

## **CHAPTER 140 EXCAVATION OF EARTH PRODUCTS**

### **Section 140-010 Purpose**

The purpose of these regulations is to regulate the conditions and operations of excavating, grading, filling and removal of earth, sand, stone, gravel, soil, minerals, loam, clay, peat moss and any other earth products. This section further is intended to conserve and preserve water storage areas, assure that erosion and sedimentation is minimized, that water pollution is prevented, that hazards inherent to open pits and steep slopes of loose earth are prevented, that nuisances such as excess traffic, noise odor, dust are minimized, that visual blight is controlled, and that the productive usage of land is maintained. Furthermore, nothing in these regulations shall be construed as eliminating the need for any other regulatory permit. *(Effective: October 9, 1999)*

### **Section 140-020 Permitted Excavations**

#### **Section 140-020-1 Excavation in Connection with Building and Construction**

- A. After the issuance of a zoning permit, or after the approval of a subdivision, materials excavated from roads, foundations, basements and other construction areas may be removed from the premises subject to all of the conditions listed below.
  
- B. A nonrenewable permit for the excavation of not more than seven hundred (700) cubic yards of material on any lot shall be exempt from these regulations, provided that excavation is confined to a six (6)-month period, and provided that an application is made to the Zoning Enforcement Officer, in writing and without fee, stating the intent and purpose of the excavation. Should this excavation exceed the aforementioned seven-hundred (700) cubic yards, application will be made to the Zoning Commission for a Special Permit and except for the six (6) month time limitation, shall be subject to the same limitations as stated above. The provisions of this regulation requiring a permit shall not apply to the Town of New Milford. All other provisions of this regulation shall apply to the Town of New Milford. *(Amended Effective: June 20, 1985; Amended Effective: January 29, 1988; Amended Effective: January 18, 1991; Amended Effective: August 25, 2003)*
  
- C. In approving any Special Permit for site development or site improvement excavation activities, the Zoning Commission may impose such conditions as may be applicable under Section 140-050 to Commercial Excavation Permits as the Commission deems necessary and appropriate to protect the public health, safety, convenience, welfare and property values in the neighborhood. *(Effective: August 25, 2003)*

**Section 140-020-2            Excavation by Owner on Premises**

- A. Materials may be excavated and used by the owner on the premises without a permit, provided that the Zoning Enforcement Officer is given notification, in writing, of the purpose and reason for the excavation and that the amount of material to be excavated and used is less than one thousand (1,000) cubic yards.
  
- B. In each of the above-mentioned uses, the Zoning Enforcement Officer may insist on such safety measures, as he/she deems necessary.

**Section 140-030            Prohibited Excavations**

Commercial Excavation Permit. Except as provided in Sections 140-020-1 and 140-020-2 above, excavation and removal from the premises of sand, loam, gravel, peat, stone or other earth product is not permitted in any zones. *(Amended Effective: June 20, 1985)*

Notwithstanding such prohibition, the provisions of Section 140-040, Section 140-050 and Section 140-060 shall continue to apply to any commercial excavation use existing as a nonconforming use after June 20, 1985. *(Effective: August 25, 2003)*

**Section 140-040            Excavation Permit Application Requirements**

- 1. An application for a permit to excavate and remove any of said products shall be made to the Commission by the property owner or his legally authorized agent with power of attorney.
  
- 2. Any such application shall be accompanied by a map or maps and other documentation, giving the following information:
  - a. Location of the premises, names of owners, within five hundred feet (500') of the perimeter, and an estimate of the amount of material to be excavated and/or removed.
  - b. Grading plan showing existing contours in the area to be excavated and proposed contours in the area after operations have been completed. Such plans shall include the area to be excavated, as well as the surrounding area within fifty feet (50') of the excavation, and shall be drawn to a convenient scale with contours shown at intervals of not more than five feet (5').
  - c. To determine the type of material, the results of deep hole tests, at least three (3) per acre, to a minimum depth of ten feet (10'), certified by an engineer licensed to do business in the State of Connecticut, shall be submitted to the Commission.
  - d. Existing and proposed drainage of the site and the protection of the same.
  - e. Proposed truck and other access to the site.

