

**EXCAVATION
REGULATIONS
for the
TOWN of ALTON, NH**



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1. AUTHORITY AND TITLE

These regulations supplement the provisions of RSA 155-E and provide further clarification of the statutory requirements and their application in the Town of Alton, New Hampshire. They are adopted as provided in RSA 155-E:11. Applicants should familiarize themselves with both RSA 155-E and these regulations to be fully informed as to permit requirements.

These regulations shall be known and cited as the "Excavation Regulations for the Town of Alton, New Hampshire".

2. PURPOSE AND SCOPE

The purpose of these regulations is to safeguard public health, safety and welfare while providing reasonable opportunities for excavation; to protect the Town's natural resources such as water, forests and wildlife; promote soil stabilization; prevent improper stormwater runoff; and maintain the aesthetic features of the Town.

The scope of these regulations shall be comprehensive. No earth materials shall be removed and no excavation shall be made from any property in the Town of Alton except in conformance with these regulations.

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3. DEFINITIONS

Abutter. As defined in RSA 672:3, as amended, 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 term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. 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 manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

Agricultural activities. Activities as defined by NH RSA 21:34-a, as amended, with the exception of septage.

Applicant. Owner of the property to be excavated or the owner's designee, so designated in writing as part of the excavation application.

Application. A complete submission of information and plans as required by the statute, RSA 155-E, local regulations, and in the excavation permit application.

Aquifer. Those areas designated by blue shading or hatching which appears on the map prepared by the United States Geological Survey entitled: "Availability of Ground Water in the Pemigewasset and Winnepesaukee River Basins."

Commercial Excavation/Commercial Taking/Commercially Useful/Commercially Viable. Any excavation of earth as defined herein intended for commerce. Any material leaving the property for whatever reason is considered to be a commercial operation

Contiguous. As defined in RSA 155-E:2, I (b), as amended, land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town.

Dimension stone. As defined in RSA 155-E:1, IV, as amended, rock that is cut, shaped, or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and used for external or interior parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which sections of dimension stone are to be produced. Dimension stone does not include earth as defined in RSA 155-E:1, I.

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Earth. As defined in RSA 155-E:1, I, as amended, 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.

Excavation. As defined in RSA 155-E:1, II, as amended, a land area which is used, or has been used, for the commercial taking of earth, including all slopes.

Excavation Area. As defined in RSA 155-E:1, VI, as amended, the surface area within an excavation site where excavation has occurred or is eligible to occur under the provisions of RSA 155-E and these regulations.

Excavation Application Fee. The fees to cover the costs of posting, publishing and mailing notice for the public hearing, due upon submission of the excavation application.

Excavation Permit. A permit issued by the regulator allowing the excavation of material at a specific site, in a manner consistent with RSA 155-E and local regulations for the period designated on the permit itself.

Excavation Permit Application. A form and associated documents which contain excavation project information. The application must be submitted in duplicate to the regulator and the Conservation Commission.

Excavation Permit Fee (RSA 155-E:8). A fee of \$50 submitted by the applicant to the regulator, following the public hearing and prior to the issuance of an excavation permit.

Excavation Site. As defined in RSA 155-E:1, V, as amended, any area of contiguous land in common ownership upon which excavation takes place.

Incidental. An activity that is customarily subordinate to the principal use of the property and which arises out of and constitutes a customary minor, concurrent part of the overall effort or activity which would not be required other than as necessary to support the underlying principal activity.

Minor Topographical Adjustment. A one time removal of earth from the site that is exclusively necessary to change the physical configuration of the land for its specified use or situation.

Normal Landscaping. The onsite alteration and contouring of the land exclusively devoted to improving the functional utility and planting of the grounds.

Owner. An individual or corporation who claims ownership of the land, containing the excavation site, by virtue of a properly executed deed filed at the County Registry of Deeds.

Pit Agreement. An agreement between the excavation site owner and the contractor describing the procedure for material excavation (see section 106.02 of "Standard Specifications for Road and Bridge Construction" published by the New Hampshire Department of Transportation).

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Reclamation. The restoring of an excavation site to a standard at least equal to those outlined in Section 7 of these regulations.

Regulator. Pursuant to RSA 155-E:1, III (a), the Planning Board is the Regulator.

Stationary Manufacturing and Processing Plants. Structural improvements that are permanently placed and that are integral to the sorting, washing, screening, crushing, classifying, drying and/or processing of excavated material.

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4. EXCAVATIONS REQUIRING AN EXCAVATION PERMIT

All excavations of land in the Town of Alton shall be required to comply with the application process described herein and no such excavation shall commence unless and until an excavation permit shall be issued by the Regulator, or the owner has filed an application to enable the Regulator to determine that the project is exempt from the excavation permit requirement(s) pursuant to RSA 155-E, or elsewhere in these regulations.

