

Return to:
Town of Chester Planning Board
84 Chester Street
Chester, NH 03036



Chester Planning Board

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Conditions and Restrictions Approving Application to Expand Existing Excavation

January 4, 2023

Old Sandown Road, LLC Gravel Pit

I. Introduction

The Planning Board opened a public hearing on September 28, 2022, on the Applicant's* application to expand its existing excavation operation into a large scale, commercial excavation operation on its property known as Map & Lot 005-085-000, located at 152 Fremont Road in Chester, NH (the "Property"). The public hearing was held on the following dates: September 28, October 12, October 26, December 14, 2022, and January 4, 2023.

* Old Sandown Road, LLC (owner - Paul Garabedian, Jr.), 352 South Broadway Street, Salem, NH 03079.

The application was accepted by the Planning Board on September 28, 2022. This board is the Town's "Regulator" pursuant to RSA 155-E:1 III(a). The Planning Board has jurisdiction over this application pursuant to RSA 155-E:2, I(b) and the Town's

Excavation and Reclamation Regulations as referenced in Article 4.7 of the Town of Chester's Zoning Ordinance adopted by the Planning Board.

II. Findings

The Planning Board makes the following findings of fact based upon the information provided during the public hearing by the applicant as well as testimony of the public and records of the Town considered during the review process:

1. The existing excavation on the Property was found to be a legal, preexisting excavation pursuant to RSA 155-E:2, I by the Town's Planning Board at its meeting on February 8, 1992.
2. The existing excavation on the Property is found to be a legal, preexisting excavation pursuant to RSA 155-E:2, I.
3. The proposed expansion of the excavation area is within the bounds of the Town and is contiguous to the Property where the existing excavation is located, which remains under common ownership.
4. Stowe Road is classified as a Class VI Town-regulated, non-maintained road. Fremont and Old Sandown roads are classified as Class V Town-regulated and maintained roads.
5. Historically, the excavation operation generated a minimal amount of additional vehicular traffic to the roads serving the Property and did not adversely impact residents' vehicular or pedestrian uses of those roads. The vehicular traffic was limited from the south end of Stowe Road over an approximate 1,225-foot graveled section and then the 365-foot paved section of Old Sandown Road out to the intersection with NH Route 121-A.
6. The new trucking route proposed by the Applicant for the expansion will now impact approximately 4,470 feet (0.85 miles) of Fremont Road out to NH Route 102. This road is the most heavily traveled Town-maintained road in Chester, and this section of the road was finished being fully reclaimed and repaved in June of 2022.
7. There are 24 properties with homes abutting and another 88 homes within 1,500 feet of the Property. There are 26 homes located along the Town roads which will be used by trucks accessing and egressing the property.
8. None of the abutting properties are within 100 feet of the excavation area. None of the existing dwellings are within 500 feet of the excavation area.

9. The proposed updated plan will reduce the excavation area proposed in the 1991 plan to provide increased buffers to abutters' property lines, dwellings, and wetlands.
10. There are no wetlands, great ponds, navigable waterways, streams, rivers, or brooks within 25 feet of the excavation area.
11. The Applicant proposes to increase the amount of material to be excavated from current amounts historically averaging 400 cubic yards per year (over the last 30 years) to an average of 100,000 cubic yards per year (over approximately the next seven years).
12. The Applicant proposes a significantly deeper excavation elevation relative to the main wetland complex south and southwest of the proposed 18.5 acre cut than on the original 1991 plan. The elevation changes proposed are as follows:

Proposed Depth of Excavation at North End of Cut:
Old Plan Sheet 1 – 275', New Plan Sheet 3 – 264' (11' deeper)

Proposed Depth of Excavation at Center (Hill Peak) of Cut:
Old Plan Sheet 1 – 265', New Plan Sheet 3 – 259.5' (5.5' deeper)

Proposed Depth of Excavation at South End of Cut
Old Plan Sheet 1 – 250', New Plan Sheet 3 – 250' (equal) - should be 256'

