

**TOWN OF WEARE**  
**EARTH PRODUCTS**  
**ORDINANCE**

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## **TOWN OF WEARE EARTH PRODUCTS ORDINANCE**

### **1. GENERAL PURPOSE AND AUTHORITY**

Chapter 155-E of the New Hampshire Revised Statutes Annotated requires that, with several exceptions, all mining and excavation operations in the State obtain prior approval

and permit from the municipality in which the operation is to occur. The purpose of the Statute and of this Ordinance is to minimize safety hazards created by open excavations; to safeguard the public health and welfare; to preserve our natural assets of soil, water, forests and wildlife; to maintain aesthetic features of our environment; to prevent land and water pollution; and to promote soil stabilization.

Those reading this ordinance must be aware that all operations must conform to the express standards as set forth in RSA 155-E. This includes grand-fathered operations. Any operations which require a permit (not grand-fathered) must conform to the express standards as a minimum and to any more stringent standards that the Town of Weare has seen fit to apply.

## 2. DEFINITIONS

A. "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 receipt of notification by the municipality of a public hearing, in the case of an abutting property being 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.

B. "Application" means a completed application for an excavation permit. In addition to other requirements of this Ordinance, an application shall not be considered complete until all of the Excavation Application Checklist items have been completed and accepted by .

C. "Commercial" means any use of any earth material for sale or resale on or off the site of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported to other land whose ownership is different than the ownership of the land from which the earth was excavated. Excavations which use earth materials in the processing of other material such as, but not limited to, concrete, asphalt and other building materials shall be considered commercial.

D. "Dimension Stone" means 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 external 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 Part E.

E. "Earth" means 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.

F. "Excavation" means a land area which is used, or has been used, for the commercial taking of earth, including all slopes.

G. "Excavation Site" means any area of contiguous land in common ownership upon which excavation takes place.

H. "Excavation Area" means the area within an excavation site where excavation has occurred or is eligible to occur under the provisions of this Ordinance.

I. "Open Area" means area being worked excluding stockpile areas, restored areas, or access roads.

J. "Regulator" means the Board of Selectmen of the Town of Weare.

K. "Incidental" means occurring as a minor, concurrent part of the overall effort or activity.

### 3. PERMIT REQUIRED

No owner shall permit any excavation of earth on his premises without first obtaining a permit therefor, except as follows:

#### A. Existing Excavations

The owner of an excavation which lawfully existed as of August 24, 1979, from which earth material of sufficient weight or volume to be commercially useful has been removed during the 2-year period before August 24, 1979, may continue such existing excavation of the excavation site without a permit, subject to the following:

- (1) Such an excavation site shall be exempt from the provisions of local zoning, or similar ordinances regulating the location of the excavation site, provided that at the time the excavation was first begun, it was in compliance with any such local ordinances and regulations as were then in effect.
- (2) Such an excavation area may not be expanded, without a permit under this ordinance, beyond the limits of the Town of Weare and the area which, on August 24, 1979, and at all times subsequent thereto has been contiguous to and in common ownership with the excavation site of that date and has been appraised and inventoried for property tax purposes as part of the

same tract as the excavation site as of that date, as modified by the limitations of Section 6, Parts A through D, inclusive.

The term "contiguous" means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in the Town of Weare.

- (3) When such excavation is not allowed in that location by the Town of Weare Zoning Ordinance in effect on August 4, 1989, or when the Zoning Ordinance allows such excavation only by special exception, expansion may be restricted or modified with conditions by order of the Regulator if after notice to the owner and a hearing, the Regulator finds that such expansion will have a substantially different and adverse impact on the neighborhood.
- (4) Such excavation shall be performed in compliance with the express operational standards of Sections 6 and the express reclamation standards of Section 7 of this Ordinance. Any violation of those standards shall be enforceable pursuant to Section 17 of this ordinance.
- (5) Any existing excavation area for which no permit has been obtained under this Ordinance and for which an excavation report, as required by RSA 155-E:2,I(d), was not filed with the Regulator by August 4, 1991 shall be determined to be abandoned per Part B, subpart (1) (c) of this Section.

The excavation report shall contain the following information:

- (a) the location of the excavation by tax map and lot number;
  - (b) the date the excavation first began;
  - (c) a description of the limits of permissible expansion as described in Section 3, Part A, subparts (2), and (3), which are claimed to apply to the excavation;
  - (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.
- (6) The exemption from local zoning or site location regulations as stated in subpart (1) of this Part A shall include the quarrying or crushing of bedrock for the production of construction aggregate; provided, however, that no owner shall, after August 4, 1989, permit any such quarrying or crushing of bedrock to occur for the first time on any excavation site without first obtaining a permit therefor under this Ordinance.