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5. PROJECTS EXEMPT FROM AN EXCAVATION PERMIT

The following projects do not require a permit:

- Existing excavations as set forth herein.
- Excavation from an excavation site contiguous to or from contiguous land in common ownership with stationary manufacturing and processing plants which were in operation as described in RSA 155-E:2, III, and which use earth obtained from such excavation site.
- Excavations Performed Exclusively for Construction of Class I, II, III, IV or V Highway.
- Other exemptions:
 - excavations that are incidental to agricultural or silvicultural (forestry) activities, normal landscaping or minor topographical adjustment; or,
 - excavations that are exclusively incidental to the lawful construction or alteration of a building or structure, a parking lot or way including a driveway, on a portion of the premises where removal occurs; or,
 - excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E (Mining and Reclamation).

They are, however, subject to Sections 6, 7 & 8 of these regulations.

The sections below provide the Regulator a framework within which to review projects that it is asserted do not require a permit.

In addition to the requirements listed below, the Regulator may require the owner/operator to come before the Regulator, at a fully noticed public hearing, and submit such information as may be necessary to demonstrate compliance with these standards and/or other appropriate information to demonstrate compliance to any particular, claimed statutory or Town exemption.

I EXISTING EXCAVATIONS

- A. An "existing excavation" is one which meets **all** of the following conditions:
1. The owner of such excavation must demonstrate that such excavation lawfully existed as of August 24, 1979; and,
 2. The owner of such excavation must demonstrate that earth material of sufficient weight or volume to be commercially useful was removed during the two-year period before August 24, 1979; and,
 3. The owner of such excavation must demonstrate that either said owner, the predecessor in title to such owner, or the authorized operator of such excavation previously filed a report with the local Regulator no later than two years following August 4, 1989, which report must have included:
 - a. The location of the excavation and the date the excavation first began;
 - b. A description of the limits of permissible expansion, as described in paragraph C below, which are claimed to apply to the excavation;

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- c. An estimate of the area which had been excavated at the time of the report; and,
- d. An estimate of the amount of commercially viable earth materials still available on the parcel at that time.

"Existing excavation" shall also include 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 of bedrock to occur for the first time on any excavation site without first obtaining a permit therefor under these regulations.

B. Application to demonstrate "existing excavation" exemption.

An owner who considers their excavation exempt from the permit requirement due to the "existing excavation" exemption shall, nevertheless file an "Existing Excavation Exemption Application" with the Regulator before commencing such operation, and shall present such evidence as the Regulator reasonably requires to determine that the proposed project is entitled to the claimed exemption.

No excavation or removal of earth materials from such site shall be undertaken unless and until the Regulator, pursuant to this section, has made a finding that the Applicant has demonstrated that the claimed exemption is applicable to the site.

C. Expansion of "existing excavation".

1. Limits of "permissible expansion"

An "existing excavation" as set forth above may NOT be expanded, without obtaining a permit from the Regulator:

- a. beyond the limits of the town in which it is situated; and,
- b. beyond the area which, on August 24, 1979, and at all times subsequent thereto has been contiguous to and in common ownership with the excavation site as of that date; and,
- c. beyond the area that has been appraised and inventoried for property tax purposes as part of the same tract as the excavation site of that date, as modified by the limitations of RSA 155-E:4-a, I, II, and II-a.

In this regard, the term "contiguous" means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town.

2. Application for Expansion when Local Zoning Prohibition or Control Exist

In circumstances in which such excavation is not allowed in that location by local zoning or similar ordinances in effect on August 4, 1989, or when such ordinances allow such excavation only by special exception, such expansion may NOT occur until an application for such expansion has been made to the Regulator, who may restrict or modify such expansion with conditions by order of the Regulator if, after notice to the owner and a hearing, the Regulator finds that such expansion will have a substantially different and adverse impact on the neighborhood.

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3. Scope of Hearing on Application for Expansion when Local Zoning Prohibition or Control Exist

An Applicant seeking to expand an "existing excavation" in those areas of Alton in which such an underlying use is either prohibited by local zoning or other local ordinances in effect on August 4, 1989, or when such ordinances allow such excavation only by special exception, shall have the burden of demonstrating to the Regulator, at a noticed public hearing, that such expansion will NOT have a substantially different and adverse impact on the neighborhood.

The Regulator may consider the following:

- a. The excavation will not cause a diminution in property values or unreasonably change the character of the neighborhood; and,
- b. The excavation will not unreasonably accelerate the deterioration of the highways or create safety hazards in the use of said highways; and,
- c. The excavation will not create any nuisance or create health or safety hazards, and,
- d. The excavation complies with such other special exception criteria set out in the applicable zoning ordinance.

4. Hearing on "Expansion" separate and distinct

The hearing provided for in this section relating to an application for an expansion shall be separate and distinct from any hearing that may be held on the question of whether an "existing excavation" is entitled to an exemption, but nothing herein shall preclude the Regulator, for the sake of convenience, from conducting such hearing(s) at the same time, date and place.

5. Appeals of decision on "Expansion"

An appeal from any decision of the Regulator under this section may be taken in the manner specified in RSA 155-E:9, as amended.

D. Compliance with Statutory Express Standards

Any "existing excavation", as well as any expansion thereof, shall be performed in compliance with the express operational standards of RSA 155-E:4-a and the express reclamation standards of RSA 155-E:5 and 155-E:5-a, as amended. Any violation of those standards shall be enforceable pursuant to RSA 155-E:10. Compliance with these standards and the other requirements herein, is mandatory in order to retain the exempted status.