Largest Wetland Elevation:
Old Plan Sheet 1 – 248', New Plan Sheet 3 – 246' to 248'.
13. Historically, the excavation operation has been seasonal, occasional and sporadic.
14. The Applicant proposes to operate the expanded excavation operations year-round from Mondays through Fridays from 7:00 a.m. to 5:00 p.m. There will be no operations on Saturdays, Sundays or Holidays except by special written permission of the Regulator.
15. The Applicant anticipates the site will generate on average 100 to 140 truck trips per day (50 to 70 loads of materials offsite) when operating. This equates to a truck passing a resident's home on average from every 4.3 to 6 minutes.
16. The proposed expansion will dramatically increase the amount of truck traffic on the two Town-maintained roads (Fremont and Old Sandown roads) serving the

Property which will adversely impact the local residents' use of the roads and increase safety risks to residents' vehicles and to pedestrians.

17. The Applicant proposes a substantial increase in weight / load capacity of the trucks hauling the materials (up to 99,000 pounds for trailers and 73,000 pounds for tri-axle trucks).
18. The Town Road Agent believes the substantial increase in very heavy truck traffic will cause the newly resurfaced Fremont Road to fail prematurely because it is not built to withstand this type of heavy trucking impact.
19. The increase in excavation from historical levels is likely to have a substantially different and adverse effect on the condition of the two Town-maintained roads serving the Property due to a substantial increase in truck traffic.
20. The Applicant proposes to excavate new areas using the same methods used at its original site and also proposes to utilize new methods of extraction, including blasting, crushing and other types of processing on the site.
21. The use of blasting and crushing and the increased on-site operations and truck traffic generated by the expansion will substantially increase the noise in the neighborhood to a degree substantially different from current conditions and adverse to the neighborhood as currently exists.
22. The increased on-site excavation operations and truck traffic will generate substantially more dust than the current excavation operation.
23. The applicant proposes to expand the excavation site to no closer than 25 feet of identified wetlands located on the Property. The existing plan proposed excavating no closer than 50 to 75 feet from the main wetland area.
24. The increase in excavation from historical levels will have a substantially different and adverse impact on the neighborhood surrounding the Property.

III. Restrictions and Conditions to Mitigate the Impacts of the Excavation Expansion on the Neighborhood

The Planning Board approves the application to expand the existing excavation operations on the Property, subject to the following conditions and restrictions, imposed pursuant to RSA 155-E:2, I(b) and the Town's Excavation and Reclamation Regulations as referenced in Article 4.7 of the Town of Chester's Zoning Ordinance adopted by the Planning Board per 155-E:11, for the purpose of mitigating the substantially different and adverse impacts on the neighborhood stated in the Planning Board's findings:

25. The excavation is subject to the Express Operational Standards pursuant to RSA 155-E:4-a and the Town's Excavation Regulations Article 6, the Express Reclamation Standards pursuant to RSA 155-E:5 and the Town's Excavation Ordinance Article 7, and the Incremental Reclamation provisions of RSA 155-E:5-a and the Town's Excavation Ordinance Article 8.
26. The Applicant shall obtain and keep current all applicable federal, state and local permits, including, but not limited to, the NHDES Alteration of Terrain permits, NHDES Wetlands permits, Federal Storm Water Pollution Prevention Plans, and others.

Site Operations Times and Limitations

27. The excavation operation shall be limited to the following days and times: Mondays through Fridays from 7:00 a.m. to 5:00 p.m. There shall be no operations on Saturdays, Sundays or Holidays except by prior written permission of the Regulator. Equipment start-up times for all on-site machinery shall not commence prior to 7:00 a.m.
28. The Applicant shall limit its use of blasting to the following days and times: Mondays through Fridays from 10:00 a.m. to 3:00 p.m.
29. The Applicant shall limit crushing on site to the following days and times: Mondays through Fridays from 7:00 a.m. to 5:00 p.m.

Public Health and Safety – Environmental Monitoring

All excavation operations and activities shall have environmental monitoring by a qualified independent third-party. The Applicant may select a professional subject to the Regulator's approval.

