

EXCAVATION

SITE PLAN REVIEW REGULATION

*Adopted November 15, 1990
Amended September 16, 1992
Amended June 15, 1994*

Table of Contents

1.0	GENERAL PURPOSE AND AUTHORITY	1
2.0	DEFINITIONS	1
3.0	PERMIT REQUIRED	2
4.0	ABANDONED EXCAVATIONS	5
5.0	APPLICATION FOR PERMIT	5
6.0	ADDITIONAL PERMIT REQUIREMENTS	8
7.0	OPERATIONAL STANDARDS	9
8.0	SITE RECLAMATION STANDARDS	10
9.0	PROHIBITED PROJECTS	11
10.0	WAIVERS	11
11.0	APPLICATION FOR AMENDMENT	11
12.0	HEARING	11
13.0	ISSUANCE OF PERMIT	12
14.0	PERMIT RENEWAL	12
15.0	APPEAL	12
16.0	ENFORCEMENT	13
17.0	SEPARABILITY	13

1.0 GENERAL PURPOSE AND AUTHORITY

Chapter 155-E of the New Hampshire Revised Statutes requires that, with several exceptions, all mining and excavation operations in the State obtain prior approval and permit from the local municipality in which the operation is to occur. The purpose of the Statute is to minimize safety hazards created by open excavations; 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.

2.0 DEFINITIONS

- 2.0.1 Abutter. Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the terms abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII.

- 2.0.2 Commercial. Any use of any earth material for sale or resale on or off site of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported to land other than that from which the earth was excavated. Excavations which use earth materials in the processing of other material such as, but not limited to, concrete, asphalt and other building materials shall be considered commercial.
- 2.0.3 Contiguous. Land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town (RSA 155-E:2, I-b).
- 2.0.4 Dimension stone. 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 Section 2.0.5.
- 2.0.5 Earth. 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.
- 2.0.6 Excavation. A land area which is used, or has been used, for commercial taking of earth, including all slopes.
- 2.0.7 Excavation area. The area within an excavation site where excavation has occurred or is eligible to occur under these regulations and the zoning ordinance.
- 2.0.8 Excavation site. Any area of contiguous land in common ownership upon which excavation takes place.
- 2.0.9 Notice of Intent. A written notice to the Planning Board and to the Conservation Commission to inform them of the intent to apply for a permit to excavate for a new excavation, or for expansion of, or continuation of an excavation in operation at the time of adoption of this regulation.
- 2.0.10 Planning Board or Board. The planning board of the Town of Wilton.

3.0 PERMIT REQUIRED

No owner shall permit any excavation of earth on his premises without first obtaining a permit. Excavations in operation as of November 15, 1990 shall have one (1) year from the date of adoption of this regulation to file a completed application for a permit to excavate. Excavations which have not operated commercially within one (1) year of the adoption of this regulation shall not continue to operate until a permit to excavate is issued by the Planning Board. All excavations require a permit except:

- 3.0.1 Existing Excavations. 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 to excavate without a permit subject to:

**WILTON LAND USE LAWS AND REGULATIONS
EXCAVATION SITE PLAN REVIEW REGULATION**

- a. Such an excavation site shall be exempt from local zoning, provided that at the time the excavation was first begun, it was in compliance with any local ordinances that may have been in effect. The exemption from local zoning includes the quarrying or crushing of bedrock for the production of construction aggregate; provided, however, that no owner shall after August 4, 1989 permit any such quarrying or crushing to occur for the first time on any excavation site without first obtaining an excavation permit from the Planning Board.
- b. Such an excavation area may not be expanded 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 area of that date, and appraised and inventoried for property tax purposes as part of the same tract as the excavation site. (As defined in RSA 155-E:2, I-b, as amended effective August 23, 1991.)
- c. Such an excavation shall be performed in compliance with the express operational and reclamation standards contained in RSA 155-E:4a, RSA 155-E:5 and RSA 155-E:5a.
- d. The owners or operators of any existing excavation area for which no permit has been obtained shall file an excavation report with the Planning Board by August 4, 1991. Any existing excavation that fails to file a report within the one year time period shall obtain a permit from the Planning Board before continuing excavation of the site.

