

TOWN OF BARTLETT
Office of Selectmen
56 Town Hall Road
Intervale, New Hampshire 03845
(603) 356-2950

REGULATION

(Providing for the regulation of excavations as defined in RSA 155-E).

- I. The provisions of RSA 155-E are hereby adopted for the Town of Bartlett, New Hampshire. The Planning Board is hereby designated the “Regulator” for the Town of Bartlett.
- II. The regulator shall prepare and distribute application forms. A fee of \$5 per abutter shall be charged and collected at the time of submission of an application.
- III. If the application for a permit is approved, a permit fee shall be assessed as follows: \$1.00 per acre calculated to the next highest whole acre with a minimum fee of \$10.00 and a maximum fee of \$50.00.
- IV. Bonding requirements to insure performance shall be determined by the regulator and will be assessed and executed prior to issuance of a permit.

Bartlett Planning Board

CHAPTER 481

HB 661

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand
nine hundred and seventy-nine

AN ACT

providing for the local regulation of excavations.

Be it Enacted by the Senate and House of Representatives
in General Court convened:

481:1 The purpose of this act is to grant municipalities the authority to cope with the recognized safety hazards which open excavations create; 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.

481:2 New Chapter. Amend RSA by inserting after Chapter 155-C the following new chapters:

Chapter 155-E

Local Regulation Excavations

155-E:1 Definitions. In this chapter:

I. "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.

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

III. "Regulator" means:

(a) The planning board of a city or town, or if a town at an annual or special meeting duly warned for the purpose so provides, the selectmen of the town or the board of adjustment; or

(b) If there is no planning board, the selectmen of the town or the legislative body of the city; or

(c) The county commissions if the land area is in an unincorporated place.

IV. “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 RSA 155-E:1, I.

V. “Excavation Site” means any area of contiguous land in common ownership upon which excavation takes place.

VI. “Excavation Area” means the area within an excavation site where excavation has occurred or is eligible to occur under the provisions of this chapter. (Amd 1988, 1989, 1991, eff. August 23, 1991)

155-E:2 Permit Required. No owner shall permit any excavation of earth on his premises without first obtaining a permit therefore, except as follows:

I. EXISTING EXCAVATION. 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 excavations on the excavation site without a permit, subject to the following:

(a) 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 such local ordinances and regulations, if any, as were then in effect.

(b) Such an excavation area may not be expanded, without a permit under this chapter, beyond the limits of the town in which it is situated 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 of that date, as modified by the limitations of RSA 155-E:4-a, I, II, and II-a. In this paragraph the term “contiguous” means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town. It is further provided that when such excavation is not allowed in that location by local zoning or similar ordinance in effect on August 4, 1989, or when such ordinances allow 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 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.

(c) Such an excavation shall be performed in compliance with the express operational standards of RSA 155-E:4-a and the express reclamation standards of RSA 155-E:5 and 155-E:5-a. Any violations of those standards shall be enforceable pursuant to RSA 155-E:10.

(d) The owners or operators of any existing excavation area for which no permit has been obtained under this chapter shall file a report with the local regulator within one year after receiving written notice of this requirement from the regulator and in no case later than 2 years following August 4, 1989. The report shall include:

(1) The location of the excavation and the date the excavation first began:

(2) A description of the limits of permissible expansion, as described in subparagraph (b), which are claimed to apply to the excavation;

(3) An estimate of the area which has been excavated at the time of the report; and

(4) An estimate of the amount of commercially viable earth materials still available on the parcel.

(e) The exemption from local zoning or site location regulations as stated in subparagraph (a) shall include the quarrying or crushing of bedrock for the production of construction aggregate; provided, however, that no owner or crushing of bedrock to occur for the first time on any excavation site without first obtaining a permit therefore under this chapter.

II. ABANDONED EXCAVATIONS. The permit and zoning exemptions under RSA 155-E:2, I shall not apply to any abandoned excavation, as defined in subparagraph (a).

