

ARTICLE V PUBLIC SAFETY AND WELFARE

SECTION 5.1 LOCAL REGULATION FOR EXCAVATIONS

A. GENERAL PURPOSE AND AUTHORITY

Pursuant to Chapter 155-E of the New Hampshire Revised Statutes Annotated, the Kensington Planning Board hereby adopts the following regulations to govern the removal of earth materials within the bounds of the community. These regulations will minimize safety hazards created by uncontrolled excavations, safeguard the public, provide for the rational uses of natural assets, maintain appropriate aesthetic features, prevent land and water pollution, and promote soil stabilization.

B. EXISTING GRAVEL PITS (Amended 09/26/2005)

1. In accordance with RSA 155-E and the Town of Kensington Land Use Ordinances, the following Gravel Pits were registered with the Town Clerk on or prior to June 1, 1973 and therefore are permitted continued use until such time as said "pit" is converted to a commercial operation or extended to adjacent property.

Ricci Construction Co., Inc.
Wadleigh, William H.
Welsh, Richard
Town of Seabrook

C. PERMIT REQUIRED

No owner shall permit any excavation of earth on any property or premises without first obtaining a permit. All excavations require a permit except:

1. An excavation which lawfully existed and was in use on or before August 24, 1979. Such excavation may continue to excavate without a permit subject to:
 1. Such excavation site may not be expanded beyond the limits of the Town or the area which, on August 24, 1979, and all times subsequent thereto had been contiguous to and in common ownership with the excavation of that date.
 2. Such an excavation shall be conducted in compliance with the operational and reclamation standards in these regulations (Articles 1.10 and 1.11).
 3. The owners or operators of any existing excavation site for which no permit has been obtained shall file an excavation report with the Board within one year of written notification by the Board. Any existing excavation that fails to file a report within the one year time period shall obtain a permit from the Board before continuing excavation of the site. The report shall contain the following information:
 - a) The location of the excavation-tax map and lot number;
 - b) The date the excavation first began;
 - c) A description of the permissible

limits of expansion as described in Article 1.3 A 1; d) An estimate of the area which has been excavated to date; and e) An estimate of the amount of commercially-viable earth materials still available on the parcel.

2. An 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 which has jurisdiction for 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: 1) A copy of the pit agreement executed by the owner, the agent and the governmental unit shall be filed with and accepted by the Board prior to the start of excavation; and such excavation shall not be exempt from the provisions of Articles 1.10 and 1.11 of these regulations, nor from any other land use regulations of the municipality. Failure to file a copy of the pit agreement with the municipality or to comply with the terms of the agreement constitutes a violation enforceable under the provisions of Article 1.16 of these regulations. 2) The New Hampshire Department of Transportation or its agent may apply to the appeals board created under RSA 21-L to be exempted from the provisions of local land use regulations. The appeals process includes a formal public hearing in the affected municipality as set forth in RSA 155 E:2 IV(c).
3. An excavation that is exclusively 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. This excavation cannot be started, however, until all required state and local permits necessary for the construction or alteration of the building, structure, parking lot or way have been issued.
4. An excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment, providing however that no material may be removed from the site without Board public hearing and the required application for and granting of a permit if deemed necessary.
5. Where 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 Board. The permit and zoning exemptions under Article 1.3 not apply to any abandoned excavations as defined under Article 1.12 A.

D. HEARING

1. A public hearing shall be held within 30 days of Board acceptance of a completed excavation application. Notice, at least 14 days prior to said

hearing shall be sent to all abutters, and shall specify the grounds for the hearing as well as the date, time and place. Notice shall be published concurrently in a paper of general circulation in the town and legal notice thereof shall also be posted in at least three public places in the town. Within twenty days of said hearing or any continuation thereof, the Board shall render a written decision approving or disapproving the application, giving the reasons therefor.

E. ISSUANCE OF PERMIT

1. If the Board approves the application for a permit, it shall grant a permit to excavate. A copy of the permit shall be filed with the Town Clerk, and a copy kept by the applicant. A permit shall not be assigned or transferred without the prior written consent of the Board. A permit shall specify the date upon which it expires.

