

**SECTION 15**  
**EXCAVATION AND FILLING OF EARTH PRODUCTS**

15.1 General, Definitions. Except as provided in this Section, there shall be no excavation, removal or deposit of Material, as defined herein, from or on any Site, as defined herein, in any District of the Town. Special definitions applicable under this Section are as follows:

15.1.1 Material. earth, topsoil, loam, peat, sand, gravel, clay, stone or other earth or mineral material.

15.1.2 Affected Area. the ground or the surface of ground which is to be removed, moved, covered over or otherwise disturbed by the excavation, removal or deposit of “material” from or on any lot or parcel in any District of the Town.

15.1.3 Site. the lot or parcel within which the “affected area” lies.

[From former Section 43.1, Amended Effective ^]

15.2. Exemptions. The following activities are exempt from the provisions of this Section:

15.2.1 excavation, removal or deposit of Material reasonably necessary in connection with the bona fide construction, alteration or repair of a Building, other Structure, a paved area or site development for which a ZONING PERMIT shall have been issued by the Zoning Enforcement Officer.

15.2.2 bona fide landscaping operations, provided that no more than 100 cubic yards of material is to be removed from, placed on, or re-graded within the Site.

15.2.3 the construction of improvements, and the changing of contours, including, but not limited to, the creation of water bodies, in accordance with subdivision construction plans and grading plans approved by the Old Lyme Planning Commission under the provisions of the Subdivision Regulations, Town of Old Lyme, Connecticut.

15.2.4 deposits resulting in the storage on the site of not more than 200 cubic yards of material.

15.2.5 normal maintenance and repair of roads and driveways.

15.2.6 normal excavation and filling of silage, manure and similar farm materials when Accessory to a Farm.

15.2.7 replenishing or adding to the sand on the beaches used for recreational purposes provided, however, that any such operation shall be subject to the Coastal Site Plan Review requirements of Section 42, the Old Lyme Inland Wetlands and Watercourses Regulations, and the issuance of any required State and Federal permits.

15.2.8 except for operations and facilities of the following types located in the Conservation Zone, any sanitary landfill operations of the Town approved by the State Department of Environmental Protection or any other facility for the disposal of solid or liquid waste approved by such Department and operated on land owned by or leased to the Town or operated under contract with the Town for the exclusive use of the Town or persons authorized by the Town to use such facility.

15.2.9 stockpiling of street maintenance material required by the Town.

15.2.10 underground installation of transmission wires and utility lines for which any required State and local permits shall have been issued.

[From former Section 43.2, Amended Effective 3-7-08]

15.3 Special Permits: Eligible Locations. The Zoning Commission, by Special Permit, granted pursuant to the provisions of this Section which follow, may permit the excavation, removal or deposit of material from or on any lot or parcel in any District of the Town provided, however, that no such Special Permit shall be issued if the affected area is in any of the categories specified in Paragraph 15.3.1. but the exclusions of paragraph 15.3.1. are not applicable to the grant of a Special Permit for the limited excavation, removal or deposit specified in Paragraph 15.3.2:

15.3.1 Locations Excluded. A Special Permit shall not be granted for excavation, removal or deposit if the affected area is in any of the following categories:

- a. the Affected Area is located in the Conservation Zone, in a Residence (R) or Multi-Family Residence (MFR) District, or within 1,500 feet of a Residence (R) or Multi-Family Residence (MFR) District.
- b. the Affected Area is located at a distance of 1,500 feet or less from the nearest boundary line of:
  - i. a lot situated outside the applicant's property containing a dwelling which is a) either occupied or fit for occupancy, not located in a Light Industry (LI) District; or

- ii. a parcel of land which has been subdivided within the past five (5) years in accordance with the Subdivision Regulations, Town of Old Lyme, Connecticut, and pursuant to a plan providing for the creation of lots to be used for residential purposes.

Distances to be determined as required above shall be measured in a straight line along the shortest distance between the edge of the Affected Area and the boundary line of the Zoning District, Lot, or Parcel of land involved in the measurement.