(a) For purposes of this section, any excavation, except for excavations or excavation sites described in RSA 155-E:2-III, whether subject to a permit under this chapter or not, for which the affected area has not yet been brought into complete compliance with the reclamation standards of RSA 115-E:5 shall be deemed "abandoned" if:

(1) 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 posting a bond or other security with the municipal treasurer in a form and amount prescribed by the regulator, sufficient to secure the reclamation of the entire excavation site in accordance with the standards of RSA 155-E:5; or

(2) The excavation site is in use and is not an excavation or excavation site as described in RSA 155-E:2, III, but does conform with the incremental reclamation requirements of RSA 155-E:5-a, or the owner or operator has not posted a bond or other security and submitted a reclamation timetable to be approved by the regulator as described in subparagraph (a)(1); or

(3) The owner or operator of the excavation has neither secured a permit pursuant to this chapter nor filed a report of an existing excavation pursuant to subparagraph I)d) within the prescribed period.

(b) In addition to the enforcement remedies of RSA 155-E:10, 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 subparagraph II(a)(1), or to complete reclamation in accordance with this chapter within a stated reasonable time. Such an order shall only be made following a hearing for which notice has been given in accordance with RSA 155-E:7, if the regulator finds that the public health, safety, or welfare requires such reclamation. If the owner fails to complete reclamation within the time prescribed in the order, the regulator may request the governing body to cause reclamation to be completed at the expense of the municipality. The municipality'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.

(c) 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 RSA 155-E:5, may be made subject to the remedy prescribed in RSA 155-E:2, II(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.

III. STATIONARY MANUFACTURING PLANTS.

(a) No permit shall be required under this chapter for excavation from an excavation site which on August 4, 1989, was contiguous to or was contiguous land in common ownership with stationary manufacturing and processing plants which were in operation as of August 24, 1979, and which use earth obtained from such excavation site. Such excavation shall be performed in compliance with the operational standards as expressly set forth in RSA 155-E:4-a and the reclamation standards as expressly set forth in RSA 155-E:5 and 155-E:5-a, 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 30 days of receipt of such notice. Such excavation may be expanded without a permit under this chapter to any contiguous lands which were in common ownership with the site of the plant on August 4, 1989, except as limited by RSA 155-E:4-a, I, II, and III.

(b) No further permit shall be required under this chapter for excavation from a site which on August 4, 1989, was contiguous to or was contiguous land in common ownership with stationary manufacturing and processing plants for which local or state permits have been granted since August 24, 1979, and before August 4, 1989, which use 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.

IV. HIGHWAY EXCAVATIONS. No permit shall be required under this chapter 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 an agent of the unit of government which has a contract or the construction, reconstruction, or maintenance of the highway, subject, however, to the following:

(a) 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 chapter, and may be enforced pursuant to RSA 155-E:10.

(b) Such excavation shall not be exempt from local zoning or other applicable ordinances, unless such exemption is granted pursuant to subparagraph (c), or from the operational and reclamation standards as expressly set forth in RSA 155-E:4-a, 155-E:5, and 155-E:5-a, 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. Before beginning such excavation, the governmental unit or its agents shall certify to the regulator that:

(1) The excavation shall comply with the operational and reclamation standards of RSA 155-E:4-a, RSA 155-E:5, and 155-E:5-a.

(2) The excavation shall not be within 50 feet of the boundary of a disapproving abutter or within 10 feet of the boundary of an approving abutter; unless requested by said approving abutter.

(3) The excavation shall not be unduly hazardous or injurious to the public welfare.

(4) Existing visual barriers in the areas specified in RSA 155-E:3, III shall not be removed, except to provide access to the excavation.

(5) The excavation shall not substantially damage a known aquifer, so designated by the United States Geological Survey.

(6) All required permits for the excavation from state or federal agencies have been obtained.

(c) The 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 local zoning or other ordinances or regulations, with respect to the excavation or transportation materials being used exclusively for the lawful construction, reconstruction, or maintenance of a class I, II, or III highway.

(1) 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.