## A. Abandoned Excavations

The permit and zoning exemptions under this Ordinance shall not apply to any abandoned excavation, as defined in subpart (1), below.

- (1) For purposes of this Part, any excavation, except for excavations or excavation sites described in Part C of this Section whether subject to a permit under this Ordinance or not, for which the affected area has not yet been brought into complete compliance with the Reclamation Standards of this Ordinance shall be deemed "abandoned" if:
  - (a) No earth material of sufficient weight or volume to be commercially useful has been removed from that excavation site during any 2-year period, either before, on, or after August 4, 1989, provided, however, that; before the end of such 2-year period, the owner or operator may extend the period by submitting to the Regulator, a reclamation timetable to be approved by the Regulator, and by posting a bond or other security with the Town Treasurer in a form and in an amount prescribed by the Regulator, sufficient to secure the reclamation of the entire excavation site in accordance with the Reclamation Standards contained in this Ordinance; or
  - (b) The excavation site is in use, and is not an excavation or excavation site as described in Part C of this Section, but does not conform with the Incremental Reclamation Standards of this Ordinance, or the owner or operator has not posted a bond or other security, and submitted reclamation timetable to be approved by the Regulator as described in subpart (1) (a) of this Part B; or
  - (c) The owner or operator of the excavation has neither secured a permit pursuant to this Ordinance nor filed a report of an existing excavation pursuant to Section 3, Part A, subpart (5) within the prescribed period.
- (2) In addition to the enforcement remedies provided in Section 17, the Regulator may order the owner of any land upon which an abandoned excavation is located to either file a reclamation timetable to be approved by the Regulator, and bond or other security as described in Section 3, Part B, subpart (1) (a), above, or to complete reclamation in accordance with this Ordinance within a stated reasonable time. Such an order shall only be made following a public hearing for which notice has been given in accordance with Section 11 if the Regulator finds that the public health, safety, or welfare requires such reclamation.

- (a) If the owner fails to complete the reclamation within the time prescribed in the order, the Regulator may cause the reclamation to be completed at the expense of the Town. The Town's costs 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.
- (3) The site of an excavation which ceased commercially useful operation prior to August 24, 1977, but for which the affected area has not been brought into compliance with the Reclamation Standards of this Ordinance, may be made subject to the remedy prescribed in subpart (2) of this Part B only if the Regulator finds, in writing, that specified reclamation measures are necessary to eliminate or mitigate an identified hazard to public health or safety.

#### C. Stationary Manufacturing Plants

1. No permit shall be required under this Ordinance for excavation from an excavation site which on August 4, 1989 was contiguous to or was contiguous land in common ownership with a stationary manufacturing or processing plant which was in operation as of August 24, 1979, and which used earth obtained from such excavation site. Such excavation shall be performed in compliance with the operational and reclamation standards as expressly set forth in Sections 6, 7, and 8 of this Ordinance, which express standards shall be the sole standards with which such excavations must comply in order to retain their non-permit status as provided under this paragraph. Loss of such non-permit status shall be preceded by written notice from the Regulator that the excavation is not in compliance and the owner shall have failed to bring such excavation into compliance within thirty (30) days of receipt of such notice. Such excavation may be expanded without a permit under this Ordinance to any contiguous lands which were in common ownership with the site of the plant on August 4, 1989, except as limited by Section 6, Parts A through E, inclusive.
2. No further permit shall be required under this Ordinance for excavation from a site which, on August 4, 1989, was contiguous to or was contiguous land in common ownership with a stationary manufacturing or processing plant for which a local or state permit has been granted since August 24, 1979, and before August 4, 1989, which uses earth obtained from such site. It is further provided that their operation and reclamation shall continue to be regulated by such local or state permits and any renewals or extensions thereof by the permitting authority or authorities.