- f. The location and type of any temporary buildings or temporary machinery to be erected or otherwise brought onto the site.
- g. An estimate of the number and type of trucks and other equipment to be used on the site.
- h. Details of final grading and planting of the site to prevent erosion and otherwise stabilize and restore the premises.
- i. Written authorization to the Commission for inspection of the site at any reasonable time by a duly authorized representative of the Commission.
- j. An affidavit to be filed with the Commission, stating that notice of the proposed excavation operation has been given to the holders of any mortgages or other encumbrances on the property to be excavated.
- k. Any application calling for a public hearing would require the petitioner, at his expense, to send notice of same, via certified mail, return receipt requested, to all owners of record of any abutting properties and also those properties that lie opposite the parcel across any street or thoroughfare. The above notice shall be mailed at least fifteen (15) days prior to the date set for said public hearing. At the time of the public hearing, a copy of the notice sent, together with return receipts, shall be presented to the Zoning Commission to show compliance. An honest effort to reach the owner of record at his last known address would suffice with postal regulations governing. The property shall also be placarded with a sign of three by four feet (3' x 4') minimum, set back no more than ten feet (10') from the front lot line or on the front face of any building or structure that is closer to the front lot line. Said sign shall be visible to the public and composed of letters with a minimum height of four inches (4"). The message shall read: "A public hearing dealing with these premises is to be held in the New Milford Town Hall at (time) on (day), (month, day, year) dealing with an application for etc." Said sign shall be placed at least fifteen (15) days prior to the public hearing and removed immediately after the hearing is closed. The wording of the required sign may be changed at the discretion of the Zoning Commission to suit the circumstances involved.
- l. Before a permit is issued, both owner and operator shall submit to the Commission a letter signed by them, which authorizes the Commission, if in its sole judgment Section 140-050-2.F is not complied with, to call any and all bonds posted for this permit and to use such funds to have the site entered upon and restored. (*Amended Effective: June 20, 1985*)

#### **Section 140-050      Regulations Concerning Conduct of Operations**

1. In considering any such application, the Commission shall consider the effect upon the premises and adjacent property, upon property values, health, safety, public welfare and any effect upon the future of the premises involved.
2. The Commission may approve the plan only when it is satisfied that the following conditions will be complied with in the undertaking of such excavation:

- a. All operations, including screening, sifting, washing, crushing or other forms of processing shall be conducted upon the premises between the hours of 7:30 a.m. and 5:30 p.m., seasonal time only, Monday through Friday inclusive and Saturday 7:30 a.m. to 12:00 noon. No operation is to take place on Sundays and the following holidays: New Year's Day, Memorial Day, 4<sup>th</sup> of July, Labor Day, Thanksgiving Day and Christmas Day, except with special permission of the Commission or the Zoning Enforcement Officer. Equipment and machinery shall not be started prior to 7:30 a.m. (*Amended Effective: June 20, 1985; Amended Effective: August 25, 2003*)
- b. No stationary machinery shall be erected or maintained within one hundred feet (100') of any property line, permit area line or street line, except in the industrial area and this only with the express written consent of the Commission after its having examined the site plan showing the premises and those adjacent to it.
- c. No excavation shall take place within fifty feet (50') of any property or highway line regardless of elevation, and no shrubbery, grass or trees shall be removed from the fifty-foot (50') strip until restoration begins.
- d. When the depth of the excavation exceeds twenty feet (20'), the distance from the property line or highway line shall be increased not less than one foot (1') for each additional vertical foot of excavation. The maximum depth of the cut shall not be greater than a vertical distance of thirty feet (30'), and if excavation exceeding a vertical distance of thirty feet (30') is desired, a second cut shall be made beginning no closer than twenty feet (20') from where the first cut ends. If the property is used for a commercial excavation, quarrying or mining operation, a maximum cut of fifty feet (50') shall be allowed, and the distance to a second cut shall be made beginning no closer than thirty feet (30') from where the first cut ends. These distances shall apply to all succeeding cuts. (*Amended Effective: November 24, 2003*)
- e. Staking by a surveyor licensed to do business in the State of Connecticut shall be required at all corners of the permit area, with secondary staking forty-five feet (45') inside the permit area, in a manner acceptable to the Commission, in order to maintain the fifty-foot (50') setback.
- f. When excavation and removal operations, or either of them, are completed, or if a permit has expired and/or has not been renewed, the excavated area shall be graded to within twenty-five feet (25') of the permit line, adjacent property line and/or highway lines, so that the slopes and disturbed areas shall be no steeper than one to three (1:3) (vertical to horizontal), but if the excavated area consists of stable material the slope may have a grade of one to two (1:2) vertical to horizontal. In stone quarries or where ledge is encountered, steeper slopes may be permitted, provided a properly maintained heavy wire fence, at least six feet (6') height, is erected and maintained at the top of the slope by the owner and/or operator. A layer of topsoil shall be spread over the excavated areas, except exposed rock surfaces, to a minimum depth of three inches