The report shall contain the following information:

1. the location of the excavation--tax map and lot number;
2. the date the excavation first began;
3. a description of the permissible limits of expansion as described in Section 3.0.1, b;
4. a description of the existing excavation with a sketch map including an estimate of the area which has been excavated to date; and
5. an estimate of the amount of commercially-viable earth materials still available on the parcel.

3.0.2 Stationary Manufacturing Plants. An excavation permit shall not be required for excavations in association with stationary manufacturing plants that meet the following conditions:

- a. Excavations from an excavation site contiguous to, or contiguous land in common ownership with, stationary manufacturing and processing plants in operation as of August 24, 1979, which use earth from said excavation site; however, such excavations shall be performed solely in compliance with the express operational and reclamation standards contained in RSA 155-E:4-a, RSA 155-E:5, and RSA 155-E:5-a. Loss of 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 receiving this notice.
- b. The operation and reclamation of excavations from a site which on August 4, 1989 was contiguous to, or was contiguous land in common ownership with, stationary manufacturing and processing plants which have been granted state or local permits since August 24, 1979 and before August 4, 1989, which use earth obtained from said site shall be governed by the conditions of the state or local permit and any extensions or renewals thereof. (As defined in RSA 155-E:2, III-b.)

3.0.3 Highway Excavations. An excavation performed exclusively for the lawful construction, reconstruction, or maintenance of a Class I, II, III, IV, or V highway by a unit of government which

has jurisdiction for the highway or an agent of the unit of government which has a contract for the construction, reconstruction, or maintenance of the highway, provided that:

- a. A copy of the pit agreement executed by the owner, the agent and the governmental unit shall be filed with and accepted by the Planning Board prior to the start of excavation; and such excavation shall not be exempt from the provisions of Sections 6.0, 7.0 and 8.0 of this regulation, nor from any other land use regulations of the municipality. Failure to file a copy of the pit agreement with the municipality or to comply with the terms of the agreement constitutes a violation enforceable under the provisions of Section 16.0 of these regulations.
- b. The New Hampshire Department of Transportation or its agent may apply to the appeals board created under RSA 21-L to be exempted from the provisions of local land use regulations. The appeals process includes a formal public hearing in the affected municipality as set forth in RSA 155-E:2, IV-(c).
- c. The governmental unit or its agents must comply with the following:
 1. the excavation shall comply with the operational and reclamation standards of RSA 155-E:4-a, RSA 155-E:5, and RSA 155-E:5-a;
 2. section 7.0-a of these regulations;
 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 State Geological Survey (see Section 7.0-h); and
 6. all required permits for the excavation from state or federal agencies have been obtained.

3.0.4 Other Exceptions.

- a. Excavation that is exclusively incidental to the lawful construction or alteration of a building or structure, or the lawful construction or alteration of a parking lot or way including a driveway on a portion of the premises where removal occurs. This excavation cannot be started, however, until all required state and local permits necessary 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 adjustment.
- c. Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E.
- d. 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 Planning Board.

4.0 ABANDONED EXCAVATIONS

The permit and zoning exemptions under Section 3.0 shall not apply to any abandoned excavations as defined in Section 4.0.1.

4.0.1 Abandoned Excavations. Any excavation except for excavations or excavation sites described in RSA 155-E:2, III, for which the affected area has not been brought into complete compliance with the reclamation standards of this regulation (Sections 6.0 and 8.0) shall be deemed abandoned if:

- a. no earth material of sufficient weight or volume to be commercially useful has been removed from the excavation site during any two (2) year period; the owner or operator may, however, extend the period by submitting a reclamation time table to be approved by the Planning Board and posting a bond or other surety in a form and amount prescribed by the Planning Board sufficient to cover the costs of reclamation of the excavation site; or
- b. the excavation site is in use and is not a stationary manufacturing plant, but doesn't conform with the incremental reclamation requirements of this regulation or the owner or operator has not posted a bond or other surety sufficient to cover the costs of reclamation; and submitted a reclamation time table to be approved by the Planning Board;
- c. the owner or operator of the excavation has neither secured a permit pursuant to this regulation nor filed a report of an existing excavation within the prescribed time period as required by Section 3.0.1.

4.0.2 Reclamation of Abandoned Excavations. The Planning Board may order the owner of any land containing an abandoned excavation to either file a reclamation time table to be approved by the Board and bond or other surety, or to complete the reclamation in accordance with this regulation within a stated reasonable time. Failure to complete said reclamation within the prescribed time period may result in the Planning Board requesting 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.