#### D. Highway Excavations

No permit shall be required under this Ordinance for excavation which is 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 by an agent of the unit of government which has a contract for the construction, reconstruction, or maintenance of the highway, subject, however, to the following:

- (1) A copy of the pit agreement executed by the owner, the agent, and the governmental unit shall be filed with the Regulator prior to the start of excavation. The failure to file such agreement, or the failure of the excavator to comply with the terms of such agreement, shall be deemed a violation of this Ordinance, and may be enforced pursuant to Section 1.
- (2) Such excavation shall not be exempt from the Town of Weare Zoning Ordinance, or other applicable ordinances, unless such an exemption is granted pursuant to subpart (3) below, or from the operational and reclamation standards as expressly set forth in Sections 6, 7, and 8 of this Ordinance, which express standards shall be the sole standards with which such excavations must comply in order to retain their non-permit status as provided under this Part D. Before beginning such excavation, the governmental unit or its agents shall certify to the Regulator that:
  - (a) The excavation shall comply with the operational and reclamation standards of Sections 6, 7, and 8 of this Ordinance
  - (b) The excavation shall not be within one hundred (100) feet of the boundary or five hundred (500) feet of the residence of a disapproving abutter or within ten (10) feet of the boundary or one hundred and fifty (150) feet of the residence of an approving abutter, unless requested in writing by said approving abutter;
  - (c) The excavation shall not be unduly hazardous or injurious to the public welfare;
  - (d) Existing visual barriers to public highways shall not be removed, except to provide access to the excavation;
  - (e) The excavation shall not substantially damage a known aquifer, so designated by the U.S. Geological Survey; and
  - (f) All required permits for the excavation from state or federal agencies have been obtained.
- (3) The New Hampshire Department of Transportation or its agent may apply directly to the appeals board created under RSA 21-L to be exempted from the provisions of the "Town of Weare Zoning Ordinance" or other ordinances or regulations, with respect to excavation or transportation of materials being used

exclusively for the lawful construction, reconstruction, or maintenance of a class I, II, or III highway.

- (a) The application shall state whether the applicant has requested any exceptions or variances which may be available at the local level, and shall describe the outcome of such requests.
- (b) Prior to acting on the application, the board shall hold a hearing in the Town of Weare. At least seven (7) days prior to such hearing, notice shall be published in a newspaper of general circulation in the Town, and shall be sent by certified mail to the applicant, the Chair of the Board of Selectmen, the Chair of the Conservation Commission and, if the proposed exemption concerns an excavation site, to the abutters of that site as defined in Section 2, Part A.
- (c) Following the hearing, the board shall issue a written decision, copies of which shall be mailed to the applicant and the parties to whom notice was sent. If an exemption is granted, the written decision shall include:
  - (i) A statement of the precise section of the ordinance or regulation from which the applicant is exempted. The applicant shall not be exempt from any section or provisions not so listed.
  - (ii) An identification of the public interest being protected by the ordinance or regulation.
  - (iii) A statement of the state interest involved, and of why, in the opinion of the board, that the state interest overrides the interest protected by the ordinance or regulation.
  - (iv) Any conditions to be imposed on the applicant, to protect the public health, safety, or welfare.
- (d) The decision of the board may be appealed in the manner provided for zoning decisions in RSA 677:4-14; provided, however, that a decision under this subpart (3) shall be considered a rehearing under RSA 677, and no further motion for rehearing shall be required.

#### E. Other Exceptions

1. The following additional excavation activities are exempt from the permit requirements of this Ordinance:
  - (a) Excavation that is exclusively incidental (see Section 2, J for definition of incidental) to the lawful construction or alteration of a building or structure or the construction or alteration of a parking lot or way including a

driveway on a portion of the premises where the removal occurs; provided, however, that no such excavation shall be commenced without a permit under this Ordinance unless all state and local permits required for the construction or alteration of the building, structure, parking lot, or way have been issued and also provide that such excavation does not exceed 5000 cubic yards without written notification to the Regulator.

- (b) Excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment, and does not exceed 5,000 cubic yards subsequent to written notification to the Regulator. The operation shall not exceed 45 days.
- (c) Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E.
- (d) Excavation that pertains to Section 3, Part E may be moved to an adjacent lot if under the same ownership.

2. 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 giving written notification to the Regulator of the intent to remove the stockpiled earth.

#### 4. PERMIT APPLICATION

A. Any owner or owner's designee subject to this Ordinance shall, prior to excavation of his land, apply to the Regulator for an excavation permit and submit a reclamation plan. A copy of the application shall also be submitted to the Conservation Commission. The application shall be signed and dated by the applicant and shall contain at least the following information in addition to that required by the Excavation Application Checklist and other applicable regulations.

The Regulator may waive one or more items listed under this Part A.