Compliance shall be confirmed by periodic inspections by the Regulator or its designee as detailed in Section 19 (Administration and Enforcement) of these regulations. Loss of exempt status can occur only after the Regulator has given written notice that the

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excavation is not in compliance and the owner has failed to bring it into compliance within 30 days of receipt of such notice, upon a finding by the Regulator to that effect.

II STATIONARY MANUFACTURING PLANTS

A. Excavation contiguous to Stationary Manufacturing and Processing Plants

1. Excavation from an excavation site which on August 4, 1989, was contiguous to or was contiguous land in common ownership with stationary manufacturing and processing plants which were in operation as of August 24, 1979, and which use earth obtained from such excavation site.
2. Excavation from a site which on August 4, 1989, was contiguous to or was contiguous land in common ownership with stationary manufacturing and processing plants for which local or state permits have been granted since August 24, 1979, and before August 4, 1989, which use earth obtained from such site.

B. Application to demonstrate entitlement to excavation contiguous to Stationary Manufacturing and Processing Plants

An owner who considers their excavation exempt from the permit requirement due to this exemption shall, nevertheless, file an "Excavation Contiguous to Stationary Manufacturing and Processing Plant Exemption Application" with the Regulator prior to commencing such operation, and shall present such evidence as the Regulator reasonably requires to determine that the proposed project is entitled to the claimed exemption.

No excavation or removal of earth materials from such site shall be undertaken unless and until the Regulator, pursuant to this section, has made a finding that the Applicant has demonstrated that the claimed exemption is applicable to the site.

C. Expansion of excavation contiguous to Stationary Manufacturing and Processing Plants

Such excavations as described in Section II, A. 1. above, may be expanded without a permit to any contiguous lands which were in common ownership with the site of the plan on August 4, 1989, except as limited by RSA 155-E:4-a, I, II, and III.

D. Compliance with Statutory Express Standards

1. Any excavation contiguous to a Stationary Manufacturing or Processing Plant as described in Section II, A. 1. above, shall be performed in compliance with the express operational standards of RSA 155-E:4-a and the express reclamation standards of RSA 155-E:5 and 155-E:5-a, as amended, which express standards shall be the sole standards with which such excavations must comply in order to retain their exempt status. Any violation of those standards shall be enforceable pursuant to RSA 155-E:10. Compliance with these standards and the other requirements herein, is mandatory in order to retain the exempted status.

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Compliance shall be confirmed by periodic inspections by the Regulator or its designee as detailed in Section 19 (Administration and Enforcement) of these regulations. Loss of exempt status can occur only after the Regulator has given written notice that the excavation is not in compliance and the owner has failed to bring it into compliance within 30 days of receipt of such notice, upon a finding by the Regulator to that effect.

2. The operation and reclamation of any excavation contiguous to a Stationary Manufacturing or Processing Plan as described in Section II, A. 2. above, shall continue to be regulated by local or state permits granted since August 24, 1979, and before August 4, 1989, and any renewals or extensions thereof by the permitting authority or authorities.

III EXCAVATIONS PERFORMED EXCLUSIVELY FOR CONSTRUCTION OF CLASS I, II, III, IV OR V HIGHWAYS

A. Application to Demonstrate Entitlement to Exemption

1. An owner, who considers their excavation exempt from the permit requirements herein due to the "Class I, II, III, IV or V highway construction, reconstruction or maintenance" exemption, shall, prior to the commencement of any such operation, request in writing on an application provided for this purpose by the Regulator, a hearing before the Regulator to demonstrate entitlement to this exemption. No excavation or removal of earth materials from such site shall be undertaken unless and until the Regulator, pursuant to this section, has made a finding that the Applicant has demonstrated that the claimed exemption is applicable to such site.
2. Requirements

The owner shall have the burden of demonstrating to the Regulator at said hearing, that the following conditions have been met:

- a. The owner has entered into a written agreement with a governmental unit, the terms of which provide that the materials from the excavation shall be used exclusively for the lawful construction, reconstruction or maintenance of a Class I, II, III, IV, or V highway. A copy of the agreement shall be provided to the Regulator prior to the start of excavation. Said agreement shall identify the highway to which the agreement pertains as well as the contemplated duration of the agreement. Furthermore, the agreement shall identify and limit the exemption granted under this Section to only that much of the excavation that is necessary for the public project.
- b. The owner has executed a document confirming that the owner understands that any operation conducted under this exemption is, nevertheless, required to be done in a manner that will NOT result in a violation of the prohibited activity enumerated in Section 10 (Prohibited Projects), agreeing to conduct such operation in compliance with the

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following, and such operation shall comply with the following irrespective of whether such document has been executed:

- i. RSA 155-E:4-a, pertaining to Minimum and Express Operational Standards; and,
- ii. RSA 155-E:5, pertaining to Minimum and Express Reclamation Standards; and,
- iii. RSA 155-E:5-a, pertaining to Incremental Reclamation Standards.