30. Environmental monitoring shall include, but is not limited to, monitoring surface and groundwater, and for dust and silica. The monitoring company shall conduct an initial baseline survey prior to the commencement of excavation activities and prepare a continuing, monitoring plan for the excavation site.
31. The monitoring company shall timely provide the initial baseline survey, monitoring plan, quarterly and annual reports to the Regulator.
32. All costs associated with environmental monitoring and reporting shall be borne by the Applicant.

33. The Applicant is required to obtain all required State permits/approvals, including, but not limited to, alteration of terrain permits and permits/approvals for wetland related issues at and leading to the excavation site.

Excavation Parameters

34. For the purposes of visual screening, property valuation, and dust and noise mitigation, no excavation shall occur within five hundred (500) feet of a disapproving abutter's occupied dwelling.

35. For the purposes of visual screening, property valuation, and dust and noise mitigation, no excavation shall occur within one hundred (100) feet of a disapproving abutter's property line.

For the purposes of visual screening, property valuation, and dust and noise mitigation, all existing vegetation shall be maintained within one hundred (100) feet of a disapproving abutter's property line.

36. For the purposes of groundwater protection, no excavation shall result in areas of standing water, other than those areas specifically intended for temporary impoundment of stormwater for treatment (SWPPP). Any water seeps shall be remedied through the regrading of side slopes and the establishment of embankment vegetation, or any other means consistent with Best Management Practices.

37. No excavation shall occur any closer than twenty-five (25) feet of any wetland or than as depicted on the plan sheets listed in Section XI a., whichever distance is greater.

38. No fuels shall be stored onsite. No lubricants or other toxic or polluting materials or chemicals shall be stored onsite unless they are stored secured and in compliance with state laws or rules pertaining to such materials. Spill pads shall be used during refueling, and shall be placed under equipment when inactive.

Trucking Controls

39. The Applicant shall limit the maximum number of truck trips per day of operation to fifty (50) loads of materials leaving the site per day. The maximum volume of materials to be excavated from the site shall not exceed one hundred thousand (100,000) cubic yards per year.

40. Vehicles entering and leaving the site shall be limited to the days and hours stated in Condition 14.

41. A "STOP" sign shall be installed at the end of Stowe Road where it intersects with Fremont Road. The location shall be approved by the Road Agent / Supervisor of Roads to ensure the location and height does not interfere with the sight-lines of vehicles turning onto Fremont Road. The sign shall be installed at the Applicant's expense.
42. To protect against a decrease in the expected longevity of Chester's bridges and roads accessing the Property, a sign shall also be placed at the end of Stowe Road stating that vehicles registered over GVW of 33,000 pounds shall only turn left on Fremont Road (towards NH Route 102). The sign shall be installed at the Applicant's expense.
- If truck traffic will leave the Property via Old Sandown Road, a sign shall also be placed at the end of Stowe Road stating that vehicles registered over GVW of 33,000 pounds shall only turn left on Old Sandown Road (towards NH Route 121-A). A "STOP" sign shall also be installed at the end of Stowe Road where it intersects with Old Sandown Road. The location shall be approved by the Road Agent / Supervisor of Roads to ensure the location and height does not interfere with the sight-lines of vehicles turning onto Fremont Road. Both signs shall be installed at the Applicant's expense.
43. The Applicant shall require all trucks leaving the site to cover the loads.
44. To minimize noise to local neighborhoods and damage to Town-maintained roads, all trucks entering and leaving the property are prohibited from downshifting "engine" braking on Town-maintained roads.
45. All trucks leaving the site shall be subject to the Town's weight limit postings during the spring thaw season.
46. Conditions 41 through 44 shall also be prominently displayed at the top of each bill of lading for each vehicle taking materials from the site.
47. The Applicant shall be responsible for dust suppression on Stowe Road, and any mud or sediment tracked onto Fremont or Old Sandown Roads from the Property shall be removed at least weekly, or more frequently if directed to do so by the Town's Road Agent / Supervisor of Roads, and at the Applicant's expense.
48. The Applicant shall maintain the surface of Stowe Road safe for pedestrians, bicycle riders, horseback riders and all other users of Stowe Road. The Applicant shall construct several pullouts along Stowe Road for use by pedestrians and other users to avoid trucks entering and leaving the Property.