(2) Prior to acting on the application, the board shall hold a hearing in the municipality whose ordinance or regulation is at issue. At least 7 days prior to such hearing, notice shall be published in a newspaper of general circulation in the municipality, and shall be sent by certified mail to the applicant, the municipality's chief executive office as defined in RSA 672:9, the chairman of its governing board as defined in RSA 672:6, the chairman of the local regulator as defined in RSA 155-E:1, the chairman of its conservation commission, if any, and, if the proposed exemption concerns an excavation site, to the abutters of that site as defined in RSA 672:3.

(3) 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 decisions shall include:

(A) 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.

(B) An identification of the public interest being protected by the ordinance or regulation.

(C) A statement of the state interest involved, and of why, in the opinion of the board, that state interest overrides the interest protected by the ordinance or regulation.

(D) Any condition to be imposed on the applicant, to protect the public health, safety, or welfare.

(4) 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 section shall be considered a rehearing under RSA 677, and no further motion for rehearing shall be required. (Amd 1985, 1988, 1989 1991, eff. Aug 23, 1991)

155-E:2-a Other Exceptions.

I. No permit shall be required for the following types of excavations:

(a) Excavation that is exclusively incidental to the 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 chapter unless all state and local permits required for the construction or alteration of the building, structure, parking lot, or way have been issued.

(b) Excavation that is incidental to agricultural or silvicultural activities, normal landscaping, or minor topographical adjustments.

(c) Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E.

II. 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 appropriate local official. (Amd 1989, eff Aug 4, 1989)

155-E:3 Application for Permit. Any owner or owner's designee subject to this chapter shall, prior to excavation of his land, apply to the regulator in each city or town involved for a permit for excavation. If the area subject to this chapter is situated in an unincorporated place application shall be made to the county commissioners. The applicant shall also send a copy of the application to the conservation commission, if any, of the city or town. Such application shall be signed and dated by the applicant and shall contain at least the following information:

I. The name and address of the owner of the land to be excavated, the person who will actually do the excavating and all abutters to the premises on which the excavation is proposed;

II. A sketch and description of the location and boundaries of the proposed excavation, the number of acres to be involved in the project and the municipalities and counties in which the project lies;

III. A sketch and description of the access and visual barriers to public highways to be utilized in the proposed excavation;

IV. The breadth, depth and slope of the proposed excavation and the estimated duration of the project;

V. The elevation of the highest annual average groundwater table within or next to the proposed excavation;

VI. A plan for the reclamation of the area affected by the excavation at least in compliance with RSA 155-E:5 and RSA 155-E5-a. Such plan shall address the effects of the proposed excavation on soil, surface water and groundwater, vegetation, overburden, topography, and fill material, and may address future land use consistent with the approved

master plan, and shall include a timetable for reclamation of fully depleted areas within the excavation site during said project;

VI-a. 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; and

VII. Such other information as the regulator may reasonably require. (Amd 1989, 1991, eff. Aug 23, 1991)

155-E:4 Prohibited Projects. The regulator shall not grant a permit:

- I. Where the excavation would violate the operational standards of RSA 155-E:4-a;
- II. For excavation within 50 feet of the boundary of a disapproving abutter or within 10 feet of the boundary of an approving abutter unless approval is requested by said abutter;
- III. When the excavation is not permitted by zoning or other applicable ordinance, provided, however, that in municipalities which have commercial earth resources on unimproved land within their boundaries, and which do not provide for opportunities for excavation of some of these resources in at least some, but not necessarily all areas within the municipality, or in municipalities which have zoning ordinances which do not address the subject of excavations, excavation shall be deemed to be a use allowed by special exception as provided in RSA 674:33, IV, in any non-residential areas of the municipality, and the zoning board of adjustment shall grant such a special exception upon a finding that:
 - (a) The excavation will not cause a diminution in area property value or unreasonably change the character of the neighborhood;
 - (b) The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof;
 - (c) The excavation will not create any nuisance or create health or safety hazards; and
 - (d) The excavation complies with such other special exception criteria as may be set out in applicable local ordinances.
- IV. When the issuance of the permit would be unduly hazardous or injurious to the public welfare;
- V. Where existing visual barriers in the areas specified in RSA 155-E:3, III would be removed, except to provide access to the excavation;
- VI. Where the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey;