IV. OTHER EXEMPTIONS

A. The following three types of excavation shall be exempt from the permit requirement herein, provided the conditions specified below for each of said types of projects have been complied with:

- excavations that are incidental to agricultural or silvicultural (forestry) activities, normal landscaping or minor topographical adjustment; or,
- excavations that are exclusively incidental to the lawful construction or alteration of a building or structure, a parking lot or way including a driveway, on a portion of the premises where removal occurs; or,
- excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E (Mining and Reclamation).

B. Conditions Applicable to "Other Exempt Excavations"

1. Application to demonstrate entitlement to exemption

An owner who considers their excavation exempt from the permit requirement herein due to any of the three circumstances identified in paragraph A, above, shall, nevertheless file an application with the Regulator prior to commencing any such operation and shall present such evidence as the Regulator reasonably requires to determine that the proposed project is entitled to the claimed exemption. No excavation or removal of earth material from such site shall be undertaken unless and until the Regulator, pursuant to this section, has made a finding that the Applicant has demonstrated that the claimed exemption is applicable to the site.

2. Requirements

The owner shall have the burden of demonstrating to the Regulator that the following conditions have been met:

- a. Incidental to Agricultural or Silvicultural (Forestry) Activities, Normal Landscaping or Minor Topographical Adjustment

In the case of a claim that the proposed excavation is incidental to agricultural or silvicultural (forestry) activities, normal landscaping or minor topographical adjustment, the owner shall demonstrate to the Regulator that the agricultural or silvicultural

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(forestry) activities, normal landscaping or minor topographical adjustment, to which the proposed excavation is claimed to be incidental, is the principal activity on the property. In this regard, the information provided to the Regulator shall include, by way of example and not by way of limitation, the information listed in the section below. No excavation pursuant to this exemption may be started, however, until any required federal, state or local permits have been issued for all the activities to which the proposed excavation is intended to be exclusively incidental.

- i. the nature and volume of agricultural or silvicultural (forestry) activities, and normal landscaping that are normally conducted on the site or, (if applicable), the extent and purpose of any contemplated minor topographical adjustment to which the excavation is intended to be incidental;
- ii. the amount of material that is intended to be removed;
- iii. the extent to which and manner in which the agricultural or silvicultural (forestry) activities, normal landscaping or minor topographical adjustment will be increased or enhanced by the removal of the earth material;
- iv. the contemplated duration of the removal operation;
- v. the intended recipient(s) of the earth products;
- vi. intended transportation routes to be used to and from the pit; the numbers and types of trucks and equipment to be used; hours of operation; maximum number of daily trips;
- vii. other information requested by the Regulator that is reasonably calculated to assist the Regulator in making a determination that the proposed excavation is "incidental" to the primary purpose of the site, as that term is defined herein.

The Regulator reserves the right to request such other information or special investigative studies as the Regulator may reasonably deem necessary based on the contemplated scope of the project. If the Regulator determines that the exemption under this section applies, and if the scope of the project warrants, the Regulator may impose reasonable conditions on the conduct of the operation to insure that the operation shall continue to be exclusively incidental to the underlying activity to which the excavation is claimed to be incidental and also to protect the public health, safety and welfare to the extent that such operation may impact the same.

In the case of this claimed exemption, the Regulator, upon receipt of the foregoing, if it considers that the same is sufficient to justify that the exception in this section applies, may dispense with a formal public hearing and issue a finding to the effect that the exemption is applicable and that no further permit or oversight by the Regulator is required.

- b. Exclusively Incidental to the Lawful Construction or Alteration of a Building or Structure, a Parking Lot or Way, Including a Driveway

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In the case of a claim that the proposed excavation is exclusively incidental to the lawful construction or alteration of a building or structure, a parking lot or way including a driveway, on a portion of the premises where removal occurs, the owner shall demonstrate to the Regulator that the proposed excavation is exclusively incidental to the principal activity on the property and that said principal activity is lawful. In this regard, the information provided to the Regulator shall include, by way of example and not by way of limitation, the information listed in the section below. No excavation pursuant to this exemption may be started, however, until any required federal, state or local permits have been issued for all the activities to which the proposed excavation is intended to be exclusively incidental.

- i. the nature and volume of lawful construction or alteration of a building or structure, a parking lot or way including a driveway, that are proposed to be constructed on the site;
- ii. the contemplated amount of material that is intended to be removed;
- iii. the extent to which and manner in which the proposed excavation is related to or required in order to facilitate the lawful construction or alteration of a building or structure, a parking lot or way including a driveway, that is contemplated on the property;
- iv. the contemplated duration of the removal process;
- v. the intended recipient(s) of the earth products;
- vi. intended transportation routes to be used to and from the incidental excavation; the numbers and types of trucks and equipment to be used; hours of operation; maximum number of daily trips;
- vii. other information requested by the Regulator that is reasonably calculated to assist the Regulator in making a determination that the proposed excavation is "incidental" to the primary purpose of the site, as that term is defined herein.