(3"), in accordance with the approved final grading plan. The Commission may approve other such methods in writing in advance of the final restoration. The area shall then be seeded with suitable grass mixtures containing at least fifty percent (50%) permanent grasses. If benching of the site exists as provided in subsection d., then the benched areas may be maintained as a final grade, provided that the benches are seeded and trees are planted on each bench. This restoration shall take place within one (1) calendar year following the completion of work or the expiration or non-renewal of a permit, unless the Commission allows a longer period of time or there is intent by the owner or operator to resume excavation or removal operations and apply for renewal of a permit for that area within a reasonable period of time. Said area shall be maintained and all bonds shall remain in force until the area is stabilized for at least two (2) years and approved, in writing, for release by the Commission, provided that the Commission may determine that the area is sufficiently stable that the part of the bond that covers that area may be released in less than two (2) years. (*Amended Effective: November 24, 2003*)

- g. No building except a field office or temporary shelter or machinery, shall be erected on the premises, and no screening, sifting, washing, crushing or other forms of processing shall be conducted upon the premises in any zone, except as may be permitted by the Commission. Any such building, shelter or machinery shall be removed from the premises within thirty (30) days of the completion, expiration or non-renewal of a permit. (*Amended Effective: June 20, 1985*)
- h. At all stages of operation, proper drainage shall be provided to prevent the collection and stagnation of water and to prevent the harmful effects upon surrounding properties or roads. Any lockage of drainage ditches or culverts, or materials from trucks, or erosion on any highway, shall be immediately removed by the owner or operator of the site. Should the Commission be required to cause the removal of such material, for the safety of the public or for any other reason, the cost of such work shall be paid by the owner and/or operator of the site.
- i. During the period of excavation and removal barricades, fences or a grassed berm, at least six feet (6') in height, shall be erected, as deemed necessary by the Commission or the Zoning Enforcement Officer, for the protection of pedestrians and vehicles. As well, such barricades, fences or berms may be required to further buffer adjacent properties from the operation.
- j. At no time shall overhang be permitted on any face, and at no time shall slopes in excess of one to two (1:2) (vertical to horizontal) be present on any face, except the face where active excavation is being carried on. (*Amended Effective: November 24, 2003*)
- k. During the period of excavation and removal, the owner and/or operator of the site shall provide, at his own expense, such special police, flagmen, barricades and fences, for the protection of pedestrians and vehicles, as deemed necessary by the Commission or the Zoning Enforcement Officer,

to protect the public health, safety, convenience and property values.

- l. Truck access to the excavation shall be so arranged as to minimize danger to traffic and nuisance to surrounding properties. That portion of any access road within the area of operation shall be treated to minimize dust. The Commission may require a road, hard surfaced, to allow settling of the loads and to ensure further control of dust.
- m. Proper measures shall be taken to minimize the nuisance of noise and dust or rock. Such measures may include limitations upon the stockpiling of excavated materials upon the site, except that the stockpiling of materials obtained from commercial quarrying or mining on the same site shall be not prohibited. Every loaded truck leaving the site shall be covered. Material may not be stockpiled higher than sixteen feet (16'), but the stockpiling of materials obtained from a site used for commercial quarrying and mining activities may be allowed by the Commission up to a height of forty feet (40'). (*Amended Effective: June 20, 1985; Amended Effective: November 24, 2003*)
- n. The owner and/or operator shall be liable for the cost of repairing any damage to any public highway resulting from its operation.
- o. Such other appropriate safeguards as the Commission may deem necessary to protect the public health, safety, convenience and property values.