VII. When the excavation requires land use permits from state or federal agencies; but the regulator may approve the application when all necessary land use permits have been obtained; or

VIII. Where the project cannot comply with the reclamation provisions of RSA 155-E:5 and 155-E:5-a. (Amd 1989, 1991, eff Aug 23 1991)

155-E:4-a Minimum and Express Operational Standards. It shall be a violation of this chapter 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 chapter, without complying with the following minimum standards or when such excavation is not subject to a permit under this chapter pursuant to RSA 155-E:2 without complying with the following express standards:

I. No excavation shall be permitted below road level within 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.

II. No excavation shall be permitted within 50 feet of the boundary of a disapproving abutter, within 150 feet of any dwelling which either existed or for which a building permit has been issued at the time the excavation is commenced.

11-a. No excavation shall be permitted within 75 feet of any great pond, navigable river, or any other standing body of water 10 acres or more in area or within 25 feet of any other stream, river or brook which normally flows throughout the year, or any naturally occurring standing body of water less than 10 acres, prime wetland and designated in accordance with RSA 482-A:15, I or any other wetland greater than 5 acres in area as defined by the wetland board.

III. Vegetation shall be maintained or provided within the peripheral areas required by paragraphs I and II.

IV. Drainage shall be maintained so as to prevent the accumulation of free-standing water for prolonged periods. Excavation practices which result in continued siltation of surface waters or any degradation of water quality of any public or private water supplies are prohibited.

V. No fuels, lubricants, or other toxic or polluting materials shall be stored on-site unless in compliance with state laws or rules pertaining to such materials.

VI. Where temporary slopes will exceed a grade of 1:1, a fence or other suitable barricade shall be erected to ward off danger or limit access to the site.

VII. 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.

VIII. Nothing in this chapter shall be deemed to supersede or preempt applicable environmental standards or permit requirements contained in other state laws, and no exemption under this chapter shall be construed as an exception under this chapter shall be construed as an exception from any other state statute.

155-E:5 Minimum and Express Reclamation Standards. Within 12 months after the expiration date in a permit issued under this chapter, or of the completion of any excavation, whichever occurs first, 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 chapter pursuant to RSA 155-E:2, to meet each of the following express standards:

I. 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 suitable to prevent erosion. Areas visible from a public way, from which trees have been removed, shall be replanted with tree seedlings, set out in accordance with acceptable horticultural practices.

II. Earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of.

III. All slopes, except for exposed ledge, shall be graded to natural repose for type of soil of which they are composed so as to control erosion or at a ration 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.

IV. The elimination of any standing bodies of water created in the excavation project as may constitute a hazard to health and safety.

V. 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 division of water supply and pollution control pursuant to RSA 485-A:17, the provisions of that statute, and rules adopted under it, shall supersede this paragraph as to areas of excavation sites covered thereby. The excavator shall file a copy of permits issued under RSA 485-A:17 with the regulator. (Amd 1989, 1991, eff. Aug 23, 1991)

155-E:5-a Incremental Reclamation. Except for excavation sites of operating stationary manufacturing plants, any excavated area of 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 RSA 155-E:5, within 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 RSA 155-E:2, III, shall prepare

and submit for the regulator's records a reclamation plan for the affected land, including a timetable for reclamation of the depleted areas within the reclamation site. (Amd 1989, 1991, eff. Aug 23, 1991)

155-E:5-b Exceptions. The regulator, upon application and following a hearing held in accordance with RSA 155-E:7, may grant an exception in writing to the standards contained in RSA 155-E:4-a, 155-E:5 and 155-E:5-a 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 RSA 155-E:9.