The Regulator reserves the right to request such other information or special investigative studies as the Regulator may reasonably deem necessary based on the contemplated scope of the project. If the Regulator determines that the exemption under this section applies, and if the scope of the project warrants, the Regulator may impose reasonable conditions on the conduct of the operation to insure that the operation shall continue to be exclusively incidental to the underlying activity to which the excavation is claimed to be incidental and also to protect the public health, safety and welfare to the extent that such operation may impact the same.

In the case of this claimed exemption, the Regulator, upon receipt of the foregoing, if it considers that the same is sufficient to justify that the exception in this section applies, may dispense with a formal public hearing and issue a finding to the effect that the exemption is applicable and that no further permit or oversight by the Regulator is required.

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

In the case of a claim that the proposed excavation is exempt due to the fact that it is an excavation from a granite quarry for the purpose of producing dimension stone which requires a permit under RSA 12-E, the owner shall demonstrate to the Regulator that the proposed excavation is one to which this exemption applies, by providing to the Regulator, the following:

- i. a copy of the bond required pursuant to RSA 12-E:6, showing that it is in effect;
- ii. a copy of any mining plan provided to the State in accordance with RSA 12-E:4 showing any conditions which may have been imposed when the permit was issued;
- iii. a copy of any permit, with related conditions, issued pursuant to RSA 12-E:6, showing that the same is in effect.

In the case of this claimed exemption, the Regulator, upon receipt of the foregoing, if it considers that the same is sufficient to justify that the exception in this section applies, may dispense with a formal public hearing and issue a finding to the effect that the exemption is applicable and that no further permit or oversight by the Regulator is required.

C. Conditions Applicable to Other Exempt Excavations

A person owning land abutting a site which was taken by eminent domain or by any other governmental taking upon which construction is taking place may stockpile earth taken from the construction site and may remove the earth at a later date after written notification to the appropriate local official, and no further permit shall be required.

6. MINIMUM AND EXPRESS OPERATIONAL STANDARDS

The following operational standards apply to both excavations requiring a permit and excavations exempt from a permit as listed in Section 5 of these regulations. Excavations that are exempt from a permit are subject only to compliance with these "express" standards. Excavations that require a permit are also subject to the excavation and reclamation standards and requirements found elsewhere in these regulations.

- A. 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.
- B. No excavation shall be permitted within 50 feet of the boundary of a disapproving abutter, within 150 feet of any dwelling which either existed or for which a building permit has been issued at the time the excavation is commenced.
- C. 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 NH Department of Environmental Services.
- D. Vegetation shall be maintained or provided within the peripheral areas required by Sections A and B above.
- E. Drainage shall be maintained so as to prevent the accumulation of free-standing water for prolonged periods. Excavation practices which result in continued siltation of surface waters or any degradation of water quality of any public or private water supplies are prohibited.
- F. No fuels, lubricants, or other toxic or polluting materials shall be stored on-site unless in compliance with state laws or rules pertaining to such materials.
- G. Where temporary slopes will exceed a grade of 1:1, a fence or other suitable barricade shall be effected to warn of danger or limit access to the site.
- H. Prior to the removal of topsoil or other overburden material from any land area that has not yet been excavated, the excavator shall file a reclamation bond or other security as prescribed by the Regulator, sufficient to secure the reclamation of the land area to be excavated.

7. MINIMUM AND EXPRESS RECLAMATION STANDARDS

The following reclamation standards apply to both excavations requiring a permit and excavations exempt from a permit as listed in Section 5 of these regulations. Excavations that are exempt from a permit are subject only to compliance with these "express" standards. Excavations that require a permit are also subject to the excavation and reclamation standards and requirements found elsewhere in these regulations.

Within 12 months after the expiration date in a permit issued under these regulations, or within 12 months of the completion of any excavation, whichever occurs first, reclamation shall be completed to meet the following standards:

- A. Except for exposed rock ledge, all areas which have been affected by the excavation or otherwise stripped of vegetation shall be spread with topsoil or strippings, if any, but in any case covered by soil capable of sustaining vegetation, and shall be planted with seedlings or grass suitable to prevent erosion. Areas visible from a public way, from which trees have been removed, shall be replanted with tree seedlings, set out in accordance with acceptable horticultural practices.
- B. Earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of.
- C. All slopes, except for exposed ledge, shall be graded to natural repose for the type of soil of which they are composed so as to control erosion or at a ratio of horizontal to vertical proposed by the owner and approved by the Regulator. Changes of slope shall not be abrupt, but shall blend with the surrounding terrain.
- D. Any standing bodies of water created in the excavation project as may constitute a hazard to health and safety shall be eliminated.
- E. The topography of the land shall be left so that water draining from the site leaves the property at the original, natural drainage points and in the natural proportions of flow. For excavation projects which require a permit from the NH Department of Environmental Services pursuant to RSA 485-A:17, the provisions of that statute, and rules adopted under it, shall supersede this paragraph as to areas of excavation sites covered thereby. The excavator shall file a copy of permits issued under RSA 485-A:17 with the Regulator.

