

## Chapter 200

### EXCAVATION OF SOIL

**[HISTORY: Adopted by the Planning Board of the Town of Hudson as amended through 10-14-2015. Subsequent amendments noted where applicable.]**

#### GENERAL REFERENCES

Driveways — See Ch. 193.  
Site plan review — See Ch. 275.  
Administrative requirements and definitions — See Ch. 276.  
Subdivision of land — See Ch. 289.  
Stormwater management — See Ch. 290.  
Zoning — See Ch. 334.

#### § 200-1. Authority.

Pursuant to the authority vested in the Hudson PLANNING BOARD under RSA 155-E, the following regulations concerning the disturbance of soils are hereby adopted.

#### § 200-2. Definitions.

Words in all capital letters are those with special definitions as noted in § 276-2 of the LAND USE REGULATIONS.

#### § 200-3. Permit required; exemptions.

- A. No OWNER shall excavate or allow any EXCAVATION of EARTH on his/her/its premises without first obtaining an EXCAVATION permit.
- B. Exemptions to this PERMIT requirement are:
  - (1) EXCAVATION for eventual residential occupancy or use that is 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.
  - (2) EXCAVATION of eventual nonresidential occupancy or use that is in conformance with SITE PLANS approved and signed pursuant to Section XVI of the Hudson SUBDIVISION Regulations.<sup>1</sup>
  - (3) EXCAVATION for SUBDIVISION roadway construction that is in accordance with an approved SUBDIVISION PLAN on record in the Hillsborough County Registry of Deeds.
  - (4) EXCAVATION that is incidental to agricultural or silvicultural activities, normal

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1. Editor's Note: For current site plan review regulations, see Ch. 275.

landscaping or minor topographical adjustment.

- (5) EXCAVATION from an area contiguous to or from contiguous land in common ownership with stationary manufacturing and processing plants which were operating on January 1, 1979, provided that such EXCAVATION was then permitted, or exempted from permit, by the Board of Selectmen pursuant to the Hudson Zoning Ordinance, Article I, Section 6.0(c).<sup>2</sup>
- (6) EXCAVATION performed exclusively for the lawful construction, reconstruction or maintenance of a Class I, II, III, IV or V HIGHWAY, as defined in RSA 230, by the TOWN OF HUDSON or the State of New Hampshire, or a contracted agent of either government unit, which has jurisdiction for said HIGHWAY, provided that any PIT AGREEMENT entered in conjunction with said EXCAVATION shall be filed with and accepted by the PLANNING BOARD prior to the start of EXCAVATION; such EXCAVATION, however, shall not be exempt from the provisions of § 200-5 and § 200-13.
- (7) EXCAVATION of less than 500 cubic yards of EARTH, provided that:
  - (a) Following EXCAVATION, restoration of the area shall be in accordance with § 200-7A(4).
  - (b) All excavating, handling, processing and storage facilities are removed from the site.
  - (c) The site is cleared of all stumps, and logs and boulders not specifically left in place or added as landscaping features.
  - (d) The site is regraded to the approximate level of the adjoining land.
  - (e) The site is seeded in accordance with § 200-7A(6).
  - (f) The duration of the EXCAVATION process, including land restoration, is less than 90 days.
- (8) EXCAVATION that is incidental to work performed by a public utility or its subcontractor under its authority granted by the State of New Hampshire to install, remove, maintain, repair or modify residential or commercial service.

#### **§ 200-4. Application for permit.**

Any OWNER shall apply to the PLANNING BOARD prior to EXCAVATION of his/her/its land and send a copy of the application to the Conservation Commission. The application form shall be supplied by the PLANNING BOARD at the Community Development Department offices at Town Hall. Said application form can also be obtained/downloaded online, via the Town's Community Development Department website: [www.hudsonnh.gov/](http://www.hudsonnh.gov/). In addition to submitting a written EXCAVATION of Soil application form to the PLANNING BOARD, electronic filing, in pdf format, is required.

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2. Editor's Note: For current zoning provisions, see Ch. 334.