155-E:6 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 to approval in the same manner as provided for an excavation permit. (Amd 1989, eff Aug 4, 1989)

155-E:7 Hearing. Prior to the regulator approving an application for an excavation permit or an application for an amended excavation permit, a public hearing shall be held within 30 days on such application. A notice of said hearing shall be sent to all abutters and shall specify the grounds for the hearing as well as the date, time and place and at least 14 days notice of the time and place of such hearing shall be published in a paper of general circulation in the city, town or unincorporated place wherein the proposed excavation is to be located and a legal notice thereof shall also be posted in at least 3 public places in such city, town or unincorporated place; the 14 days shall not include the day of publications nor the day of the meeting, but shall include any Saturdays, Sundays and legal holidays within said period. Within 20 days of said hearing or any continuation thereof, the regulator shall render a decision approving or disapproving the application, giving reasons for disapproval.

155-E:8 Issuance of Permit. If the regulator after the public hearing approves the application for a permit and determines it is not prohibited by RSA 155-E:4 it shall, upon receipt of an excavation fee determined by the regulator not to exceed \$50 and the posting of a bond or other such surety with the municipal treasurer in an amount, as it requires, reasonably sufficient to guarantee compliance with the permit, grant a permit to the applicant for an excavation. A copy of the permit shall be prominently posted at the excavation site or the principal access thereto. A permit shall not be assignable or transferable without the prior written consent of the regulator. A permit shall specify the date upon which it expires. The regulator may include in a permit such reasonable conditions as are consistent with the purpose of this chapter and may include requirements for a permit for excavation which are more stringent than the standards set forth in this chapter including the provision for visual barriers to the excavation. (Amd 1991, eff Aug 23, 1991)

155-E:9 Appeal. 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. 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 with

10 days of the date of the decision appealed from. The regulator 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. 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. (Amd 1985, eff. Jan 1, 1986)

155-E:10 Enforcement.

I. The regulator or its duly authorized agent may suspend or revoke the permit of any person who has violated any provision of his permit or this chapter or made a material misstatement in the application upon which his permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with RSA 155-E:9.

II. Fines, penalties, and remedies for violations of this chapter shall be the same as for violations of RSA title LXIV, as stated in RSA 676:15 and 676:17.

III. To ascertain if there is compliance with this chapter, a permit issued hereunder of an order issued hereunder, the regulator 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 August 24, 1979.

IV. [Repealed.] (Amd 1989, eff. Aug 4, 1989)

155-E:11 Regulations.

I. The regulator may adopt such regulations as may be reasonably necessary to carry out the provisions of this chapter, including adopting a permit fee schedule. Whenever such local regulations differ from the provisions of this chapter, the provision which imposes the greater restriction or higher standard shall be controlling, except that no local regulation shall supersede the sole applicability of express standards under RSA 155-E:2, I, III, and IV.

II. Such regulations may include reasonable provisions for the protection of water resources, consistent with the municipality's local water resources management and protection plan developed under RSA 674:2, VIII. If such regulations prohibit excavations below a stated height above the water table, the regulations shall also contain a procedure whereby an exception to such prohibition shall be granted if the applicant demonstrates that such excavation will not adversely affect water quality, provided, however, that written notice of such exception shall be recorded in the registry of deeds, and one copy filed with the division of water supply and pollution control, department of environmental services. (Amd 1989, 1991, eff Aug 23, 1991)

481:4 Effective date. This act shall take effect 60 days after its passage.

Approved: June 25, 1979
Effective Date: August 24, 1979

RSA 676:15 Injunctive Relief. In case any building or structure or part thereof is or is proposed to be erected, constructed, altered, or reconstructed, or any land is proposed to be used in violation of this title, or of any provision or specification of an application, plat, or plan approved by, or any requirement or condition of a permit or decision issued by any local administrator or land use board acting under the authority of this title, the building inspector or other official with authority to enforce the provisions of this title or any local ordinance, code, or regulation adopted under this title, or the owner of any adjacent or neighboring property who would be specifically damaged by such violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or any other appropriate or proceeding to prevent, enjoin, abate, or remove such unlawful erection, construction, alteration, or reconstruction. (Amd 1988, eff. Jan 1, 1989)

RSA 676:17 Fines and Penalties.