8. INCREMENTAL RECLAMATION

Except for excavation sites of operating stationary manufacturing plants, any excavated area of 5 contiguous acres or more which is depleted of commercial earth materials, excluding bedrock, or any excavation from which earth materials of sufficient weight or volume to be commercially useful have not been removed for a 2-year period, shall be reclaimed in accordance with Sections 7 & 17 of these regulations, within 12 months following such depletion or 2-years non-use, regardless of whether other excavation is occurring on adjacent land in contiguous ownership. A reclamation plan, including a reclamation timetable for the depleted areas within the reclamation site, shall be submitted to the Regulator for approval.

9. ABANDONED EXCAVATIONS

- A. An excavation site shall be considered abandoned when any of the following circumstances are found to exist:
1. No earth material of sufficient weight or volume to be commercially useful has been removed from that excavation site during any 2-year period, either before, on, or after August 4, 1989; provided, however, that before the end of such 2-year period, the owner or operator may extend the period by submitting to the Regulator a reclamation timetable to be approved by the Regulator, and posting a bond or other security with the municipal treasurer in a form and amount prescribed by the Regulator, sufficient to secure the reclamation of the entire excavation site in accordance with the standards of Section 7 of these regulations; or,
 2. The excavation site is in use and is not an excavation or excavation site for a Stationary Manufacturing Plant, but does not conform with the incremental reclamation requirement of Section 8 of these regulations, or the owner or operator has not posted a bond or other security and submitted a reclamation timetable to be approved by the Regulator as described in paragraph 1. above; or,
 3. The owner or operator of the excavation has neither secured a permit pursuant to this chapter nor filed a report of an existing excavation pursuant to Section 5. I A. of these regulations within the prescribed period.
- B. The Regulator may convene a fully noticed hearing, in accordance with the requirements of RSA 155-E:7, concerning the excavation site to determine if there are reasonable grounds to declare the site abandoned within the meaning of said statute.
- C. If the Regulator finds that such site is abandoned, no further excavation may take place on the property without a permit under these regulations.
- D. In instances in which the Regulator determines that the public health, safety, or welfare requires such reclamation, it may take such action as is available to it under the provisions of RSA 155-E:10, and also, without limitation, the remedy provided for in RSA 155-E:2, II (b), to the effect that it may order the owner of any land upon which an abandoned excavation is located to either file a reclamation timetable, to be approved by the Regulator, and bond or other security as described in RSA 155-E:2, II (a) (1), or to complete reclamation in accordance with said statute within a stated reasonable time.
- E. If the owner fails to complete reclamation within the time prescribed, the Regulator may request the governing body to cause reclamation to be completed at the expense of the municipality. The municipality's costs shall constitute an assessment against the owner, and shall create a lien against the real estate on

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which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

- F. The site of an excavation which ceased commercially useful operation prior to August 24, 1977, but for which the affected area has not been brought into compliance with the reclamation standards of RSA 155-E:5, may be made subject to the remedy prescribed in RSA 155-E:2, II (b), only if the Regulator finds in writing that specified reclamation measures are necessary to eliminate or mitigate an identified hazard to public health or safety.

10. PROHIBITED PROJECTS

The Regulator shall not grant a permit for the following projects:

- A. For excavations within 50 feet of the boundary of a disapproving abutter or within 10 feet of an approving abutter unless approval is requested by said abutter.
- B. Where existing visual barriers would be removed, except to provide access to the excavation.
- C. Where the issuance of the permit would be unduly hazardous or injurious to the public welfare. The Regulator shall give particular consideration to such factors as noise, traffic, dust, fumes, or danger from operation.
- D. Where the excavation would substantially damage a known aquifer, as designated by the United States Geological Survey.
- E. When the excavation cannot receive necessary approvals from state or federal agencies, such as Alteration of Terrain or Wetlands permits.
- F. Where the excavation is not permitted by zoning or other applicable ordinances, provided, however, that reasonable opportunities for excavation exist in town, as described in RSA 155-E:4, III.
- G. Where the project cannot comply with the requirements of Sections 6, 7 & 8 of these regulations.

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11. PERFORMANCE GUARANTEE

- A. Prior to the granting of any permit, or to the removal of any topsoil or other overburden material from a new area within an existing excavation site, the Applicant shall submit to the Regulator a bond with sufficient surety as determined by the Regulator. The purposes of the bond are to guarantee reclamation of the area and compliance with the permit. Off-site improvements for potential damage to Town roads or facilities caused by the transportation of earth materials shall be discussed at this stage.
- B. The security may be in the form of a performance bond, irrevocable letter of credit, cash, certified check, bank check, or any other form approved by the Regulator. The surety must be phased to coincide with the phasing of work, in an amount sufficient to guarantee reclamation of the applicable section, to be released as sections are completed. Prior to a new section being opened, new securities shall be posted. Town Counsel shall review the suitability and enforceability of the performance guarantee if it is in the form of a bond, irrevocable letter of credit or similar. The cost of said review shall be at the Applicant's expense.
- C. The security shall be recalculated every five years.
- D. The surety shall not be released until the Regulator is satisfied that all conditions of the site reclamation plan have been complied with. This shall be determined at a final site walk by the Regulator and/or its designee.