- (1) The name and address of the owner of the land to be excavated;
- (2) The name and address of the person who will actually do the excavating;
- (3) The names and addresses of all abutters to the premises which will be excavated;
- (4) An Excavation Plan at a scale of no less than one inch equals one hundred feet and showing the area to be excavated, property boundaries, appropriate buffers, any dwelling units, structures, septic systems, and wells within 150 feet of the perimeter of the area to be excavated. All plans

submitted to the Regulator shall comply with the Erosion and Sedimentation Control provisions of the Town of Weare Subdivision Regulations. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. At least four (4) copies of the final plans shall be filed with the Regulator prior to the issuance of a permit.

The Excavation Plan shall include:

- (a) The tax map and lot number of the parcel to be excavated;
- (b) The seal and signature of an engineer or land surveyor registered in the State of New Hampshire;
- (c) The existing topography at contour intervals of five feet, based on a permanent assumed benchmark;
- (d) The proposed topography at contour intervals of five feet at the completion of excavation and restoration;
- (e) The number of acres involved in the project;
- (f) The estimated volume of material to be removed;
- (g) The breadth, depth and slope of the proposed excavation (and existing excavation where applicable)
- (h) The estimated duration and description of phasing of the project;
- (i) The existing vegetation;
- (j) All existing surface drainage patterns including wetlands, standing water, lakes, streams, intermittent streams, major seasonally wet areas, and the like; Prime consideration shall be given to protecting any stream within the proposed excavation with the intention of protecting wildlife corridors.
- (k) The location of all easements, on and below the ground;
- (l) Names, locations, and widths of all public roads and rights-of-way;
- (m) For the purpose of groundwater protection, a log of borings or test pits that extend to either the historical high water table, ledge, or a minimum of six (6) feet below the maximum proposed excavation depth, including location and soils data. One boring or test pit shall be performed per every three (3) acres of proposed excavation area, with at least three (3) borings or test pits performed per excavation site. A State-certified soils scientist, or septic

system designer shall provide a written report as to any indication of the presence of a historical high groundwater mark within six (6) feet below the desired depth of excavation;

- (n) The location and extent of any stone walls, ledge outcroppings, wells, existing buildings, septic systems, utilities, significant natural and man-made features, and the like;
- (o) A locus map, at a scale of one inch equals one thousand feet (1":1,000'), showing the proposed operation in relation to existing roads;
- (p) Any existing and all proposed excavation areas;
- (q) Any existing and all proposed accessory facilities/activities;
- (r) Existing and proposed access roads, including widths and surface materials, and methods to prevent site materials from being tracked onto public roadways.
- (s) Existing and proposed fencing, buffers or visual barriers, including heights and materials; and methods to prevent site materials from being tracked onto public roadways.
- (t) Storage areas for topsoil to be used in reclamation;
- (u) Specific actions to be taken by the applicant on the excavation site relative to fuel oil and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons. If fuel or oil is to be stored on-site, a reasonable plan to prevent and control spills must be in place.
- (v) Plans for storm-water management, designed for a 25-year storm.
- (w) The locations of existing buildings, structures, septic systems and wells on abutting properties within one hundred and fifty (150) feet of the property boundary;
- (x) The locations of all driveways and road intersections within two hundred (200) feet of the property boundary;
- (y) Aquifer locations and limits as identified by the U.S. Geological Survey and other acceptable sources;
- (z) Zoning districts of the site and within 200 feet of the excavation area boundary.

(aa) Such other information or special investigative studies as the Regulator may reasonably deem necessary.-

- (5) A Reclamation Plan, at the same scale as the Excavation Plan, and covering the same area. All plans submitted to the Regulator shall comply with the Erosion and Sedimentation Control provisions of the Town of Weare Subdivision Regulations. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. At least four (4) copies of final plans shall be filed with the Regulator prior to the issuance of a permit.

The Reclamation Plan shall include:

- (a) A time table for reclamation.
- (b) The seal and signature of an engineer or land surveyor registered in the State of New Hampshire;
- (c) All boundaries of the area proposed for reclamation;
- (d) The final topography of the area proposed for reclamation;
- (e) Final surface drainage patterns, including the locations and physical characteristics of all drainage facilities;
- (f) A schedule of vegetative and temporary reclamation activities including seeding mixtures, mulching materials, fertilizer types, lime, and application rates;
- (g) Soil conditioning specifications, i.e. liming and fertilizing required based on soils analysis performed by the University of New Hampshire or other equivalent organization;
- (h) The plant materials to be used in the restoration; spacing, their quantities and sizes with consideration being given to reproducing the pre-existing vegetation.
- (i) The subsequent reuse of the site, if known is consistent with the approved Town of Weare Master Plan.
- (j) Cross-sectional views showing existing common excavated, and restored topographic configuration.
- (k) An erosion and sedimentation control plan, regardless of the size of the excavation area;