I. Any person who violates any of the provisions of this title, or any local ordinance, code, or regulation adopted under this title, or any provision or specification of any application, plat or plan approved by, or any requirement or condition of a permit or decision issued by any local administrator or land use board acting under the authority of this title:

(a) Shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

(b) Shall be subject to a civil penalty not to exceed \$100 for each day that such violation is found to continue after the conviction date or after the date on which the violator received written notice from the municipality that he is in violation, whichever is earlier. [Amd 1988, eff Jan 1, 1989]

II. If any legal action brought by a municipality to enforce, by way of injunctive relief as provided by RSA 676:15 or otherwise, any local ordinance, code or regulation adopted under this title, or to enforce any planning board, zoning board of adjustment or building code board of appeals decision made pursuant to this title, or to seek the payment of any fine levied under paragraph I, the municipality may recover its costs and reasonable attorney's fees actually expended in pursuing the legal action if it is found to be a prevailing party in the action. For the purposes of this paragraph, recoverable costs shall include all out-of-pocket expenses actually incurred, including but not limited to, inspection fees, expert fees and investigatory expenses.

III. If any violation of a local ordinance, code or regulation, or any violation of a planning board, zoning board of adjustment or building code board of appeals decision, results in the expenditure of public funds by a municipality which are not reimbursed under paragraph II, the court in its discretion may order, as an additional civil penalty, that a violator make restitution to the municipality for such funds so expended.

IV. The superior court may, upon a petition filed by a municipality and after notice and a preliminary hearing as in the case of prejudgment attachments under RSA 511-A, require an alleged violator to post a bond with the court to secure payment of any penalty or remedy or the performance of any injunctive relief which may be ordered or both. At the hearing, the

burden shall be on the municipality to show that there is a strong likelihood that it will prevail on the merits, that the penalties or remedies sought are reasonably likely to be awarded by the court in an amount consistent with the bond sought, and that the bond represents the amount of the projected expense of compliance with the injunctive relief sought.

V. The building inspector or other local official with the authority to enforce the provisions of this title or any local ordinance, code, or regulation adopted under this title may commence an action under paragraph I either in the district court pursuant to RSA 502-A:11-a, or in the superior court. The prosecuting official in his discretion may, prior to or at the time of arraignment, charge the offense as a violation, and in such cases the penalties to be imposed by the court shall be limited to those provided for a violation under RSA 651:2 and the civil penalty provided in subparagraph I(a) of this section. The provisions of this section shall supersede any inconsistent local penalty provision. [Added 1988, eff. Jan 1, 1989]

RSA 676:17-a Cease and Desist Orders. The building inspector, code enforcement officer, zoning administrator or other official designated as an enforcement authority by ordinance or resolution of the local legislative body may issue a cease and desist order against any violation of this title, or any provision or specification of an application, plat, or plan approved by, or any requirement or condition of a permit or decision issued by, any local administrator or land use board acting under the authority of this title, subject to the following:

- I. The order shall state in writing:
 - (a) The precise regulation, provision, specification or condition which is being violated.
 - (b) The facts constituting the violation, including the date of any inspection from which these facts were ascertained.
 - (c) The corrective action required, including a reasonable time within which such action shall be taken.
 - (d) A statement that a motion for summary enforcement of the order shall be made to the court of the district in which the property is situated unless such corrective action is taken within the time provided, or unless an answer is filed within 20 days, as provided in paragraph V.
 - (e) A statement that failure to either take the corrective action, or to file an answer, may result in corrective action being taken by the municipality, and that if this occurs the municipality's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including possible loss of the property if not paid.

II. The order shall be served upon the record owner of the property or his agent, and upon the person to whom taxes are assessed for the property, if other than the owner, and upon occupying tenant of the property, and upon any other person known by the enforcing officer to exercise control over the premises in violation, and upon all persons holding mortgages upon

such property as recorded in the office of the register of deeds, in the same manner provided for service of a summons in a civil action in district court. If the owner is unknown or cannot be found, the order shall be served by posting it upon the property and by 4 weeks publication in a newspaper in general circulation in the municipality.