15.3.2 Limited Activity in Excluded Locations. A Special Permit, however, may be granted for limited excavation, removal or deposit in locations excluded under Paragraph 15.3.1. when the activity meets the following requirements:

- a. is located outside the Conservation Zone and will not take more than three (3) months to complete and is not one of a series of such projects on the same Lot which will take more than the aforesaid number of months to complete; or
- b. is located outside the Conservation Zone and will not result in the excavation, removal or deposit from or on the Lot of more than 1,000 cubic yards of material; or
- c. is located inside the Conservation Zone and the excavation, removal or deposit is in connection with the landscaping and grading of land for a purpose for which a Building Permit is not required and not more than 300 cubic yards of material will be excavated, removed or deposited.

[From former Section 43.3, Amended Effective 3-7-08]

15.4. Application for Special Permit. Application for a Special Permit to excavate, remove or deposit material from or on any lot in any district of the Town shall be made to the Zoning Commission by the owner of the lot on forms provided by or acceptable to the Commission and signed by the owner or owner's authorized agent. The application shall be submitted to the Zoning Enforcement Officer and shall be accompanied by the following:

15.4.1 Statement. A written statement signed by the applicant a) identifying the site by its location on the Town Map and by the name(s) and address(es) of its owner(s), b) stating the names and addresses of abutting owners as shown in the most recent Grand List, c) providing a description of the nature and an estimate of the quantity of the material to be excavated, removed or deposited, d) setting forth the estimated starting and completion dates of the work and the intended hours and days of the week

during which operations will be conducted, and e) listing the estimated number and types of trucks and pieces of machinery to be used in such operations.

15.4.2 Maps, Plans and Other Data. Four (4) copies of each of the following prepared by a professional engineer or land surveyor, as required by law and licensed to practice in the State of Connecticut:

- a. a drawing drawn to a scale of 1" = 100' showing I) the boundaries and dimensions of the site and of the Affected Area, ii) means of access to the site such as roads and driveways, iii) buildings and other structures and improvements on the site, and iv) easements and utility lines within the site. The Commission may require that such drawing meet the requirements of a Class A2 transit survey;
- b. a survey drawn to a scale of 1" = 100' showing the existing topography of the site drawn with two-foot contour intervals and disclosing all surface drainage, wetlands, water bodies and other natural features such as rock outcroppings and wooded areas;
- c. a report containing an analysis and showing the location of soil borings taken to the depth of any proposed excavation; the Commission may require additional borings if it deems the number taken to be insufficient or not properly spaced;
- d. a drawing and narrative description of measures to be taken to control erosion and sedimentation and which show i) the drainage and estimated runoff of the area to be served by any existing drainage facilities, and ii) all proposed drainage facilities and protective devices to be constructed for the purpose of preventing the collection and stagnation of water and any harmful effects upon surrounding properties from water, erosion or sedimentation in accordance with the criteria of Section 16 of these Regulations;
- e. a topographical map of the same scale and having the same contour intervals as provided for in subparagraphs a. and b. above, showing as of the time when the operation is completed, the final grades, surface drainage facilities, and landscaping, including planting and vegetation to be provided or retained;
- f. a drawing showing proposed vehicular access to the site for use in the proposed operation and proposed work roadways therein, and the location, size and type of any structures to be erected on the site; and

- g. detailed plans for any proposed blasting or storage of explosives in connection with the proposed operations.
- h. The applicant shall submit a re-use plan which will indicate the final land configuration of the parcel. In order to encourage land aesthetics, final slopes may consist of variations of 3:1 and 4:1 ratios. Said plan, subject to approval of the Commission, shall also include provision for ground cover, including top soil, reforestation and seeding. Said re-use plan shall indicate: a) Proposed final condition of the land and its usefulness for development in accordance with the zoning of the premises, based on the remaining natural resource conditions after restoration; b) Improvements to the land resulting from the excavation operation; and c) Evidence (such as borings) that adequate cover will remain over bedrock to permit development of the premises in accordance with its zoning, including adequate depth for drainage, septic systems, and other utility installation.
- i. The applicant shall submit the anticipated haul pattern for the operations, which shall be approved or modified and approved by the Commission. If such haul pattern creates traffic safety hazards, and cannot be modified to remove such conditions, the Commission may deny the application.
- j. Evidence of the approval of the Excavation Operation, where required, by the Old Lyme Inland Wetlands and Watercourses Commission, and the final report of that Commission, as required by Connecticut General Statutes §8-3c.

15.4.3 Additional Information. The Zoning Commission may request the submission of such additional information as it may deem necessary in order to determine whether the public health, safety and general welfare may be endangered by the proposed operation.