The site of an excavation which ceased commercially useful operation prior to August 24, 1977 (see Section 3.0.1), but for which the affected area has not been brought into compliance with the reclamation standards of Section 8.0, may be made subject to the remedy prescribed in this section only if the Planning Board finds in writing that specified reclamation measures are necessary to eliminate or mitigate an identified hazard to public health or safety.

5.0 APPLICATION FOR PERMIT

Any owner or owner's designee subject to this chapter shall, prior to excavation of or continuance or expansion of excavation of any land, apply to the Planning Board for an excavation permit and submit a reclamation plan. Copies of the application and the plans shall be submitted to the Wilton Conservation Commission at the same time. The permit application shall be signed and dated by the applicant and shall contain at least the information in this Section in addition to other regulation,

checklist and site plan review requirements. The Planning Board may waive one or more of the items listed under this section.

5.0.1 General Information. The application shall include 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.

5.0.2 Excavation Plans.

5.0.2.1 a. Excavations which would have qualified as existing excavations, as defined in Section 3.0.1, with a disturbed area less than 100,000 square feet and no plans to expand their operations beyond 100,000 square feet shall submit an excavation plan containing the following information:

- 1) the location of the excavation -- tax map and lot number;
- 2) the date the excavation first began;
- 3) a description of the limits of the proposed excavation;
- 4) a description of the existing excavation with a sketch map including an estimate of the area which has been excavated to date; and
- 5) an estimate of the amount of commercially-viable earth materials still available on the parcel.

b. These excavations shall comply with the express operational and reclamation standards contained in RSA 155-E:4a and RSA 155-E:5, and Sections 7.0 and 8.0 of these regulations.
(Adopted June 1994)

5.0.2.2 All new excavations and excavations which would have qualified as existing excavations, as defined in Section 3.0.1, with a disturbed area of 100,000 square feet or greater shall submit an excavation plan. The excavation plan shall be at a scale of no less than one inch equals one hundred feet and showing the area to be excavated and the land falling within 200 feet of the perimeter of the area to be excavated. All plans submitted to the Planning Board shall comply with the provisions in the Soil Erosion and Sedimentation Control Standards contained in Appendix II. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. At least six (6) copies of final plans shall be filed with the Planning Board prior to issuance of a permit. (Amended June 1994)

The Excavation Plan shall include:

- a. the seal and signature of an engineer and/or land surveyor registered in the State of New Hampshire;
- b. existing topography at contour intervals of five or fewer feet, based on mean sea level;
- c. the breadth, depth and slope of the proposed excavation, and existing excavation where applicable, and the estimated duration of the excavation;
- d. wooded and heavily vegetated areas;
- e. all surface drainage patterns including wetlands and standing water;
- f. location of all easements, on or below the ground;
- g. location and width of all public roads and rights-of-way;
- h. a log of borings or test pits that extend to either the seasonal high water table, ledge, or a minimum of six feet below the maximum proposed excavation depth, including location and soils data;

**WILTON LAND USE LAWS AND REGULATIONS
EXCAVATION SITE PLAN REVIEW REGULATION**

- i. location and extent of any stone walls, ledge outcroppings, wells, existing buildings, septic systems, utilities and the like;
- j. a locus map, at a scale of one inch equals one thousand feet (1":1000'), showing the proposed operation in relation to existing roads;
- k. any existing and all proposed excavation areas;
- l. any existing and all accessory facilities/activities;
- m. existing and proposed access roads, including width and surface materials;
- n. existing and proposed parking areas;
- o. existing and proposed fencing, buffers or visual barriers, including height and materials;
- p. storage areas for topsoil to be used in reclamation;
- q. all measures to control erosion, sedimentation, water pollution, air pollution, and hazards to human safety;
- r. the location of existing buildings, structures, septic systems and wells within one hundred and fifty (150) feet of the property boundary;
- s. the location of all driveways and road intersections within two hundred (200) feet of the property boundary;
- t. copies of any permits required by state or federal regulations
 - WSPCD - Site Specific (RSA 485-A:17)
 - Wetlands Board - Dredge and Fill (RSA 482-A)
 - Army Corps of Engineers - Dredge and Fill
 - NH Department of Transportation - Access Permit
 - NH Department of Transportation - Pit Agreement; and
- u. all measures 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.