- (l) Such other information as the Regulator may reasonably require.
- (6) Copies of related permit approvals and other documents pertinent to the excavation proposal required by state or federal regulations.
- (7) Hauling information, including routes to be utilized, the number of axles and weight of motor vehicles involved, and the frequency and schedule of operations of such vehicles shall be provided to the Regulator prior to the issuance of an excavation permit. The Regulator may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. The Regulator reserves the right to conduct a traffic study, an environmental impact study, and a noise impact study at the applicant's expense to ensure that public safety, neighborhood compatibility, environmental issues, and road capacity and condition have been properly considered and addressed in the permit application and hauling plan.
- (8) Statements of specific actions to be taken by the applicant on the excavation site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons.
- (9) All application fees.
- (10) Such other information as the Regulator may reasonably require.

B. Additional Permit Requirements.

- (1) No excavation of a new area shall exceed ten (10) acres in size at any one time. Any permitted excavation shall be reclaimed according to the approved application within one (1) year after the permit expiration date. If reclamation is not completed within one (1) year after the permit expiration date the Town may declare part or all of the bond forfeited, and use these monies to reclaim the site.
- (2) The applicant shall be responsible for a proportionate share of refurbishing any existing Town road(s) which access the excavation site, and for the repair of Town-maintained roads which are damaged as a result of hauling earth from the site. The Regulator may require these costs to be bonded prior to the granting of a permit to excavate.
- (3) No solid and/or hazardous waste, seepage, dredge spoils, or organic waste and debris shall be disposed of on the excavation site unless specifically authorized and/or permitted by the appropriate local, state or federal authority(s).

5. PROHIBITED PROJECTS

The Regulator shall not grant a permit:

- A. Where the excavation would violate the Operational Standards of Section 6 of this Ordinance.
- B. For any excavation to occur within (the distance (to be measured horizontally):
  - (1) One hundred (100) feet of the boundary or five hundred (500) feet of the residence of any disapproving abutter; or
  - (2) Within ten (10) feet of the boundary or one hundred and fifty (150) feet of the residence of any approving abutter unless written approval is supplied by said abutter. In all such cases there must be a 2:1 slope away from the abutter's property line. (This provision would not apply to any excavation in operation prior to March 15, 1986.);
  - (3) The term "disapproving abutter," as used in this Ordinance, shall be considered to be one who has filed a written request with the Regulator, not to allow an excavation within (100) feet of his property line or within five hundred (500) feet of his residence.
- C. When the issuance of the permit would be unduly hazardous or injurious to the public welfare, or would unduly endanger the safety of highway users or local residents;
- D. When the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey;
- E. When the excavation requires land use permits from state or federal agencies; but the Regulator may approve the application after all necessary land use permits have been obtained;
- F. Where the project cannot comply with the Reclamation Standards contained in this Ordinance;
- G. Where the excavation is to take place less than four (4) feet above any known high water table. An exception to this restriction shall be granted by the Regulator, provided that the applicant can demonstrate that such excavation will not adversely affect water quality, provided, however, that written notice of such exception shall be recorded in the Hillsborough County Registry of Deeds, and one cop shall be filed with the Water Supply and Pollution Control Division of the NH Department of Environmental Services; or
- H. Where existing visual barriers to public highways would be removed, except to provide access to the excavation.

## 6. OPERATIONAL STANDARDS

It shall be a violation of this Ordinance for any person to excavate, or for any owner to permit excavation on his excavation site, when such excavation is subject to a permit under this Ordinance, without complying with the following minimum standards or when such excavation is not subject to a permit under this Ordinance pursuant to Section 3 without complying with the following express standards:

For the purpose of preserving its scenic characteristics, and to prevent a significant increase in noise and in heavy truck traffic around the Town Center, no new excavation areas shall be permitted within one mile (5,280 feet) of the center of the Town of Weare except where the land was zoned industrial prior to April, 1999. The Center of Town shall mean the intersection of Flanders Memorial Drive, East Street, and Route 114.