15.4.4 Modification of Submission. The Commission may, by resolution, upon written request by the applicant, determine that the required submission of any part of the information required in Paragraphs 15.4.1. and 15.4.2. is not necessary in order for it to decide on the application and need not be submitted.

[From former Section 43.4, Amended Effective 3-7-08]

15.5 Procedure and Conditions for Approval. The Zoning Commission, after due notice and public hearing as required by law, may grant a Special Permit authorizing the excavation, removal or deposit of material as requested in the application, with such conditions or modifications as the Commission may require

per Sections 15.6 and 15.7 below, if the Commission finds that the following standards and conditions will be met:

- 15.5.1 The excavation, removal or deposit of material will not substantially or permanently injure or detract from the appropriate use of adjacent or nearby property or substantially or permanently impair the future usefulness of the affected area after completion of the proposed operations.
- 15.5.2 The excavation, removal or deposit of material will not detract from the public health, safety, convenience or property values.
- 15.5.3 The distances between the area or areas of the proposed excavation, removal or deposit operations and nearby properties containing dwellings are sufficient so that persons living in such dwellings will not be unduly disturbed by noise and dust emanating from such operations.
- 15.5.4 The affected area will be excavated and graded or filled and graded in accordance with the final drawings and plans submitted by the applicant including any modifications made to meet Commission requirements.
- 15.5.5 Slopes resulting from the excavation, removal or deposit to be undertaken will not exceed one (1) foot of rise for three (3) feet of horizontal distance, or such lesser slope as the Commission may specify as necessary for the public health or safety, soil stability, or for the reasonable use of the property after completion of the excavation, removal or deposit. Slopes will be maintained during operations so as not to exceed one (1) foot of rise for two (2) feet of horizontal distance whenever the site is unattended for more than two (2) weeks.
- 15.5.6 No fixed machinery will be erected or maintained on the site.
- 15.5.7 There will be no excavation or removal within 100 feet of any lot line unless such excavation or removal would result in finished grades at or above the elevation of the adjoining street or lot or the owner of the property abutting such lot line shall have consented to such excavation or removal by instrument recorded in the office of the Old Lyme Town Clerk before the approval of such Special Permit.
- 15.5.8 There will be maintained an undisturbed strip of land at least 100 feet wide between any excavated area and any inland wetlands and

watercourse and at least 50 feet wide between any excavated area and any tidal wetlands or waterways.

- 15.5.9 There will be no sharp declivities, slopes, pits or depressions, and proper drainage will be provided to avoid stagnant water, soil erosion and water pollution. Any surface water flowing from an excavated area will flow through appropriate sediment control devices before leaving the site.
- 15.5.10 At no time shall more than five (5) acres, or ten (10%) percent of the premises, whichever is less, be left in an unrestored condition, unless expressly authorized by the Commission due to special circumstances such as topography, weather, or unique site conditions.
- 15.5.11 As each stage of the excavation operation is completed, that portion of the permit premises shall be graded to its final contour lines as shown on the plans, as approved by the Commission, and a layer of arable topsoil, of a quality approved by the Zoning Enforcement Officer, shall be spread over the previously excavated areas, except exposed rock surfaces, to a minimum depth of four (4") inches. The areas shall be mulched and seeded in accordance with current recommendations of the Soil Conservation Service. The cover vegetation shall be stabilized and maintained for a period of twenty-four (24) months following seeding. The Commission may authorize different restoration vegetation for areas which are to be used for recreation or agriculture.
- 15.5.12 No on-site processing of material may be permitted unless such use is expressly requested in the application, and approved by the Commission as part of the Special Permit issued hereunder. The plan submitted in support of the Special Permit shall depict the proposed location of such processing. In any event, no rock crushing or other processing of material shall occur within five hundred (500') feet of any property line or of any street. The Commission may increase or decrease such minimum setback depending on the projected lifespan of the Excavation Operation; the character and use of adjacent or nearby properties; the topography of the property, and its ability to contain or deflect noise and dust; and the presence or absence of specific measures to control noise in the Excavation Operation.
- 15.5.13 The applicant shall make provision for such highway warning signs as are reasonably required by the Commission and authorized by the State Traffic Commission or the Board of Selectmen, as the case may be.