#### **Section 140-060      General and Specific Provisions**

1. Every application shall contain full information regarding the preceding conditions, plus other such information as the Commission may require.
2. No more than four (4) acres may be opened up and excavated at one (1) time without specific authorization from the Commission.
3. Where leveling off is the intent of the permittee(s) and where doing so would improve the properties of both, the permittee(s) and the adjacent property owner(s) may, after formal application and approval by the Commission, excavate and grade within the fifty-foot (50') setback area.
4. Where there is an operation, either new or existing, adjacent to another operation, either existing or formerly mined, the Commission may require the owner(s) or operator(s) of the two (2) contiguous properties to mine through, removing the materials within the fifty-foot (50') buffer strips and blend the contiguous property lien into a common grade.
5. Before a permit is issued, the applicant and his operator shall post, separately, performance bonds in form and amount satisfactory to the Commission as surety conditioned on the carrying out of all above conditions and any other safeguards imposed. The Commission, as it deems fit, may require a cash bond or letter of credit or a combination of the two (2). (*Amended Effective: June 20, 1985*)

6. Permit approval may be granted in two (2) stages by the Commission:
  - a. Permit approval to the owner may be granted only after submission of all the required documents and requested information and the necessary public hearing.
  - b. Permit approval of the operator may be granted only after his furnishing to the Commission evidence of proper bonding and insurance.
7. No permit shall be issued by the Commission for a period exceeding three (3) years, but, upon application, the permit may be renewed by the Commission for additional three (3)-year periods, provided that within such three (3) year period the Commission may require the permit holder to submit another permit application if after inspection of the permit location the Commission decides to review the use of the property area covered by the permit. A fee of seven hundred fifty dollars (\$750.00) shall be paid for each permit and renewal. Areas previously worked upon for extraction of earth materials shall not be renewed for a period of five (5) years after closure. (*Amended Effective: June 20, 1985; Amended Effective: March 22, 1991; Amended Effective: July 18, 2005*)
8. Updated topo maps may be required by the Commission prior to renewal of any permit.
9. The Commission, or the Zoning Enforcement Officer, may require as is topo maps at any stage of the operation.
10. An as-built topo map, done by a surveyor licensed to do business in the State of Connecticut, showing conformity with the requirements for restoration, may be required prior to the release of any bonds.
11. If the excavation is abandoned for three (3) years, or if no substantial activity, as determined by the Commission and the Zoning Enforcement Officer, takes place within three (3) years after the granting or renewal of the permit, the permit may be revoked. Prima facie evidence of activity shall be the excavation of three thousand (3,000) cubic yards of materials per year.
12. Failure to comply with the plans and conditions as approved, or any deviation therefrom, shall be a violation, and the Commission or the Zoning Enforcement may order the stoppage of all excavation, and the Commission may revoke the permit.
13. Said area shall be maintained and all bonding may be required to remain in force until the area is stabilized for at least two (2) years and approved in writing by the Commission for release. After the area has been initially graded, top soiled, seeded and fertilized in accordance with the provisions of these regulations, the

Commission may, based on the review and recommendation of the Director of Public Works or other designated agent, accept substitute bonding of a lesser amount, but which would assure complete restoration. (*Effective: June 26, 1987*)