- A. 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 such excavation is for the purpose of said highway. For the purpose of providing for adequate drainage, for safe entry and exit of vehicles, to preserve the aesthetic character of the surrounding area, and to ensure that the finished excavation area is in keeping with the surrounding properties, the final, average elevation of the floor of the excavation area within five hundred (500) feet of the roadway shall not be below the average road level of the servicing public road or roads.
- B. No excavation shall be permitted within one hundred (100) feet of the boundary or within five hundred (500) feet of the dwelling of a disapproving abutter
- C. No excavation shall be permitted within one hundred and fifty (150) feet of a dwelling of an approving abutter, or a dwelling for which a building permit has been issued at the time excavation is commenced. If written concurrence is received from an abutter, then the boundary setback shall be no less than ten (10) feet.
- D. No excavation or alteration of terrain shall be permitted within one hundred fifty (150) feet of any great pond, navigable river, or any other standing body of water five (5) acres or more in area or within fifty (50) feet of any other stream, river, or brook which normally flows throughout the year, or any naturally occurring standing body of water less than five (5) acres, prime wetland as designated in accordance with RSA 482-A:15,I or any wetland greater than five (5) acres, in area as defined by the Wetlands Board.
- E. Vegetation shall be maintained on the excavation site within the buffer areas required by parts A through D of this Section.
- F. Natural vegetation 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. The Regulator shall have the authority to require additional screening (e.g., vegetation or fencing) where necessary.

- G. Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process. Excavations shall comply with the Erosion and Sedimentation Control provisions in the Town of Weare Subdivisions Regulations.
- H. Excavation practices which result in continued siltation of surface waters or any degradation of water quality of any public or private water supplies are strictly prohibited.
- I. Drainage shall be maintained so as to prevent the accumulation of free-standing water for prolonged periods
- J. No fuels, lubricants, or other toxic or polluting materials or chemicals shall be stored on-site unless in compliance with state and federal laws and regulations pertaining to such materials. Additionally, automatic shut-off nozzles are required on fueling hoses and absorbent spill pads must be on hand where fueling occurs.
- K. Where the depth of the excavation will exceed fifteen (15) feet and temporary slopes will exceed a grade of 1:1, an appropriate fence, gate, signage or other suitable barricade shall be erected to warn of danger or to limit access to the site as approved by the Regulator during the permitting process.
- L. Prior to the removal of topsoil or other overburden material from any land area that has not yet been excavated, the excavator shall file a reclamation bond or other security as prescribed by the Regulator, sufficient to secure the reclamation of the land area to be excavated.
- M. All temporary structures required during excavation operations shall be removed from the site within thirty (30) days after such operations cease.
- N. Start-up and shut-down times for all machinery associated with an excavation operation shall be determined by the Regulator. Such times shall be reasonable with respect to the type of operation proposed and the character of the neighborhood in which it is located.

## 7. RECLAMATION STANDARDS

Within twelve (12) months after the expiration date of a permit issued under this Ordinance, or of the completion of any excavation, whichever first occurs, the owner of the excavated land shall have completed the reclamation of the areas affected by the excavation to meet each of the following minimum standards or when such excavation is not subject to a permit under this Ordinance pursuant to Section 3, to meet each of the following express standards:

- A. Except for exposed rock ledge, all areas which have been affected by the excavation or otherwise stripped of vegetation shall be spread with topsoil or strippings, if any, but in any case covered by soil capable of sustaining vegetation, and shall be planted with seedlings or grass such that erosion and siltation are effectively controlled. Areas visible from public way and from which trees have been removed, shall be replanted with tree seedlings, set out in accordance with accepted horticultural practices.
- B. Earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of.
- C. So as to control erosion, all slopes, except exposed ledge, shall be graded to natural repose for the type of soil of which they are composed, or at a ratio of horizontal to vertical proposed by the owner and approved by the Regulator. Changes of slope shall not be abrupt, but shall blend with the surrounding terrain.
- D. Any standing bodies of water created in the excavation project as may constitute a hazard to health and safety shall be eliminated unless the Regulator shall specify different restoration.
- E. 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. For excavation projects which require a permit from the Water Supply and Pollution Control Division pursuant to RSA 485-A:17, the provisions of that statute, and the rules adopted under it, shall supersede this part E as to areas of excavation sites covered hereby. The excavator shall file, with the regulator, a copy of the permits issued under RSA 485-A:17 with the Regulator.

## 8. INCREMENTAL RECLAMATION

Except for excavation sites of operating stationary manufacturing plants, any excavated area of five (5) contiguous acres or more, which is depleted of commercial earth materials, excluding bedrock, or any excavation from which earth materials of sufficient weight or volume to be commercially useful have not been removed for a 2-year period, shall be reclaimed in accordance with the provisions of Section 7 of this Ordinance, within twelve (12) months following such depletion or 2-year non-use, regardless of whether other excavation is occurring on adjacent land in contiguous ownership.