- 15.5.14 After excavation, removal or deposit, the site will be cleared of debris and equipment removed within the time provided in the Special Permit. The site will be left in such condition that natural storm drainage will leave the property at the original natural storm drainage points and so that the area of drainage to any one point is not increased.
- 15.5.15 In the case of excavation or removal, the top layer of soil for a depth of at least four (4) inches will be set aside and retained on the site and will be re-spread over the affected area at the conclusion of the operation and, in the case of deposit, at least four (4) inches of topsoil will be spread over the affected area. No loam shall be sold from any permit premises unless the applicant can conclusively establish that the required four (4") inches of loam would remain to provide the cover specified in the preceding paragraph for all disturbed areas. Deposited soil will have the proper additions of lime and fertilizer as recommended by the New London County Soil and Water Conservation District, Inc. A suitable ground cover will be planted and grown to an erosion resistant condition upon completion of the work in accordance with the approved contour lines. Such work will be completed within the time provided for in the Special Permit.
- 15.5.16 No excavation shall occur within less than four (4') feet of the seasonal high water table. The Commission may require test borings or monitoring wells in order to determine the seasonal high water table both prior to the commencement of excavation and during the period of any SPECIAL EXCEPTION.
- 15.5.17 The affected area or an appropriate portion thereof will be enclosed within a fence of such type, height and location as the Commission may specify, if deemed necessary to meet the purpose of these Regulations.

[From former Section 43.5, Amended Effective 3-7-08]

- 15.6 Alterations of Conditions. The Zoning Commission may adjust any standards or conditions provided in Paragraph 15.5. if in its judgment such adjustment is necessary to maintain the purpose and intent of this Section. [From former Section 43.6, renumbered only Effective 3-7-08]
- 15.7 Additional Conditions. The Commission may establish such reasonable additional standards as it deems necessary to satisfy the purpose of this Section, including but not limited to a) limitations on the days of the week or the hours of the day during which any work, including any blasting, may be performed, b) limitations as to size and type of mobile machinery to be used, c) limitations on

the place and manner of disposal of excavated material, d) requirements as to the control of dust, noise and lighting, and e) limitations on the type of fill material permitted for deposit. [From former Section 43.7, renumbered only Effective 3-7-08]

- 15.8 Bond. When a Special Permit is approved under this Section, the applicant shall post a bond or otherwise provide suitable security acceptable to and to be held by the Treasurer of the Town of Old Lyme, in form approved by Town Counsel and in an amount approved by the Commission as sufficient to guaranty compliance with the provisions of the Special Permit. [From former Section 43.8, renumbered only Effective 3-7-08]
- 15.9 Periodic Reports. The Commission may require the holder of the Special Permit issued under this Section to submit periodic reports, prepared by and bearing the seal of a Connecticut licensed land surveyor or professional engineer, showing the status and progress of the excavation, removal or deposit. [From former Section 43.9 renumbered only Effective 3-7-08]
- 15.10 Duration of Special Permit. Any Special Permit issued under this Section on or after March 7, 1988, shall be valid for a period of two (2) years or for such shorter period as may be requested by the applicant or fixed by the Commission. At the expiration of the period for which a Special Permit has been issued, or at the expiration of any extension of such Special Permit, and after a public hearing, the Commission may extend, or further extend, such Special Permit upon and subject to the terms and conditions of this Section for up to another two (2) year period if the applicant and his property meet the requirements then prevailing for the issuance of a Special Permit under this Section and provided the applicant can show that the operations undertaken on his property relating to the excavation, removal or deposit of material conform to the provisions of the Special Permit last granted the applicant. The Commission shall be empowered to grant such a extension upon and subject to the terms and conditions of this Section notwithstanding the fact that the affected area is located as follows:
- a. in a Rural (RU) District which the Commission has found to have become residential in character, or
  - b. at a distance of 1,500 feet or less from the nearest boundary line of a lot containing a dwelling, or
  - c. at a distance of 1,500 feet or less from the nearest boundary line of a parcel of land subdivided for residential purposes,
- if the applicable state of facts described opposite subparagraphs a., b. or c. above shall have come into existence after the Special Permit sought to be extended was first granted.