**§ 200-5. Excavations for which permits shall not be granted.**

The PLANNING BOARD shall not grant a permit:

- A. Where an EXCAVATION is proposed below road level within 50 feet of any HIGHWAY right-of-way, unless such EXCAVATION is for purpose of said HIGHWAY.
- B. (Reserved)
- C. (Reserved)
- D. When the issuance of the PERMIT would be unduly hazardous or injurious to the public welfare.
- E. Where existing visual barriers in the areas specified in RSA 155-E:3(III) would be removed, except to provide ACCESS to the EXCAVATION.
- F. Where the EXCAVATION would substantially damage a known aquifer, so designated by the United States Geological Survey.
- G. Where EXCAVATION is planned beneath or adjacent to inland surface waters in such manner that a PERMIT is required from the New Hampshire Water Supply and Pollution Control Commission, the New Hampshire Water Resources Board, the New Hampshire Wetlands Board or other state, county or federal agencies with jurisdiction over the premises, except that the PLANNING BOARD may approve the application only after all such other necessary permits have been obtained.
- H. Where the project cannot comply with the restoration provisions of § 200-7.

**§ 200-6. Conditions with which work must comply.**

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

- A. All original topsoil shall be stockpiled on the site and spread on the final slopes. No original topsoil, including LOAM, may be removed from the site, unless written permission therefor is given by the PLANNING BOARD.
- B. Interim, i.e., daily, slopes shall not be left steeper than 3:1, unless written permission is obtained from the Town Engineer, who may require specific soils data to be obtained at the expense of the owner.
- C. Hours of excavating or removal shall be limited, such that no work shall take place prior to 7:00 a.m., after 7:00 p.m. or on Sundays or holidays.

**§ 200-7. Restoration.**

Within 12 months after the expiration date in the PERMIT as defined in § 276-9C or the completion of the EXCAVATION, whichever occurs first, the OWNER of the excavated land shall restore the area affected by the EXCAVATION to meet each of the following minimum conditions:

- A. Except for exposed rock ledge, said area shall be covered with vegetation suitable to

prevent erosion and with soils suitable to sustain such vegetation, thus:

- (1) No area shall be left in such a condition that erosion of the area after completion of the work may result in water pollution by silt or other deleterious substances.
  - (2) The area shall be left in such shape and condition that material shall not wash to block or obstruct drainageways.
  - (3) Unless the area is intended to serve as an approved pond, the area shall be left as free draining as practicable.
  - (4) Unless otherwise allowed in writing by the PLANNING BOARD, all disturbed areas shall be spread with the original topsoil or strippings, if any, to a minimum four-inch depth.
  - (5) Unless waived in writing or otherwise stipulated by the PLANNING BOARD, areas from which trees have been removed shall be planted with two-year-old plants or plants furnished under a standard nursery order. Type of plants selected shall be included in the "large tree" category as listed in Trees and Shrubs in New Hampshire — A Guidebook for Natural Beauty Projects. (Extension Bulletin No. 163, revised, published May 1980 by the Cooperative Extension Service of the University of New Hampshire, Durham, New Hampshire, a copy of which is on file in the office of the Town Engineer.) Seedlings without center buds and seedlings with pruned roots shall not be accepted. Seedlings shall be set out under review of the Town Engineer in accordance with accepted horticultural practice at eight-foot spacing in both directions, all as approved by the Town Engineer.
  - (6) Areas from which low brush or grass has been removed shall be (at the option of the owner) planted with red pine seedlings or covered with material capable of supporting vegetation and seeded as described and specified in Parts 1, 2 and 3 of Section 644 (Grass Seed) of the Standard Specifications for Road and Bridge Construction by the New Hampshire Department of Public Works and HIGHWAYS, 1974, et seq.
  - (7) Unless written permission is obtained from the PLANNING BOARD to preserve fire or other access roads (paved or unpaved) to excavated areas, such roads shall be obliterated.
- B. Debris resulting from the EXCAVATION shall be buried or removed.
- C. All slopes shall be graded to natural repose for the type of soil of which they are composed. Further, the area shall be restored in such shape that it shall be blended to be in keeping with the surrounding terrain.
- D. The elimination of any standing bodies of water created in the EXCAVATION project as may constitute a hazard to health and safety, unless the PLANNING BOARD specifies different restoration.
- E. Exemptions. EXCAVATION for the purpose of installing or creating pools, patios, and landscaping features or recreational areas shall be finished to the conditions specified on the permit.