The location and construction of the pullouts shall be approved by the Town's Road Agent / Supervisor of Roads . Applicant shall be required to remove the pullouts and restore the road shoulders at the time the excavation site is fully reclaimed. The Town may, at its sole discretion, waive the removal and/or restoration of the pullout areas.

Blasting, Crushing & Other Processing Operations

49. The Applicant shall submit blasting and noise mitigation plans and protocols to the Regulator prior to commencing any blasting activities and obtain all required state and local permits prior to each blasting event. The plans and protocols are subject to third party review at the Applicant's expense.
50. The Applicant shall provide the Town's Fire Department and Building Inspector with prior written notice two (2) days before blasting activities.
51. The Applicant shall comply with all Federal and State laws, regulations and rules regarding the use of explosives. The use of perchlorates is strictly prohibited.
52. Prior to commencing its blasting activities, the Applicant shall provide a report to the Regulator from an appropriate and licensed professional(s) affirming that blasting activities at the excavation will not have a material and adverse impact on nearby aquifers, bodies of water or wetlands.
53. Prior to commencing excavation activities, groundwater monitoring wells shall be installed surrounding the excavation areas to monitor for impacts to groundwater levels and contamination from on-site operations, including, but not limited to, blasting. Prior to commencing excavation activities, said wells shall be sampled to establish baselines for groundwater chemistry and groundwater levels.
54. The Applicant shall take precautions to prevent dust generated by the expanded operations from escaping the Property, including, but not limited to, construction of berms, leaving vegetated buffers, use of a water truck and maintaining a gravel apron at the access to the Property to remove dirt and mud from truck tires.
55. The Applicant shall mitigate noise generated by the excavation operations by use of berms, vegetated buffers and such other measures required or recommended by federal or state laws, regulations or guidelines for excavation and similar operations.

IV. Reclamation Standards

56. The topsoil required for the reclamation shall remain onsite. Quarterly reports of the volume of the topsoil stockpile shall be submitted to the Planning Board.

57. All materials required for reclamation shall remain onsite. No materials other than seeds or plantings shall be brought in from off the Property.

All remaining operational standards and regulations of Article 7 of the Town's Excavation Regulations not listed here shall apply.

V. Incremental Reclamation

All operational standards and regulations contained in RSA 155-E:5-a and Article 8 of the Town's Excavation Regulations shall apply.

VI. Complaint Resolution

Prior to commencing operations, the Applicant shall provide to the Regulator a written protocol for the resolution of complaints by the public. Said complaints and resolutions shall be submitted in writing, and shall be shared between the Applicant, Operator, Code Enforcement Officer and Town Planner.

VII. Renewal of Approval

This approval shall be subject to review at a public hearing on the second anniversary of the issuance, and every two years thereafter. The purpose of these public hearings will be to determine if the approved expansion has resulted in any additional different and adverse impacts on the neighborhood and whether the measures required by this approval have been and will continue to be effective for the purpose of mitigating the adverse impacts on the neighborhood. If the existing mitigation methods have not been effective, the Regulator, after public hearing, may approve additional mitigation measures.

VIII. Bonding

58. The Applicant shall post a bond in the amount of \$541,500 to cover the costs of repairing, maintaining and replacing Fremont Road resulting from the increased vehicular traffic generated by the expansion. The amount of this bond shall be updated annually by the Town's engineer.

59. Should the Applicant wish to commence using Old Sandown Road to access or

exit the excavation, the Applicant shall post a bond beforehand, calculated by the Town's engineer to cover the costs of repairing, maintaining and replacing the section of Old Sandown Road out to NH Route 121-A resulting from the increased vehicular traffic generated by the expansion. The amount of this bond shall also be updated annually by the Town's engineer.