F. FEES

1. Application fee shall be \$50.
2. Permit review fees shall be based on estimates by Board designated experts of their fees for review of plans. Said fees shall be paid directly to such experts prior to the Board accepting an application as final.
3. Notification fees shall be those fees incurred by the required certified mailings and publication in a newspaper and shall be submitted by an applicant prior to acceptance.

G. BONDS

1. Road Bonds - An applicant, when required to do so by Article 1.10 T, shall file a bond in such form as is acceptable to the Board and counsel, to assure compliance with said section. Such bond shall be filed prior to approval of an application.
2. Reclamation bond - Bonds, in such form as are acceptable to the Board and counsel, shall be filed to assure site reclamation in compliance with Article 1.11.

H. APPEAL

1. Any interested person affected by any decision of the Board may appeal for a rehearing on such decision or any matter determined thereby to the Board. The motion for 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 days of the date of the decision being appealed. The Board shall either grant or deny the request for rehearing within ten days, and if the request is granted, a rehearing shall be scheduled within thirty days. Any person affected by the Board's decision on a motion for rehearing may appeal in accordance with the procedure specified in RSA 677.

2. The Board may order the owner of any land containing an abandoned excavation to either file a reclamation time table and bond or other surety, or to complete the reclamation in accordance with these regulations within a reasonable time period, based on the area involved and the opinion of a recognized excavation specialist. Failure to complete said reclamation within the prescribed time period may result in the Board requesting that Selectmen cause reclamation to be completed at the expense of the municipality. The expense shall constitute an assessment against the owner, and shall create a lien against the real estate on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

I. APPLICATION FOR PERMIT

1. Any owner or owner's agent shall, prior to excavation of or continuance or expansion of excavation on any land, apply to the Board for a permit to excavate and submit a reclamation plan. The permit application shall be signed and dated by the applicant and shall be accompanied by the following:
 - a. The name and address of the owner of the excavation site, the person or firm actually doing the excavating and all abutters to the premises on which the excavation is proposed.
 - b. Approvals to assure: 1) Driveway access; 2) Acceptable stump disposal and organic disposal plans; 3) State erosion control permits required by RSA 149-8a; 4) Necessary dredge and fill approvals; 5) All other necessary and applicable permits.
 - c. An excavation plan at a scale of no less than one inch equals one hundred feet and showing the area to be excavated and the land falling within 200 feet of the perimeter of the area to be excavated. At least three copies of final plans shall be filed with the Board prior to issuance of a permit. An excavation plan shall include:
 - i. The seal and signature of an engineer registered in the State of New Hampshire;

- ii. A property boundary survey, noting located or installed boundary markers at all corners and other necessary points as determined by the Board's designated expert;
- iii. Existing elevations, based on mean sea level, or an established bench mark, and contour information at intervals of two or five feet, as determined by the area and slopes of the site;
- iv. Finished elevations of the site, based on mean sea level;
- v. The breadth, depth and slope of the proposed excavation, existing excavation where applicable;
- vi. The estimated duration of the excavation;
- vii. Area and extent of wooded and heavily vegetated areas;
- viii. Surface water characteristics, including town designated hydric soils and standing water including intermittent brooks and streams;
- ix. Location of any above or below ground easements;
- x. Location, width and status of all adjacent public roads and right of way;
- xi. Logs of borings or test pits which assess depths to ledge, or extend a minimum of six feet below the maximum proposed excavation depth. Such logs shall contain soils data and water table level estimates in accordance with the unified soil classification system; said logs shall be located on the excavation plans;
- xii. Location and extent of any on-site stone walls ledge outcroppings, wells, existing buildings, septic systems, utilities and the like;
- xiii. A locus map, at a scale of one inch equals one thousand feet showing the proposed operation in relation to existing roads;
- xiv. Any existing and all proposed excavation areas;
- xv. Any existing and all accessory facilities and activities;