**§ 200-8. Amendment of permit.**

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 restoration, the OWNER shall submit an application for amendment of his/her/its EXCAVATION permit, which application shall be subject to approval in the same manner as provided for an original EXCAVATION permit.

**§ 200-9. Hearings on applications.**

Hearings on applications are as noted in § 276-5 of the LAND USE REGULATIONS.

**§ 200-10. Issuance of permit; prerequisites.**

If the PLANNING BOARD determines the application is not prohibited by § 200-5 above and approves it after the public hearing, the Board shall grant an EXCAVATION PERMIT to the APPLICANT only after:

- A. Town receipt of an EXCAVATION PERMIT fee as shown in § 276-6.
- B. Unless waived by the PLANNING BOARD, receipt by the office of the Town Engineer of a bond or other Surety as specified in § 276-4 in an amount computed by the Town Engineer and approved by the PLANNING BOARD as being reasonably sufficient to guarantee PERMIT compliance.
- C. Unless waived by the PLANNING BOARD, receipt by the PLANNING BOARD of a letter from Town Counsel certifying all documents as to form. Town Counsel fees shall be paid by the Owner.

**§ 200-11. Posting, transferability, expiration dating and conditions on permits.**

- A. A copy of the PERMIT shall be prominently posted at the EXCAVATION site or the principal ACCESS thereto.
- B. A PERMIT shall not be assignable or transferable without the prior written consent of the PLANNING BOARD.
- C. A PERMIT shall specify the date upon which it expires.
- D. The PLANNING BOARD may include in a PERMIT such reasonable conditions as are consistent with the purpose of RSA 155-E, including the provision of visual barriers to the EXCAVATION.

**§ 200-12. Rehearings.**

- A. If the PLANNING BOARD 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 PLANNING BOARD for a rehearing on such decision or any matter determined thereby. 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 10 days of the date of the decision appealed from. The

PLANNING BOARD shall either grant or deny the request for rehearing within 10 days, and if the request is granted, a rehearing shall be scheduled within 30 days.

- B. Any person affected by the PLANNING BOARD's decision on a motion for rehearing to the PLANNING BOARD may appeal in conformity with the procedures specified in RSA 677:4 through 677:14.

**§ 200-13. Violations and penalties; enforcement.**

- A. The PLANNING BOARD or the Town Engineer may suspend or revoke the PERMIT of any person who has violated any provision of his/her/its PERMIT or this chapter or made a material misstatement or deliberate falsehood in the application upon which his/her/its PERMIT was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with § 200-12.
- B. The PLANNING BOARD or a person affected thereby may seek an order from the Superior Court that the violator cease and desist from violation of any provision of his/her/its PERMIT or this chapter and take such action as may be necessary to be in compliance with his/her/its PERMIT and this chapter. If the Superior Court issues such an order, the PLANNING BOARD or the person affected, as the case may be, shall have judgment for all costs and attorney fees in seeking such an order.
- C. To ascertain if there is compliance with this chapter, a PERMIT issued hereunder or an order issued hereunder, the PLANNING BOARD or its duly authorized agent may enter upon any land on which there is reason to believe an EXCAVATION is being conducted or has been conducted since January 1, 1979.
- D. Whoever violates any provision of this chapter, a PERMIT issued hereunder or a valid order issued hereunder shall be guilty of a misdemeanor, if a natural person, or guilty of a felony, if any other person.

**§ 200-14. Fees.**

Fees associated with EXCAVATION PERMIT Applications are specified in § 276-6D.