Each operator, other than the operator of stationary manufacturing plants which are exempt from permit requirements pursuant to Section 3, Part C, shall prepare and submit for the Regulator's record a reclamation plan for the affected land, including a timetable for reclamation of the depleted areas within the reclamation site.

## 9. EXCEPTIONS

The Regulator, upon application and following a hearing held in accordance with the provisions of Section 11 of this Ordinance, may grant an exception in writing to the

standards contained in Sections 6, 7, and 8 for good cause shown. The written decision shall state specifically what standards, if any, are being relaxed, and include reasonable alternative conditions or standards. The Regulator's decision on any request for such exception may be appealed in accordance with Section 15.

## 10. APPLICATION FOR AMENDMENT

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 plan for reclamation, 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 excavation permit.

## 11. HEARING

- A. Prior to the Regulator approving or disapproving an application for an excavation permit or for an amended excavation permit:
- (1) A public hearing shall be held within thirty (30) days of receipt of a completed application.
  - (2) A notice of the hearing shall be sent to all abutters by certified mail and shall specify:
    - (a) the grounds for the hearing; as well as
    - (b) the date, time and place of the hearing.
  - (3) A legal notice shall be published in at least two (2) newspapers that have general circulation in the Town at least fourteen (14) days in advance of the hearing. The fourteen days shall not include the day of publication or the day of the hearing, but shall include any Saturday, Sunday or legal holiday within said period.
  - (4) A notice of the hearing shall be sent by mail to the members of the Weare Planning Board and the Weare Conservation Commission.
  - (5) A legal notice shall be posted in at least three (3) public places in Town.
- B. The current costs of mailing certified letters to all abutters and the publication of legal notices in at least two (2) newspapers shall be paid by the applicant at the time of filing.
- C. Within ten (10) days of said hearing, or any continuation thereof, the Regulator shall render a written decision approving or disapproving the application. If disapproved, the Regulator shall state the reasons for disapproval in writing.

## 12. ISSUANCE OF PERMIT

- A. If, after the public hearing, the Regulator determines that the project for which the application was submitted is not prohibited by the provisions of Section 5 of this Ordinance, and if the Regulator approves the application, the Regulator shall grant a permit to the applicant, provided that prior to issuing the permit, the Regulator shall require:
  - (1) The posting of a bond, with such surety as the Regulator shall reasonably determine, with the Town Treasurer in an amount as reasonably set by the Regulator based on the open area of the project, but not less than five thousand (\$5,000) dollars to guarantee compliance with the terms of the permit. The bond shall not expire until eighteen (18) months following the end of the permit or any extension thereof.
  - (2) That any and all local, state or federal permits must have been obtained, ask required and copies of said permits provided to the Regulator.
  - (3) The payment of the excavation permit fee as specified in Section 16.
- B. A copy of the permit shall be prominently posted at the excavation site or the principle access thereto.
- C. The permit shall not be assignable or transferable without the prior written consent of the Regulator.
- D. The permit shall specify the date upon which it expires. The expiration date of all excavation permits issued by the Town of Weare shall be December 31 in the year in which they are issued
- E. The Regulator may include in the permit such reasonable conditions as are consistent with the purpose of this Ordinance, and may include requirements for a permit for excavation which are more stringent than the standards set forth in RSA 155-E including the provision of visual barriers to the excavation.
- F. The calling of a bond or surety which is found not to hold sufficient monies to restore the area does not, however relieve the landowner of his obligation to comply with the reclamation provisions of this Ordinance. It shall be the responsibility of the Regulator to take whatever means are necessary to force compliance.

13. RENEWAL OF PERMIT

- A. All valid excavation permits issued by the Town of Weare shall expire on December 31 in the year in which they are issued.
- B. The Regulator may renew any existing permit following:

- (1) The filing of a completed application for permit renewal with the Regulator by October 1. Said application shall be accompanied with the renewal fee as specified in Section 16;
- (2) Inspection of the excavation site by the Regulator by October 30 to check the operation and to order any necessary work to be completed by December 31 in order to be in compliance with the terms of the permit and this Ordinance;
- (3) Determination by the Regulator that the work being performed on the site is consistent with that as shown on the approved excavation and/or reclamation plan(s) which served as the basis for the permit for which the renewal is being requested.

