

Part II
Proposed Excavation, Mining, & Quarrying Regulations
[Application #24-07ZRA - REVISED]

Summary & Analysis

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The existing regulations applicable to excavation need to be revised to protect the health, safety, quality of life, and property values of residents who reside or work near an excavation site, especially if the excavation involves explosives or rock crushing and continues for an extended term.

Mining and Quarrying Not Allowed

The first change includes regulations to clarify that excavation to extract and sell marketable minerals, stones, or other valuable materials, which constitutes mining or quarrying, is not permitted.

The proposed regulations require that the ZEO or the Commission, depending on the amount of excavated materials, determine whether the proposed excavation is primarily for the development of one or more of the primary or accessory uses listed in the regulations or if the proposed excavation is mainly for a mining or quarrying operation for the extraction or sale of marketable minerals and stones. Excavation is prohibited under the proposed regulations if it is primarily a mining or quarrying operation.

The proposed regulations allow but do not require the ZEO or the Commission to determine if an applicant would likely proceed with his proposed development if the development depends on revenue from the sale of minerals and stones excavated from the site.

If the primary purpose of the proposed excavation is the extraction and sale of marketable minerals, then under the proposed regulations, the application must be denied because mining and quarrying are not permitted as principal or accessory land uses. If the primary purpose of a proposed excavation is to develop land for a listed principal or

accessory use, then a proposed excavation should be approved if public health, safety, and property values are not endangered.

New & Deleted Definitions

Items #3 and #4 on page 4 establish a new definition for "Excavation" in §2.2 of the regulations. The proposed new definition for excavation" is *"The act or process of digging, removing, relocating, or displacing soil, rock, or other materials from a parcel or lot to build foundations, install utilities, or landscaping for the development of one or more principal or accessory uses allowed in the district. Excavation is not a "land use."*

The new definition is necessary to clarify and correct ambiguity and deficiencies in the existing regulations.

Because "excavation" is defined as an act or a process and not as a land use, there is no longer a need to define minor excavation or major excavation as a land use. There is also no longer a need for excavation to be a listed principal or accessory use. As such, Item #2 on page 4 of the application deletes the definitions for minor and major excavation from Section 2.2 of the regulations. Item #5 at the top of page 5 deletes minor and major excavation from the list of land uses in Table 5-3. Item #6 on page 5 deletes minor and major excavation from the list of land uses in Table 6.4 of the regulations.

The proposed regulations add definitions in §2.2 for mining and quarrying. Item #4 on page 4 defines "*Mining*" as ***the act or process of extracting valuable or marketable minerals from the earth's surface.***

It also defines quarrying as "The act or process of extracting marketable stone or other valuable materials from a quarry.

Together, the definitions mean that excavation is not permitted if its principal purpose is to extract valuable or marketable minerals, stones, or other materials.

Item #7 on page 5 replaces the existing §8.16 excavation regulations.

Limits on the Amount of Excavated Material

The proposed regulations limit the maximum excavation removal amount to 5,000 cubic yards, enough for a full-size Olympic swimming pool or a 10,000-square-foot basement. The excavation of more than 5,000 cubic yards would require one or more additional special permits. The proposed regulations continue to allow excavation amounts of less than 300 cubic yards by right when it is associated with the development of a listed principal or accessory use.

The proposed regulations require that excavation begin within one year of its permit issuance date and be finished within 180 days after it starts.

Time Limits, Distance Limits, and Technology Constraints

The most significant change is the proposed requirement that excavation cannot involve using explosives or rock-crushing machinery within 2,000' of a residence.

However, the proposed regulations allow for alternative technologies, such as expansive controlled demolition agents, whenever explosives or rock-crushing machinery are not allowed or are unsuitable.

The proposed regulations continue to provide relaxed regulations if the excavated material is under 300 cubic yards. A large roll-on dumpster will hold 30 cubic yards, which means up to 10 truckloads of material can be removed from a site under an ordinary by-right zoning permit. Excavation for basements, foundations, and swimming pools will typically be less than 300 cubic yards.

The upper limit of 5,000 cubic yards, allowed by a special permit under the proposed regulations, is sufficient for a full-size Olympic swimming pool or a 10,000-square-foot basement. For larger projects, a developer can submit multiple excavation permit applications.

Deletion of Linkage to Appendix B Check Sheet

The existing regulations require that an excavation application include a site plan consistent with the applicable criteria per the Check Sheet in Appendix B. The problem is that the Check Sheet in Appendix B does not identify the minimum set of site plan requirements necessary to approve a proposed excavation. For example, the Check Sheet requires the site plan to identify all of the trees on a parcel that exceed 30 inches in diameter. It is unclear if this is a site plan requirement for all developments involving excavation, such as a simple concrete slab for an emergency generator. If it is, it would be an example of regulatory overkill.

The site plan for most proposed developments will include much, if not all, of the information necessary to approve the excavation component. As such, the proposed regulations replace the reference to the Appendix B Check Sheet with a minimal set of additional site plan requirements for the excavation part of a development.

As previously noted, the proposed regulations redefine excavation as an act or process, not a land use. As such, permits will no longer be issued for excavation as a land use. Excavation will be limited to the development of listed principal or accessory uses, such as a house allowed by right or a listed principal or accessory use, such as a gas station or a convenience store allowed by special permit.

Summary

In summary, the proposed regulations should be adopted to protect residents' health, quality of life, and property values from the risks associated with mining and quarrying disguised as a principal excavation use.