60. The Applicant shall post a reclamation bond in the amount of \$5,000 per disturbed acre. The amount of this bond shall be updated annually by the Town's engineer.

61. The Regulator may, with notice to Applicant, order the Applicant to cease and desist from all operations for failure to maintain or keep bond amounts current.

IX. Conflicting Provisions

These requirements shall supersede less restrictive requirements as noted on the plans. Applicable notes, buffers, depictions etc. on the plans shall be corrected prior to the issuance of the permit to correctly reflect the conditions and restrictions set forth in these conditions of approval.

X. Waivers

Under Article 19 of the Town's Excavation Regulations, the Applicant may apply to the Regulator for waivers if it can show good cause, except as may be prohibited by RSA Chapter 155-E.

XI. General Planning Board Conditions

a. Excavation of the Property shall be performed in accordance with the plans and specifications with revisions dated as follows:

Excavation Plan Final Revision Dates:

| | |
|--|-----------------------------|
| Title Sheet | Sheet 1: December 13, 2022 |
| Site Excavation Overview Plan | Sheet 2: November 10, 2022 |
| Existing Conditions & Site-Specific Soils Plan | Sheet 3: September 21, 2021 |
| Excavation & Reclamation Plan | Sheet 4: December 13, 2022 |
| Cross-Section Plan | Sheet 5: December 13, 2022 |
| Cut/Fill Analysis | Sheet 6: December 13, 2022 |
| Phasing Plan & Construction Notes | Sheet 7: December 13, 2022 |
| Site Details | Sheet 8: August 8, 2022 |
| Construction Details | Sheet 9: August 26, 2022 |

(Verify dates on final hardcopies before recording.)

such plans being hereinafter referred to as the “approved plans” or “the approved plan set”.

b. There shall be no increases or changes in the proposed activities and uses beyond those approved for this application without further Planning Board review and approval.

c. Construction Code Compliance: All construction on the site shall comply with the Chester Zoning Ordinance, the Chester Building Code and the State of New Hampshire State Building Code as established in RSA 155-A.

d. Fire Code Compliance: All construction and operations shall comply with the State of New Hampshire State Fire Code as established in Saf-C 6000.

e. Signage: This approval is subject to Section 4.4 – Signs of the Town of Chester Zoning Ordinance, as amended from time to time.

f. Lighting Restrictions: This approval is subject to Article 15 – Lighting Requirements of the Town of Chester Zoning Ordinance, as amended from time to time.

g. Groundwater Protection: This approval is subject to Zoning Article 16 - Groundwater Protection of the Town of Chester Zoning Ordinance, as amended from time to time.

h. Date of Conditional Approval is determined to be January 4th, 2023.

Terms of this Conditional Approval shall be binding on the applicant, their heirs and assigns and shall run with the land.

Notwithstanding the terms set forth in this document, nothing shall be construed to avoid or abrogate any statutes of the State of New Hampshire or ordinances of the Town of Chester or any other Federal, State, or local rules in force, except as may be specifically provided for in this approval or by state statute.

Brian L. Sullivan, Chairman, Chester Planning Board

Date

Andrew L. Hadik, Chester Town Planner

Date

Notice of Appeal Rights: Any persons aggrieved by this decision of the Planning Board may appeal to the Planning Board for a rehearing on the decision or any matter

determined thereby. The motion for rehearing shall specify every ground upon which it is alleged that the decision is unlawful or unreasonable. The motion for rehearing shall be filed within ten (10) days of the date of the decision being appealed. The Planning Board shall grant or deny the motion for rehearing within ten (10) days of receipt of the motion. If the motion for rehearing is granted, the rehearing shall be heard within thirty (30) days. Any party aggrieved by the Planning Board's decision on a motion for rehearing may appeal the decision to the Superior Court. Appeals to the Superior Court are governed by NH RSA 677:4-15. See New Hampshire Revised Statutes Annotated, Chapter 677 for additional information and requirements for filing appeals. This decision has been placed on file and made available for public inspection in the records of the Planning Board.