#### 14. BONDING

The Regulator shall establish the amount of a performance bond prior to the issuance of the excavation permit. The bond amount shall be reasonably sufficient to guarantee compliance with the restoration in accordance with the provisions of Section 7. The bond requirements shall be based on the acreage of the project or approved phases and the estimated per acre restoration costs. The bond will be returned to the applicant when the restoration work has been completed and final satisfactory site inspection has been conducted by the Regulator or its designee. The applicant shall pay for any bond reviews by the Town and/or Town Counsel, or any other professional service necessary to review the proposed excavation/reclamation plan.

#### 15. APPEAL

- A. If the Regulator disapproves 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 Regulator for a rehearing on such decision or any matter determined thereby.
- B. 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 (10) days of the date of the decision appealed from.
- C. The Regulator shall either 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.
- D. Any person affected by the Regulator's decision on a motion for rehearing to the Regulator may appeal in conformity with the procedures specified in RSA 677:4-15.

#### 16. FEES

- A. In accordance with the provisions of RSA 155-E:8, an excavation permit fee in the amount of \$50.00 shall be payable to the Town of Weare prior to the issuance of a permit or a renewal permit.
- B. The Regulator may assess reasonable additional fees necessary to perform application plan review and the annual compliance review.
- C. Reasonable fees may be required for the Town's designated engineer or other agents of the Regulator to periodically conduct required studies or field surveys at the excavation site to ensure compliance with the approved excavation and reclamation plan.

## 17. ENFORCEMENT

- A. The Regulator may suspend or revoke the permit of any person who has violated any provision of his or her permit or of this Ordinance or has 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 Section 15.
- B. The Regulator shall issue cease and desist orders against any operator found to be in violation of any of the terms of this Ordinance. Such orders shall remain in effect until the violation is corrected.
- C. Any cease and desist order issued by the Regulator shall take effect, for the purpose of this Ordinance, on the date it is issued, and shall be served by either certified mail or by a law enforcement officer.
- D. Fines, penalties, and remedies for violations of this Ordinance shall be partially stated in RSA676:15 and 676:17. Those found to be operating a gravel pit without obtaining a permit will be fined \$5,000 (five thousand dollars) per open acre with a minimum of \$5,000 (five thousand dollars) plus \$275 (two hundred seventy five dollars) for each day operation continues.
- E. To ascertain if there is compliance with this Ordinance, or permit or an order issued hereunder, the Regulator or its duly authorized agent with company escort may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since August 24, 1979.

## 18. CONFLICTING PROVISIONS

- A. Where the provisions of this Ordinance are in conflict with other ordinances, regulations, or laws, the more stringent shall apply.
- B. Nothing in this Ordinance shall be deemed to supersede or preempt applicable environmental standards or permit requirements contained in state laws, and no

exemption under this Ordinance shall be construed as an exemption from any state statute.

19. WAIVERS

The Regulator, upon application and following a hearing, may grant a waiver, in writing, to the standards contained in this Ordinance for good cause shown except as prohibited by RSA 155-E. The written decision shall state specifically what standards, if any, are being relaxed and include reasonable alternatives.

20. AMENDMENTS

The Earth Products Ordinance may be amended by the Regulator in accordance with the provisions of RSA 675:6 and RSA 675:7.

21. EFFECTIVE DATE

This Ordinance shall be effective upon adoption by the Regulators and upon public notice in a newspaper of local circulation, ~~or~~ and when copies thereof have been posted in two or more public places in the Town of Weare and when an attested copy of the same has been recorded with the Weare Town Clerk and upon notification by certified mail of all operations currently permitted in the Town of Weare.

Given under our hands and seals this 23rd day of October,2000.

TOWN OF WEARE  
BOARD OF SELECTMEN

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attest:  
This 23rd day of October, 2000.

\_\_\_\_\_  
Town Clerk, Town of Weare

EARTHPRD.DOC  
3/7/72 original ordinance article 25.  
amended 3/23/76  
amended 3/2/76 article 48  
amended 3/8/77 article 44  
amended 3/14/78 article 67

amended 3/13/79 article 56

amended 2/16/87 BOS meeting

amended 8/31/87 BOS meeting (name changed to Town of Weare Earth Product Ordinance)

amended 2/8/88 BOS Meeting

amended 3/30/92 BOS Meeting

amended 5/03/99 BOS Meeting

amended 10/16/00 BOS Meeting/Public Hearing

ORDINANCE

earthprd.doc