5.0.3 Reclamation Plan.

5.0.3.1 Reclamation plans for excavations which meet the criteria of Section 5.0.2.1 shall provide the following information:

- a. all boundaries of the area proposed for reclamation;
 - b. post excavation/reclamation surface water drainage patterns;
 - c. final slopes;
 - d. schedule of final reclamation activities including seeding mixtures, cover vegetation and fertilizer types and rates; and
 - e. subsequent use of the site, if known or anticipated.
- (Adopted June 1994)

5.0.3.2 Reclamation Plans for all other excavations shall be provided at the same scale as the Excavation Plan covering the same area. All plans submitted to the Planning Board shall comply with the provisions in the Soil Erosion and Sedimentation Control Standards contained in Appendix II. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. At least six (6) copies of final plans shall be filed with the Planning Board prior to issuance of a permit. (Amended June 1994)

The Reclamation Plan shall include:

- a. the seal and signature of an engineer and/or land surveyor registered in the State of New Hampshire;
- b. all boundaries of the area proposed for reclamation;

- c. final topography of the area proposed for reclamation;
- d. final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities;
- e. schedule of final reclamation activities including seeding mixtures, cover vegetation, fertilizer types, and rates;
- f. photographs of the site before excavation (from at least two different vantage points); and
- g. subsequent use of the site, if known or anticipated.

6.0 ADDITIONAL PERMIT REQUIREMENTS

- 6.0.1 Size and Reclamation Time Limit on New Excavations. No excavation of a new area shall exceed five acres in size at any one time. In addition, the size of the area for any permitted excavation shall not exceed that area which can be reclaimed according to the approved application within a one (1) year period.

If reclamation of the site is not completed within the one (1) year permit period the Town may declare part or all of the bond forfeit, and use these monies to reclaim the site, in addition to the requirements of Section 13.0 (Issuance of Permit). At no time shall more than one permit be allowed on a lot of record.

- 6.0.2 Size and Reclamation Time Limit on Expansions of Excavations. No expansion and reclamation of an excavation shall exceed the already disturbed area of the excavation plus five acres. However, the entire excavation area shall not exceed that area which can be reclaimed according to the approved permit within a one (1) year period. If an excavation operating at the time of adoption of this regulation cannot be reclaimed within one (1) year, no additional excavation into an undisturbed area shall be permitted until the existing excavated area is reclaimed based on an approved permit as required by this regulation. In the case of excavation in operation at the time of adoption of this regulation that is not being expanded, the permit period allowed for reclamation shall also be one (1) year.

If reclamation of the site is not completed within the one (1) year permit period the Town may declare part or all of the bond forfeit, and use these monies to reclaim the site, in addition to the requirements of Section 13.0 (Issuance of Permit). At no time shall more than one permit be allowed on a lot of record.

- 6.0.3 Excavation Sites Considered Non-Conforming. Expansion of any site used for sand and gravel excavation is limited to such activities which are considered a permitted or allowed use in the corresponding zoning district. When an excavation is not allowed by local zoning or similar ordinances regulating the location of the excavation site in effect on the effective date of this section, expansion may be restricted or modified with conditions by order of the Planning Board if after notice to the owner and a public hearing the Board finds that such expansion will have a substantially different and adverse impact on the neighborhood.

- 6.0.4 Hours of Operation. The hours of operation shall be determined by the Planning Board during the permit process. The level of operation and the type of neighborhood affected shall be considered by the Board in establishing these hours.

- 6.0.5 Hauling Information. Hauling information, including routes to be utilized and average daily trips, shall be provided to the Planning Board prior to the issuance of an Excavation Permit. The Planning

Board may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. The Planning Board reserves the right to conduct a traffic study at the applicant's expense to ensure that public safety, neighborhood compatibility and road capacity and condition have been properly considered and optimized in the hauling plan.

7.0 OPERATIONAL STANDARDS

The following standards apply to the operation of all excavations within the Town.