[From former Section 43.10, renumbered only Effective 3-7-08]

15.11 Expansion of Existing Operations. The expansion or proposed expansion of any operation involving the excavation, removal or deposit of material into any area beyond the boundaries of the lot owned by or leased to the person, firm or other entity conducting such operation at the time of the adoption of this Section shall be subject to all of the provisions of such Section as respects the area of such expansion. Excavation or removal operations which are being conducted at the time of the adoption of this Section shall not be extended within the lot where conducted in a manner which would contravene the restrictions set forth in Paragraph 15.5.7 and 15.5.8 of this Section except as allowed by permits issued prior to such adoption while they remain in force. [From former Section 43.10, Amended Effective 3-7-08]

15.12 Termination of Existing Operations. In the interest of public safety and the protection of the environment, the area affected by any excavation, removal or deposit operation which is being conducted at the time of the adoption of this Section shall at the conclusion of such operation be placed by the owner of such property in a condition as follows:

- a. the area shall be free of debris and equipment;
- b. proper drainage shall have been provided for the area to prevent water stagnation, soil erosion or water pollution from occurring;
- c. no slope within the area shall exceed one (1) foot of rise for two (2) feet of horizontal distance;
- d. the area shall have been, or will be, shielded from public view from nearby streets as a consequence of appropriate landscaping such as the planting of trees or bushes on the periphery of the area;
- e. and whenever soil conditions permit, or if the owner's permit in force at the time of the adoption of this Section so requires, a suitable ground cover shall have been planted within the area and grown to an erosion resistant condition.

Any excavation, removal or deposit operation which has not been actively conducted for a period of one (1) year shall be deemed to have been terminated and the owner of the property within which such operation was conducted shall comply with the provisions of this Paragraph 15.12 and complete the work of so doing within nine (9) months from the end of such one (1) year period. The Zoning Commission may, upon written request, modify any of the requirements of this Paragraph 15.12 if, in its judgment, compliance would place an undue burden upon the property owner. However, the provisions of this Paragraph 15.12 shall not be deemed to relieve such owner of the duty of complying with the provisions of any Special Permit in force regarding site restoration following termination of any excavation, removal or deposit operation.

[From former Section 43.12, renumbered only Effective 3-7-08]

- 15.13 Permits for Existing Operations. ZONING PERMITS will be required for the continuation of any excavation, removal or deposit operation not exempted by Paragraph 15.2 which is legally in existence at the time of the adoption of this Section and for which a ZONING PERMIT or Special Permit shall not have been issued. Such operations shall not, however, be subject to the restrictions on land use imposed by this Section except that they shall comply with the requirements of Paragraphs 15.11 and 15.12 (including Paragraphs 15.5.7 and 15.5.8 to the extent incorporated in Paragraph 15.11). Such PERMITS will be authorized by the Zoning Commission for periods of up to two (2) years, shall not require a public hearing, and shall be renewable. A presently existing permit or Special Permit issued before March 7, 1988, for an excavation, removal or deposit operation shall be valid until its expiration date, but the holder thereof shall comply with the requirements of Paragraph 15.11 and 15.12 (including Paragraphs 15.5.7 and 15.5.8 to the extent incorporated in Paragraph 15.11.) in addition to any other requirements set forth in such existing permit or Special Permit, provided, however, that if such a permit contains requirements respecting site restoration to be undertaken when such permit and/or the operations conducted thereunder terminate, the permittee, upon complying with such requirements, shall be relieved of the obligation of complying with the site preservation and restoration requirements of Paragraphs 15.11 and 15.12. [From former Section 43.13, Amended Effective 3-7-08]
- 15.14 Extension of Permits Issued Under Repealed Art. III, Sec. F.16, Expanding the Scope of an Earlier Permit. Upon written request of the permittee, the Zoning Commission, after due notice and public hearing, may extend or further extend for up to two (2) years any permit in effect at the time of such request which expanded the scope of a permit issued before March 7, 1988, pursuant to Section F.16 of Article III of the Zoning Regulations in effect immediately prior to the effective date of these Regulations, any such extension to be upon and subject to the same terms and conditions as are set forth in the permit sought to be extended except as respects its termination date and except as the Commission may, in its discretion, desire to otherwise modify or supplement such terms and conditions in order to satisfy the terms of this Section. In determining whether to grant such an extension, the Commission shall be guided by the standards set forth in Paragraphs 15.5.1 through 15.5.3 of this Section. [From former Section 43.14, Renumbered only Effective 3-7-08]
- 15.15 Date of Adoption of this Section. References herein to the time of adoption of this Section 15, or its predecessor Section 43, and similar references shall be deemed to refer to March 7, 1988, when this Section, prior to codification and subsequent amendment, became effective. [From former Section 15.15, Amended Effective 3-7-08]