**Section 140-070      Grading and Re-Grading of Property**

1. No person, firm, entity, or corporation shall grade or re grade any lot or parcel of land except as described herein, without first having secured a permit for such activity from the Zoning Commission.
2. Earth grading exemption from the provisions of this section shall be limited to the necessary alteration of a building or structure on the same premises for which a Zoning Permit has been issued; a roadway or parking facility installation of essential septic systems, water lines, sewer pipe, storm drainage systems including dry wells, subsurface drainage, structures (curtain drains, etc.), public utility surface and to home landscaping project carried out by or for the owner of the premises upon which such activity is to occur which requires fewer than 100 cubic yards of earth material for completion or in the alternative consists of entirely finished grading or topsoil not altering the existing land contours by more than six inches (6”).
3. Prior to approval, a letter of intent with a sworn statement of purity shall be submitted to the Commission. A cash bond or letter of credit in an amount to be determined by the Zoning Commission or its agent to ensure that all of the safeguards and conditions imposed by these regulations will be satisfied shall be presented to the Commission before a zoning permit is issued.

**Section 140-080      Filling of Land**

1. The purpose of this section is to conserve and preserve water storage areas by helping to maintain the ground water level and stream flow, to secure the safety of traffic movement and to control any fill operations that may create a safety or health hazard to the public or adjacent property owners, or be detrimental to the immediate neighborhood or the town.
2. The Commission may grant a special permit for the filling of land subject to the following conditions and the provisions of Chapters 175 and 180 of the Zoning Regulations. A special permit is required except in the following circumstances:
  - a. Where the filling of land involves an amount of earth material, which is less than one hundred (100) cubic yards.
  - b. Where the filling activities are associated with construction of a residential subsurface sewerage disposal system, activities approved as part of an approved site plan by the Commission, or activities approved as part of an approved subdivision plan by the planning commission.



3. Procedure for applying for a special permit for Filling of Land:
  - a. The applicant shall submit a site plan of the area to be filled pursuant to the provisions of Chapter 175 of the Zoning Regulations and also showing finished grades at the completion of filling, type of fill material, and proposed access for vehicles and hours of operation, as well as any other information considered necessary by the Commission for adequate study of the proposal.
  - b. The plan shall provide for proper drainage of the operation, during and after completion. No bank shall exceed a slope of one foot (1') of vertical rise in two feet (2') of horizontal distance. Necessary precaution against erosion shall be shown.
  - c. At the conclusion of the filling operation, the disturbed area shall be covered with not less than three inches (3") of topsoil and seeded with a suitable cover crop.
4. Before a special permit is issued, the applicant and his operator shall post, separately, performance bonds in form and amount satisfactory to the Commission as surety conditioned on the carrying out of all above conditions and any other safeguards imposed. The Commission, as it deems fit, may require a cash bond. (*Amended Effective: September 22, 2001*)

**Section 140-090      Processing of Earth Products in Connection with Building and Construction**

1. A zoning permit may be issued by the Zoning Enforcement Officer for a period of up to sixty (60) days for the processing of earth products in conjunction with on-site construction activities approved as part of an approved site plan by the Commission, or activities approved as part of an approved subdivision plan by the Planning Commission. This permit may be renewed, provided that the total period allowed for the processing of earth products in connection with such construction activities shall not exceed a total of 180 days. The application for said permit must be accompanied by a statement of use detailing the type, amount and source of the material to be processed and the duration of time required for this activity, as well as the purpose of the activity. (*Amended Effective: August 25, 2003*)
2. The processing activities authorized in section 1 hereof may include crushing, screening and sifting of on-site material only. No off-site earth material may be brought on-site for crushing, screening and/or sifting
3. No earth material may leave the site other than as permitted in section 140-020-1 B of the zoning regulations.
4. All applications for a zoning permit shall be accompanied by a plot plan in duplicate, drawn to a scale of at least one inch (1") equals fifty feet (50'),

prepared by a Connecticut licensed land surveyor, showing the location of the proposed activities.

5. All operations must be confined to the hours of 8:00 a.m. to 5:30 p.m. Monday through Friday.
6. All activities authorized herein must be at least 500 feet from any residence.
7. No operation is to take place on Sundays, Saturdays, or New Year's Day, Memorial Day, 4<sup>th</sup> of July, Labor Day, Thanksgiving Day or Christmas Day, except with special permission of the Zoning Enforcement Officer.  
*(Effective: September 22, 2001; Amended Effective: August 25, 2003)*