- a. No excavation covered under RSA 155-E shall be permitted closer than 50 feet of the boundary of a disapproving abutter or within 10 feet of an approving abutter unless approval of a lesser distance is requested by the abutter.
- b. No excavation covered under RSA 155-E shall be permitted closer than 150 feet of an existing dwelling or to a dwelling for which a building permit has been issued at the time the excavation is begun.
- c. 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.
- d. Vegetation shall be maintained or provided within the peripheral areas required by Section 7.0 a, b and c.
- e. Natural vegetation adjacent to neighboring properties on which excavation is not intended shall be maintained for the purposes of erosion control, screening, noise reduction, and property valuation.
- f. No actual excavation is to exceed five (5) acres at one time unless specifically authorized by the Planning Board.
- g. Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process. Excavations shall comply with the Soil Erosion and Sedimentation Control Standards contained in Appendix II.
- h. No excavation shall be permitted closer than six feet to the seasonal high water table or to bedrock (as indicated by the required borings or test pits). The Planning Board may approve a lesser distance if the applicant provides scientific information sufficient to determine subsequent use of the site would not be precluded or present a public health threat; or if the applicant places restrictions upon future development of the site.
- i. Where the depth of excavation will exceed 15 feet and temporary slopes will exceed 1:1 in grade, a fence or other suitable barricade shall be erected to warn of danger and/or limit access to the site.
- j. No area shall be excavated which will cause the accumulation of free standing water for prolonged periods. Appropriate drainage shall be provided.
- k. Excavation projects requiring a permit from the Water Supply and Pollution Control Division of Department of Environmental Services (DES) under RSA 485-A:17 shall file a copy of the permit with the Planning Board prior to receiving a permit.
- l. Topsoil shall be stripped from the excavation area and stockpiled on-site for use in subsequent reclamation of the site.
- m. All temporary structures required during excavation operations shall be removed from the site within 30 days after such operations cease.
- n. No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with State laws or rules pertaining to such materials.

- o. 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 surety, as prescribed by the Planning Board, sufficient to cover the cost of reclaiming the land area to be excavated.
- p. 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 as designated in accordance with RSA 482-A:15,I or any other wetland greater than 5 acres in area as defined by the New Hampshire Department of Environmental Services Wetlands Board.

8.0 SITE RECLAMATION STANDARDS

The Planning Board or its designee shall periodically inspect the excavation operations and shall perform a final reclamation inspection in order to ensure that the approved plans have been followed. The standards below apply to the reclamation of all excavations in the Town of Wilton.

- a. No slope in soil material shall be left steeper than 3:1 (three horizontal feet for each one foot of vertical drop) unless it can be demonstrated by the applicant that a steeper grade can be adequately vegetated and stabilized. Under no case shall a soil material slope be left steeper than 2:1.
- b. All debris, stumps, boulders, etc. shall be lawfully disposed of in a manner acceptable to the Planning Board or its designee.
- c. Ground levels and grades shall be established as shown on the approved reclamation plan as soon as practical after site excavation has been completed, but no later than one year.
- d. Stockpiled topsoil shall be spread over the disturbed area to a depth to allow and maintain vegetation. Areas posing the most critical problems for re-vegetation shall be given first priority should available topsoil be limited. The disturbed area(s) shall be fertilized, if necessary, and seeded with a grass or grass-legume mixture.
- e. If deemed necessary by the Planning Board, suitable trees or shrubs may be planted in order to provide screening and natural beauty and to aid in erosion control. Such planted areas shall be protected from erosion during an appropriate establishment period by mulch and structural erosion control devices.
- f. Upon completion of the reclamation operations, 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.
- g. The responsible party shall not be released from its performance commitment (reclamation bond) until the Planning Board certifies compliance with all terms of the Excavation and the Reclamation Plans.
- h. 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 one year period, shall be reclaimed in accordance with Sections 6.0 and 8.0 within one year. Each operator shall submit a reclamation plan and timetable.

9.0 PROHIBITED PROJECTS

The Planning Board shall not grant an Excavation Permit under the following conditions.