- xvi. Existing and proposed access roads, detailing width and surface materials;
- xvii. Existing and proposed vehicle parking area;
- xviii. Existing and proposed fencing buffers or visual barriers expressing height and materials;
- xix. Volume estimate and disposal plans for stumps and other organic debris, accompanied by applicable State approvals;
- xx. Location of fuel and equipment storage areas with plans for ground surface sealing and spill prevention and containment techniques;
- xxi. Storage areas for topsoil to be used in reclamation;
- xxii. Details of plans for erosion and sediment control; all plans submitted to the Board shall comply with the provisions in the soil erosion and sedimentation control requirements contained in Town subdivision review regulations;
- xxiii. Water runoff calculations including the volumes, Identification and location of current runoff patterns, and plans for management of after-excavation runoff to assure that rates and locations remain constant;
- xxiv. The location of existing buildings, structures, septic systems and wells within one hundred fifty feet of the property bounds;
- xxv. The location of all driveways and road intersections within two hundred feet of the property bounds; and
- xxvi. Notation and location of permanent bench marks as deemed necessary by the Board.

- 2. A reclamation plan at the same scale as the excavation plan, and covering the same area, containing the following:
 - a. Seal and signature of a New Hampshire registered engineer;
 - b. Boundaries and size of area proposed for reclamation;
 - c. Final elevation and topography of the area proposed for reclamation;

- e. Final surface elevations and surface drainage patterns, including the location and physical characteristics of all structural and/or modified drainage facilities;
- f. Schedule of final reclamation activities and list of approved seeding mixtures, cover vegetation and stabilization techniques utilizing the recommendations of a specialist approved by the Board;
- g. Proposed reuse of the site, detailing proposed land use of the site on cessation of the activity;
- h. Estimate of loam required to cover the site to a 4" depth, including all bankings and slopes; and
- i. Dollar estimate of reclamation work, expressed as per acre costs and total, with calculations of material needs, labor and equipment.

J. OPERATIONAL STANDARDS

- 1. No excavation or blasting shall be permitted closer than 200 feet to the boundary of a disapproving abutter or within 50 feet of an approving abutter, unless approval of a lesser distance is requested by abutter. Such area shall remain in its undisturbed state as a buffer zone. **(Amended 01/10/2002)**
- 2. No excavation shall be permitted closer than 300 feet to an existing dwelling or to a dwelling for which a building permit has been issued at the time the excavation is begun. **(Amended 01/10/2002)**
- 3. No excavation shall be permitted below road level within 50 feet of the right-of-way of any public highways as defined in RSA 229-1 unless such excavation is for the purpose of said highway.
- 4. No excavation shall be permitted in hydric soils.
- 5. The Board shall require vegetation to be maintained or provided within the peripheral areas required by Article 1.10 A, B and C.
- 6. Natural vegetative screening adjacent to neighboring properties on which excavation is not intended shall be maintained for the purposes of erosion control, screening, noise reduction and property valuation.
- 7. The area involved in excavation cannot exceed five acres at one time unless specifically authorized by the Board.
- 8. Appropriate erosion, sedimentation, air and water quality measures shall

be integrated into the excavation process. Excavations shall comply with the Erosion and Sediment control requirements contained in Town of Kensington Subdivision regulations.

9. No organic, mineral or earth materials or any other debris may be brought onto the site. **(Amended 01/10/2002)**
10. No excavation shall be permitted so close to the water table level or to bedrock as would preclude the subsequent reuse of the site in accordance with submitted reuse plans and existing public health standards, local zoning, or other local regulations.
11. Where the depth of excavation will exceed 15 feet and temporary slopes will exceed 1:1 in grade, a fence or other stable barrier shall be erected to warn of danger and/or limit access to the site.
12. No area shall be excavated which will cause the accumulation of free standing water for prolonged periods. Appropriate drainage shall be provided.
13. Topsoil shall be stripped from the excavation areas and be stockpiled for use in the reclamation of the site.
14. All temporary structures required during excavation operations shall be removed from the site within 30 days after such operations cease.
15. Nothing in these regulations shall be deemed to supersede or preempt applicable environmental standards or permit requirements contained in other state or federal laws, and no exemption under these regulations shall be construed as an exemption from any other state or federal statute.
16. Prior to the removal of topsoil or other material from a new excavation area the excavator shall file a reclamation bond or other surety as prescribed by the Board. Such bond shall be based on total reclamation costs, and shall not exceed \$10,000 per acre.
17. Active excavation areas shall not exceed five acres in size at any one time. In addition, the area for any permitted excavation shall not exceed that area which can be excavated and reclaimed within a one year period.
18. No expansion of an existing excavation shall exceed the area of the existing excavation plus five acres. However, the entire excavation area shall not exceed that area which can be excavated and reclaimed within a one year period. Excavations operating at the time of adoption of these regulations which cannot be reclaimed within one year shall not be