III. Upon service of the order, the owner or his agent, occupying tenant or his agent, or any other person who is engaged in development, construction, excavation, or other changes of the land or buildings on the land shall cease immediately such activities, if so provided in the order, until such time as judgment is rendered under paragraphs VI or VII. Failure to cease such activity shall constitute a separate violation of this title in addition to the violation cited in the order, unless such order is annulled as provided in paragraph VII.

IV. A copy of the order with proof of service shall be filed with the clerk of the district court of the district in which the property is located not fewer than 5 days prior to the filing of a motion to enforce under paragraph VI.

V. Within 20 days after the date of service, any person upon whom the order is served may serve an answer in the manner provided for the service of an answer in a civil action, specifically denying such facts in the order as are in dispute.

VI. If no answer is served, the enforcement official may move the court for the enforcement of the order. If such a motion is made the court may, upon presentation of such evidence as it may require, affirm or modify the order and enter judgment accordingly, fixing a time after which the governing body may proceed with the enforcement of the order. The clerk of the court shall mail a copy of the judgment to all persons upon whom the original order was served.

VII. If an answer is filed and served as provided in paragraph V, further proceedings in the action shall be governed by the rules of the district court. If the order is sustained following trial, the court shall enter judgment and shall fix a time within which the corrective action shall be taken, in compliance with the order as originally filed, or as modified by the court. If the order is not sustained, it shall be annulled and set aside. If it appears to the court that the order was frivolous, was commenced in bad faith, or was not based upon information and belief formed after reasonable inquiry or was not well-grounded in fact, then the court shall order the defendant's costs and reasonable attorney's fees to be paid by the municipality. The clerk of the court shall mail a copy of the judgment to the persons upon whom the original order was served.

VIII. If a judgment is not complied with in the time prescribed, the local governing body may cause the corrective action to be taken as set forth in the judgment. The cost to the municipality of taking such corrective action together with its other expenses as provided in paragraph IX, shall be a lien against the real estate on which the violation occurred, which shall continue for 18 months from the date upon which the expense account is allowed by the court, as provided in paragraph IX.

IX. The municipality shall keep an accurate account of the expenses in connection with its enforcement, including but not limited to filing fees, service fees, publication fees, the

expense of searching the registry of deeds to identify mortgages, witness and expert fees, attorneys fees and traveling expenses. The court shall examine, correct if necessary, and allow the expense account. The municipal governing body, by majority vote, may commit the expense account to the collector of taxes, in which case the mayor, as defined by RSA 672:9, shall direct the expense account, together with a warrant under his hand and seal, to the municipal tax collector, requiring him to collect the same from the person to whom real estate taxes are assessed for the premises upon which such corrective action was taken, and to pay the amount so collected to the municipal treasurer. Within 30 days after receipt of such warrant, the collector shall send a bill as provided in RSA 76:11. Interest as provided in RSA 73:13 shall be charged on any amount not paid within 30 days after the bill is mailed. The collector shall have the same rights and remedies as in the collection of taxes, as provided in RSA 80.

X. A party aggrieved by the judgment of the district court may appeal, within 15 days after the rendering of such judgment, to the superior court.

XI. The remedy provided in this section is supplementary to other enforcement remedies provided by this chapter or local ordinance. At the discretion of the local enforcement official, an action to enforce a cease and desist order under this section may be joined with an action under RSA 676:17, I, and the cease and desist order shall constitute the written notice under RSA 676:17, I(b). [1991, eff. Jun 28, 1991]

676:17-b Local Land Use Citations; Pleas by Mail. A building inspector or other local official with authority to prosecute an offense within the scope of RSA 676:17, and who, prior to or at the time of serving the summons, elects, pursuant to RSA 676:17, V to charge the offense as a violation, may issue and serve upon the defendant, in addition to the summons, a local land use citation as set forth in this section. The defendant receiving such a citation may plead guilty or nolo contendere by mail by entering the plea as provided herein. If such a plea is accepted by the court, the defendant shall not be required to appear personally or by counsel; otherwise he shall appear as directed by the court. The following procedure shall be used:

