acceptance.
- B. The Regulator must solicit input from and provide material for consideration to the Henniker Conservation Commission, the Building Inspector/Code Enforcement Officer, Fire Department, and Town Engineer on the application,.
- C. Public notice of the hearing shall be made and individual notices shall be made to all abutters by certified mail return receipt, at the expense of the applicant.
- D. The Regulator, in considering any application, shall be guided by considerations of the public health, safety and general welfare, giving particular consideration to the following factors:
 - (1) Soil erosion due to water and/or wind.
 - (2) Drainage.
 - (3) Potential damage to surface waters due to sedimentation and silting.
 - (4) Lateral support slopes and grades to all adjacent properties.
 - (5) Impacts to adjacent properties, land, bridges and roads.
 - (6) The purposes of RSA 155-E, relevant zoning ordinances and regulations.

- (7) Such other factors which may relate to and impact upon the orderly, coordinated and harmonious physical development of the Town of Henniker.
- E. The Regulator shall, within 65 days of the public hearing, or any continuance thereof, approve, approve with conditions or disapprove the application. Notice of the decision shall be recorded in the minutes of the meeting at which such action is taken and shall be forwarded to the applicant along with one of the following:
 - (1) A statement of the decision approving the application; or
 - (2) A statement of the decision approving the application which contains the specific conditions of approval which, in the opinion of the Regulator, are necessary to protect the public health and safety and adjoining properties from potential hazards resulting from the applicant's activities under the permit or other purpose of RSA 155-E; or
 - (3) A statement of the decision disapproving the application, giving the reasons for the disapproval.
- F. Upon approval by the Regulator of a written application for excavation permit and receipt of the required excavation fee and any bond required by the Regulator, an excavation permit shall be issued to the owner of record or his or her designated agent.

~ 201-6. Conditions of approval.

For any permit issued pursuant to the provisions of this regulation, the following conditions shall apply unless, upon written request of the applicant, and agreement by the Regulator, specific conditions of approval are waived due to special site conditions, the unnecessary hardship they would impose or because of the nature of the proposed excavation.

- A. All equipment for sorting, washing, crushing, classifying, drying, processing and treating, if approved by the Regulator, shall not be used closer than 100 feet to any public street or to any adjoining property line.
- B. Suitable off-street parking shall be provided.
- C. Explosives shall be used in accordance with the regulations for storage and handling of explosives as published by the State of New Hampshire.
- D. The Regulator shall establish hours of operation for each application. No operations are permitted as follows:
 - (1) Between the hours of 7:30 p.m. and 7:30 a.m.
 - (2) Sundays.
 - (3) Federal Holidays.
- E. The applicant shall post a bond or other surety with the Town Finance Director prior to the issuance of any permit. The amount shall be determined by the Regulator and shall be sufficient to cover all costs of reclamation according to the approved plan, including excessive wear and tear of town roads. The bond will be released upon satisfactory completion of reclamation as prescribed in the approved plan and after sufficient time has elapsed (1-3 growing seasons) to ensure that the reclamation process was successful.
- F. When the scope of a project for which a permit has been issued is proposed to be altered so as to affect either the size or location of the operation, the owner shall submit

an application for amendment of the approved plan. Such application for amendment shall be subject to approval in the same manner as provided for in this Regulation.

- G. The Regulator will determine and include as a condition of permit approval the amounts of land area which may at any one time be unrestored or under active excavation. Excavation operators are hereby encouraged to restore excavated areas of the site as they are completed.

~ 201-7. Administration and enforcement.

A. Inspections:

- (1) The Regulator shall designate an agent as the enforcement official of the Regulator. The agent shall make annual inspections of all permitted and exempt operations. Inspections may be made more frequently if there are questions of alleged violations of the permit or report for exempt operations, as required under RSA 155-E:2(I)(d).
- (2) The Planning Board and the agent, in performance of their functions, are authorized to enter upon any land and make any examination or surveys as are necessary per RSA 155:E 10, III.
- (3) If nonconformance is certified by the agent, written notice shall be forwarded to the owner & operator within 5 days of such non-conformance being certified, return receipt requested, which shall identify all violations. Five business days after notification of nonconformance has been received by the owner & operator, the agent shall re-inspect the excavation site. If the violations and nonconformance identified in the notice have not been corrected, or an acceptable plan with a timetable is not in place and approved by the Regulator, then a hearing shall be called (within 30 days) by the Regulator to consider revocation of the excavation permit.
- (4) If an unsafe or hazardous condition is determined to exist by the agent, then the agent may order an immediate suspension of excavation activities and establish a reasonable time by which the unsafe or hazardous condition must be corrected.
- (5) If the time set by the agent for correction of an unsafe or hazardous condition expires without said condition being corrected, within 30 days of being notified of such condition, the Regulator shall call a hearing pursuant to RSA 676:4a to consider revocation of the permit and forfeiture of the bond with its proceeds used to correct the unsafe or hazardous condition and restore the site in accordance with the approved plan.

- B. **Appeals.** Any interested person affected by the Regulator's decision to approve or disapprove an application for an excavation permit, or an amendment thereto or any suspension or revocation of an excavation permit, may appeal to the Regulator for a rehearing pursuant to the procedures in RSA 155:E9.

- C. **Fees.** The Regulator will recommend fees to the Board of Selectmen to adopt, including but not limited to public notices, inspections, engineering review, and other services and expenses that might be necessary.

- D. **Bonding.** Prior to issuance of a permit by the Regulator, the applicant shall submit to the Regulator a bond or other surety in an amount determined by the Regulator sufficient to guarantee compliance with the permit. The Regulator shall, in determining the amount of

bond required, consider factors including, but not limited to:

- (1) The estimated cost of restoration provided by the applicant in the restoration plan.
- (2) The type(s) and quantity of soils and vegetation to be used in restoration.
- (3) The nature of the excavation itself, proposed finish slopes and elevations.
- (4) The estimated cost of repairing any potential damage to town roads or facilities caused by the transportation of earth materials outside of the methods and limits authorized by the permit.

E. Excavation permit amendments.

- (1) Permit holders wishing to amend Planning Board excavation approval and existing, lawfully issued permits shall follow the procedures outlined in ~ 201-5A through F of these regulations.
- (2) Additional application fees, permit fees and bonding or other surety, sufficient to guarantee restoration, may be required by the Regulator in acting upon applications for an amendment.

~ 201-8. When effective.

This regulation shall take effect upon adoption by the Regulator and as amended.

~ 201-9. Violations and penalties.

Fines, penalties and remedies for violations of this regulation shall be as provided in RSA 155-E10.