- a. The excavation would violate the operational standards of Section 7.0.
- b. The excavation is located within 50 feet of the boundary of a disapproving abutter or within 10 feet of the boundary of an approving abutter unless approval of a lesser distance is requested by the abutter.
- c. Issuance of the permit would be unduly hazardous or injurious to the public welfare.
- d. Existing visual barriers would be removed, except as necessary to provide access to the excavation.
- e. The excavation would substantially damage a known aquifer, so designated by the United States Geological Survey.
- f. The excavation is within 150 feet of an existing dwelling or a dwelling for which a building permit has been issued at the time the excavation is begun.
- g. The excavation requires land use permits from state or federal agencies; the Planning Board may approve the application when all the necessary permits have been obtained.
- h. The project cannot comply with the reclamation provisions of Sections 6.0 and 8.0.
- i. The excavation is not permitted by zoning or other applicable ordinance.

10.0 WAIVERS

The Planning Board, upon application and following a hearing, may grant a waiver in writing, to the standards contained in Sections 6.0, 7.0, 8.0 and 9.0 for good cause shown. The written decision shall state specifically what standards, if any, are being relaxed and include reasonable alternative conditions.

11.0 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 an application for amendment of his excavation permit. The amended application shall be subject to approval in the same manner as provided for an excavation permit. An application for amendment to increase the size of a permitted excavation may be allowed if at least one-half of the area covered by the prior permit is reclaimed in accordance with the approved site Reclamation Plan.

12.0 HEARING

Prior to approving an application for an excavation permit or an application for an amended excavation permit, the Planning Board shall hold a public hearing within 30 days of receipt of a completed 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, place; at least 14 days notice of the time and place of the hearing shall be published in a paper of general circulation in the town; and legal notice shall also be posted in at least 3 public places in the town. The 14 days shall not include the day of publication or 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 Planning Board shall render a decision approving or disapproving the application, giving reasons for disapproval.

13.0 ISSUANCE OF PERMIT

If the Planning Board, after public hearing, approves the application for a permit and determines it is not prohibited by Section 9.0, it shall grant the excavation permit upon receipt of an excavation permit fee of \$50, and the posting of a bond or other surety with the municipal treasurer in the amount determined by the Board to be sufficient to guarantee compliance with the permit. The excavation permit shall be granted for a period of one year. The performance bond or other surety shall be for a period of the permit plus sixty days; the expected duration of the excavation shall not be greater than five years unless an application for amendment is filed. A copy of the permit shall be prominently posted at the excavation site and the principal access thereto. A permit shall not be assigned or transferred without the prior written consent of the Planning Board. A permit shall specify the date upon which it expires. The Planning Board may include in a permit such reasonable conditions as are consistent with the purpose of this regulation including requirements which are more stringent than RSA 155-E and the provision of visual barriers to the excavation. Prior to issuance of a permit, the applicant shall also be assessed an excavation review fee determined by the Planning Board to be sufficient to cover the cost of annual permit and compliance review by the Board or its designated representative. This excavation review fee shall also include sufficient funds to cover periodic field reviews conducted by the Town's engineer or other agent to ensure compliance with the approved Excavation and Reclamation Plans.

14.0 PERMIT RENEWAL

An excavation permit may be renewed annually for a renewal fee of \$15 if a site inspection by the Planning Board or its designee finds that the excavation is in compliance with the approved Excavation and Reclamation Plans. It is the responsibility of the owner/operator to apply to the Planning Board for a permit renewal and to arrange for a site inspection prior to the expiration of the existing permit.

15.0 APPEAL

If the Planning Board 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 Board 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 within 10 days of the date of decision appealed from. The Planning Board shall either grant or deny the request for rehearing within 10 days. If the request is granted, a rehearing shall be scheduled within 30 days. Any person affected by the Board's decision on a motion for rehearing may appeal in accordance with the procedures specified in RSA 677.

16.0 ENFORCEMENT

- a. The Planning Board or its duly authorized agent may suspend or revoke the permit of any person who has violated any provision of his permit or this regulation 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 Section 16.0. Failure to file for a permit as required by this regulation shall be considered a violation subject to the enforcement provisions of this regulation.
- b. Fines, penalties and remedies for violations of this regulation shall be the same as for violations of RSA 676:15 and RSA 676:17.
- c. To ascertain if there is compliance with this regulation, a permit issued hereunder or an order issued hereunder, the Planning Board or its duly authorized agent(s) may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since the effective date of this regulation.
- d. Operators who fail to file for a permit will be issued a cease and desist order.

17.0 SEPARABILITY

The invalidity of any provisions of this regulation shall not affect the validity of any other provision.

#260G-31