12. EXCAVATION APPLICATION PROCEDURES

According to the Town of Alton Zoning Ordinance, Section 401, Excavation is permitted in the Rural District only with a special exception granted by the Zoning Board of Adjustment. If the Zoning Board of Adjustment grants the special exception, the Applicant shall then submit an application to the Regulator for a permit under these regulations.

Prior to the Regulator rendering a decision for an excavation permit, a public hearing shall be held with due notification to all abutters and the public. The application procedure for an excavation permit is as follows:

A. Filing the Application

1. The applicant shall submit to the Regulator and the Conservation Commission the information and documents specified in RSA 155-E:3 and in the Excavation Permit Application.
2. The application shall be filed with the Planning Department at least 21 days prior to a scheduled public meeting of the Regulator.
3. The Regulator shall at the next regular meeting, or within 30 days of delivery of the application to the Planning Department, for which notice can be given in accordance with these regulations, determine if the submitted application is complete according to the Excavation Regulations, and shall vote upon its acceptance as complete.
4. If the Regulator determines that a submitted application is incomplete, it shall notify the Applicant of the determination in accordance with RSA 676:3, which shall state what additional information is required.
5. The Regulator, upon receipt of an application for earth removal, shall review it promptly and determine whether or not the application, if approved, could reasonably be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the application has a potential regional impact, and notice as provided in these regulations, shall be given to the Regional Planning Commission and the affected municipalities.

B. Board Action on Application

1. Before taking any action on an Excavation Permit Application, the Regulator shall hold a public hearing thereon. The same notice of submission of the application, as specified in part C shall be given. If notice of the public hearing has been included in the notice of submission or any prior notice, additional notice of the public hearing is not required nor shall additional notice be required of an adjourned session of a hearing with proper notice if the date, time and place of the adjourned session was made known at the prior hearing. All costs of notice, whether mailed, posted or published, shall be paid in advance by the Applicant. Failure to pay such costs shall constitute valid grounds for the Regulator to terminate further consideration and to disapprove the application without a hearing.

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2. Except as provided in part B, 1., no application may be denied or approved without a public hearing on the application. At the hearing, the Applicant, any abutter, holder of conservation, preservation, or agricultural preservation restriction, or any person with a direct interest in the matter may testify in person or in writing. Other persons may testify as permitted by the Regulator at each hearing.
 3. Pursuant to RSA 155-E:7 and 676:3, within twenty (20) days of the close of the hearing on the application or any continuation thereof, the Regulator shall issue a final written decision which either approves or disapproves an application for a local permit. In the case of disapproval of any proposed Excavation Permit Application submitted, the grounds for such disapproval shall be adequately stated on the records of the Regulator and the Applicant shall be so notified by certified mail. If the Regulator votes to approve or disapprove an application, or deny a motion for rehearing, the minutes of the meeting at which such vote was taken, including the written decision containing the reasons therefor, shall be placed on file in the Regulator's office, and shall be made available for public inspection within five (5) business days of such vote.
 4. Within five (5) business days of reaching a decision that the proposed excavation has the potential for regional impact, the Regulator shall, by certified mail, furnish the Regional Planning Commission and the affected municipalities with copies of the minutes of the meeting at which the decision was made.
- C. Notices Required for Public Hearing
1. The Regulator shall notify the Applicant, abutters, holders of conservation, preservation or agricultural preservation restrictions, and every engineer, architect, and surveyor or soils scientist whose professional seal appears on any plan submitted to the Regulator, by certified mail, of the date upon which the application will be formally submitted to the Regulator. Notice shall be mailed at least ten (10) days prior to the submission.
 2. Notice to the general public shall also be given at the same time by posting in at least three (3) public places in the Town, and by publication in a newspaper of general circulation in the Town. The notice shall include a general description of the proposal which is the subject of the application and shall identify the Applicant and the location of the proposal as well as the date, time and place of the meeting.
 3. Upon determination that a proposed excavation has a potential regional impact, the Regulator shall afford the Regional Planning Commission and the affected municipalities the status of abutters, as defined in Section 3, for the limited purposes of providing notice and giving testimony. At least fourteen (14) days prior to public hearing, the Regulator shall notify, by certified mail, all affected municipalities through its Regulator, if any, or local governing body and the Regional Planning Commission of the date, time, and place of the hearing and their right to testify concerning the application.

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D. Compliance Hearing

1. If the Regulator places a condition precedent (one to be fulfilled before the excavation can begin, such as obtaining an easement, posting a bond, procuring special permits, etc.) on the approval, final approval will become effective on the plan or application without further public hearing, providing the conditions are:
 - a. Minor plan changes whether or not imposed by the Regulator as a result of a public hearing, compliance with which is administrative and which does not involve discretionary judgement; or,
 - b. Conditions which are in themselves administrative and which involve no discretionary judgement on the part of the Regulator; or,
 - c. Conditions with regard to the Applicant's possession of permits and approvals granted by other boards or agencies.Otherwise, all other conditions shall require an additional noticed public hearing at which interested parties and town officials will have an opportunity to review and comment on the Applicant's compliance with the condition(s) precedent. Notice as provided in these regulations, shall be required except that additional notice shall not be required of an adjourned session of a hearing with proper notice if the date, time and place of the adjourned session were made known at the prior hearing.
2. If the Regulator places a condition subsequent, such as the completion of on-site or off-site improvements before the project is considered to be completed, an additional public hearing shall be held at which interested parties and town officials will have an opportunity to review and comment on the Applicant's compliance with the condition(s) subsequent before any bonds are released.