I. No local land use citation as set forth in this section shall be served unless the defendant has first been given written notice of the violation by the municipality. If the notice involves or includes a decision which may be appealed to the zoning board of adjustment pursuant to RSA 676:5, or to the building code of appeals pursuant to RSA 674:34, such notice shall set forth a reasonable period as provided by the rules of the respective board, in no case less than 7 days, within which such appeal shall be filed after receipt of the written notice, and the citation shall not be served until after the end of such period. If such appeal is filed, further proceedings shall be governed by RSA 676:6.

II. The local land use citation shall contain:

- (a) The caption: "Local Land Use Citation, Town (City) of _____.
- (b) The name of the offender, and address if known to the prosecuting official.

(c) The statute, code, ordinance, regulation, provision, specification, requirement or condition the offender is charged with violating.

(d) The set or circumstances constituting the violation.

(e) The place of the violation.

(f) The date upon which the offender received written notice of the violation by the municipality.

(g) The time and date upon which the violation was witnessed subsequent to such written notice.

(h) The amount of the civil penalty as set forth in RSA 676:17, I(b), which is payable by the offender for each day the violation continued subsequent to such written notice, up to a maximum of 5 days violation charged in one citation.

(i) Instructions informing the defendant that he may answer the citation by mail or may personally appear in court upon the date on the summons, and instructing the defendant how to enter a plea by mail, together with either the amount of the penalty specified in the citation, or a request for a trial.

(j) The address of the clerk of the district court, where the plea by mail may be entered.

(k) A warning to the defendant that failure to respond to the citation on or before the date on the summons may result in his arrest as provided in paragraph V.

(l) The signature of the prosecuting official.

III. Defendants who are issued a summons and local land use citation and who wish to plead guilty or nolo contendere shall enter their plea on the summons and return it with payment of the civil penalty, as set forth in the citation, to the clerk of the court prior to the arraignment date, or shall appear in court on the date of arraignment.

IV. Civil penalties collected by the district court under this section shall be remitted to the municipality issuing the citation. Whenever a defendant (a) does not enter a plea by mail prior to the arraignment day or does not appear personally or by counsel on or before that date or move for a continuance; or (b) otherwise fails to appear for a scheduled court appearance in connection with a summons for any offense, the defendant shall be defaulted and the court shall determine what the civil penalty would be upon a plea of guilty or nolo contendere shall impose an administrative processing fee in addition to the civil penalty. Such fee shall be the same as the administrative processing fee under RSA 502-A:19-b, and shall be retained by the court for the benefit of the state.

V. The court may, in its discretion, issue a bench warrant for the arrest of any defendant who:

(a) Is defaulted in accordance with the provisions of paragraph IV of this section;

(b) Fails to pay a fine or other penalty imposed in connection with a conviction under this title which a court has determined he is able to pay, or issues a bad check in payment of a fine or other penalty, or

(c) Fails to comply with a similar order on any matter within the court's discretion.

VI. For cause, the court in its discretion may refuse to accept a plea by mail and may impose a fine or penalty other than that stated in the local land use citation. The court may order the defendant to appear personally in court for the disposition of the case.

VII. The prosecuting official may serve additional written notice or appeal opportunity under paragraph I, if the facts or circumstances constituting the violation continue beyond the date or dates of any prior citation. A plea of guilty or nolo contendere to the prior citation shall not affect the rights of the defendant with respect to a subsequent citation.

VIII. Forms and rules for the local land use citation and summons shall be developed and adopted by the New Hampshire supreme court.

IX. This section is not intended in any way to abrogate other enforcement actions or remedies in the district or superior court pursuant to this title, nor to require written notice as a prerequisite to other types of actions or remedies under this title. [1991, eff. Jan 1, 1992]