allowed to conduct additional excavation into undisturbed areas until the existing excavated area is reclaimed based on an approved permit as required by these regulations. In the case of an excavation in operation at the time of adoption of these regulations that is not expanded, the permit period allowed for reclamation shall also be one year.

19. Excavation activity may not commence prior to 8 A.M. nor be conducted after 5 P.M. Excavation activity shall not be conducted on Saturday or Sunday. **(Amended 01/10/2002)**
20. Hauling information, including routes to be used, the type, weight, and load capacity of motor vehicles involved, and the frequency and schedule of operations of such vehicles may be required by the Board prior to the issuance of a permit to excavate. The Board may require modifications to such plans, and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. Specific limitations shall be included governing the use of town roads during frost ban postings. The Board reserves the right to require traffic studies to be conducted at the applicant's expense to ensure that public safety, neighborhood compatibility and road capacity and condition have been properly considered in the hauling plan. When excavation activities involve the use of local roads, the applicant must provide documentation of existing roadbed and road surface conditions, and post a separate bond in an amount sufficient to assure the return of the road bed and road surface to its documented pre-hauling condition at the cessation of the hauling.
21. Truck access to the lot and the work area shall be so arranged as to minimize traffic hazards on the streets and to avoid nuisance to residents of the neighborhood. Access aprons shall be paved with macadam or bituminous concrete to a minimum distance of 100 feet from the paved surface of the connecting highway.
22. Depth of excavation shall not be lower than the approved finished floor elevation.
23. No power-activated sorting machinery or equipment shall be located within 300 feet of any street or other property line, and all such machinery shall be equipped with satisfactory dust elimination devices. **(Added 01/10/2002)**

K. SITE RECLAMATION STANDARDS

1. The Board, or an agent authorized by the Board shall periodically inspect excavation sites and shall perform a final reclamation inspection in order to ensure compliance with approved plans.

- a. No slope or soil material shall be left steeper than 3:1 unless it can be demonstrated by the applicant that a steeper grade can be adequately vegetated and stabilized. Under no conditions shall a soil material slope be left steeper than 2:1. Reverse slope benches or diversions must be provided whenever the height of cut exceeds 20 feet. The benches shall be a minimum of 1 foot deep and 5 feet wide and shall divide the slope face as equally as possible. The benches or diversions shall convey runoff water into stable outlets.
- b. All debris, stumps, boulders, etc. shall be lawfully disposed of in a manner consistent with approved plans.
- c. Ground levels and grades shall be established in relation to the permanent benchmarks shown on the approved reclamation plan as soon as practical after site excavation has been completed, but no later than one year.
- d. Stockpiled topsoil shall be spread over the disturbed area to a minimum depth of four inches. Areas posing the most critical problems for revegetation shall be given priority. The disturbed areas shall be fertilized and seeded with a grass or grass-legume mixture, approved by the Board or its designated expert.
- e. If deemed necessary by the Board, suitable trees or shrubs may be required in order to provide screening and to aid in erosion control. Such planted areas shall be protected from erosion during an appropriate establishment period by mulch or structural erosion control devices.
- f. Upon completion of the reclamation operations, the topography of the land shall be such that water draining from the site leaves at the original, natural drainage points and in the natural proportions of flow.
- g. The owner of an excavation site shall not be released from its performance commitment or bond until the Board receives certification of compliance from a third party expert designated by the Board.
- h. Any excavated area of five contiguous acres or more, which either is depleted of commercial earth materials, excluding bedrock, or from which no earth materials have been removed for a one year period, shall, within one year, be reclaimed in accordance with Article 1.11.

L. ABANDONED EXCAVATIONS

1. Any excavation for which the affected area has not been brought into compliance with these regulations (Articles 1.10 and 1.11) shall be deemed abandoned if no excavation occurred on the site subsequent to August 24, 1979, and:
 - a. No earth material has been removed from the excavation site during any three year period; the owner or operator may, however, extend the period by submitting a time table for reclamation to the Board and posting a bond or other surety in a form and amount prescribed by the Board sufficient to cover the costs of reclamation; or
 - b. The excavation is still in use, but the owner or operator has not brought the affected area into compliance with the incremental reclamation requirements of these regulations within three years of August 4, 1989 or posted a bond or other surety sufficient to cover the costs of reclamation;
 - c. The owner or operator of the excavation has neither secured a permit pursuant to these regulations nor filed a report of an existing excavation within the prescribed time period.
2. The Board may order the owner of any land containing an abandoned excavation to either file a reclamation time table and bond or other surety, or to complete the reclamation in accordance with these regulations within a reasonable time period, based on the area involved and the opinion of a recognized excavation specialist. Failure to complete said reclamation within the prescribed time period may result in the Board requesting that Selectmen cause reclamation to be completed at the expense of the municipality. The expense shall constitute a lien against the real estate on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

M. PROHIBITED PROJECTS

The Board shall not grant a permit:

1. Where the excavation would violate the operational standards of Article 1.10;
2. Where the issuance of the permit would be unduly hazardous or injurious to the public welfare;

3. Where existing visual barriers would be removed, except to provide access to the excavation;
4. Where the excavation would substantially damage a known aquifer, so designated by the community;
5. When the excavation is planned beneath or adjacent to inland surface waters or town designated hydric soils in such a manner that a permit is required from the Department of Environmental Services or federal agencies with jurisdiction over the premises; and
6. Where the project cannot comply with the reclamation provisions of Article 1.11.

N. WAIVERS

1. The Board, upon application and following a Public Hearing may grant a waiver in writing to the standards contained in Articles 1.10, 1.11 and 1.12 for good cause shown. The written decision shall state specifically, from the minutes, what standards, if any, are being relaxed and include reasonable alternative conditions.

O. APPLICATION FOR AMENDMENT

1. When 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 plans for reclamation, the owner shall submit an application for amendment of the excavation permit. The amended application shall be subject to approval in the same manner as provided for an excavation permit, and shall be subject to all fees and charges. An application for amendment to increase the size of a permitted excavation may be allowed if at least one-half of the area covered by the prior permit is reclaimed in accordance with the approved site reclamation plan.

P. ENFORCEMENT

1. The Board or its duly authorized agent may suspend or revoke the permit of any person who has violated any provision of the permit or these regulations or made a material misstatement in the application upon which the permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with Article 1.8. Failure to file for a permit as required by these regulations shall be considered a violation subject to the enforcement provisions of these regulations.
2. Fines, penalties and remedies for violations of these regulations shall be

the same as for violations of RSA 676:15 and RSA 676:17.

3. To determine compliance with these regulations, a permit issued hereunder, or an order issued hereunder, the Board 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 these regulations.
4. Whoever violates any provision of these regulations, a permit issued hereunder, or a valid order issued hereunder, shall be guilty of a misdemeanor.
5. Operators who fail to file for a permit will be issued a cease and desist order.
6. If reclamation of the site is not completed within the one year permit period, the town may declare part or all of the reclamation bond as forfeited, and use these monies to reclaim the site. At no time shall more than one permit be allowed on a lot of record.

Q. SEPARABILITY

1. The invalidity of any provision of these regulations shall not affect the validity of any other provisions.