E. Fees

1. Upon submission of an application, the applicant shall pay the costs incurred by the processing of applications, posting, publishing and mailing notice for the public hearing as per the fee schedule approved by the Planning Board. Failure to pay such costs shall constitute grounds for the Regulator to not accept the application.
2. A permit fee of \$50 shall be paid prior to the issuance of a permit.
3. The Regulator may require special investigative studies, environmental assessments, legal review of documents, administrative expenses, and other matters necessary to make an informed decision. The cost of such studies and investigations shall be paid by the Applicant prior to the service or study being provided. Failure to pay such costs shall constitute valid grounds for the Regulator to terminate further consideration and to disapprove the permit application.

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13. EXCAVATION APPLICATION SUBMISSION ITEMS

- A. The following shall be required for, and constitute, a completed application:.
1. An Excavation Permit Application properly filled out and executed by the Applicant. In the event that the Applicant is not the owner of record, the owner of record must also sign the application form in the space provided. The application shall be filed with the Planning Department in accordance with Section 12, A.
 2. An abutters list providing the names and mailing addresses of the Applicant; owner (if different from Applicant); all abutters as indicated in town records, the Belknap County Registry of Deeds, etc., holders of conservation, preservation or agricultural preservation restrictions, compiled not more than five (5) days before the date of delivery of the application; and, the name and address of every licensed professional whose seal appears on the plan.
 3. A check payable to the Town of Alton to cover filing fees, mailing, advertising, recording, and other reasonable costs as provided in Section 12, E.
 4. Four (4) paper print copies of the excavation and reclamation plans prepared in accordance with and accompanied by the information required in Sections 14, 15, 16 & 17, to be drawn at a scale of no smaller than one hundred feet to the inch (1"=100').
 5. Ten (10) legible 11" x 17" copies of the excavation and reclamation plans as described in 4. above.
 6. Three (3) paper print copies of stormwater management, sediment and erosion control plans prepared in accordance with the Town of Alton Site Plan Review Regulations; or,
One (1) copy of the plan submitted to the NH DES Alteration of Terrain Bureau for an Alteration of Terrain Permit under RSA 485-A:17.
- B. The following items shall be submitted, unless waived, upon request and for cause, before final approval of the application can be granted:
1. Bond and security proposal(s) for reclamation as provided for in Section 11.
 2. Traffic and/or environmental studies, as described in the Town of Alton Site Plan Review Regulations.
 3. Any and all other approvals and/or permits from local, state or federal agencies, as required, including, but not limited to, State of New Hampshire Wetlands Bureau Dredge and Fill Permit, and, State of New Hampshire Alteration of Terrain Permit as governed by RSA 485-A:17, submission of such approval to the Regulator to include a set of the plans approved by the State under that permitting process.
 4. Driveway Permit(s) issued by the Town or State, if applicable.

The Applicant shall also send a copy of the application, including excavation and reclamation plans, to the Town of Alton Conservation Commission.

14. EXCAVATION PLAN

- A. Excavation Plan. The owner/applicant shall submit a plan describing the specific location and extent of the proposed excavation project, including specific actions to be taken on the site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons. Other information which must be contained in or accompany the plan is as follows:
1. Topography at contour intervals of five feet or less.
 2. Distances between disturbed areas and closest property lines.
 3. Zoning district boundaries.
 4. Existing visual barriers to be retained and proposed fencing, buffers or other visual barriers, including height and materials.
 5. The known aquifer limits/location as identified by the U.S. Geological Survey and in accordance with the Aquifer Protection Overlay District in the Town of Alton Zoning Ordinance.
 6. All surface drainage patterns, including lakes, streams, and wetlands; significant natural and man-made features, including stone walls and ledge outcroppings; location of cemeteries or burial sites.
 7. A description of project duration and phasing.
 8. The names, addresses and deed references of the owner(s) of record, all abutting land owners as specified in Section 3, all holders of conservation, preservation and agricultural preservation restrictions; copies of conservation easement deeds; the name and address of the excavator, if different than the owner; and the name, address and signature of the person preparing the plan with applicable seals; tax map and lot number of the site and abutting parcels; date of plan, including revision dates; north point; graphic and written scale; locus map showing the subject property, north point and main traffic arteries.
 9. A photograph(s) of the existing site.
 10. The area in square feet and acres of the total parcel and the excavation site and the estimated volumes of material to be removed in total, each year and during the permit period.
 11. The location and design, including width and surface material, of site access roads leading to and from public highways; public and private streets, driveways, intersections, rights-of-way within 200 feet of the property boundary; any trails and roads existing on the property; any proposed changes to public streets including any traffic control devices necessary in conjunction with the excavation plan.
 12. The elevation of the highest annual average ground-water table within or next to the proposed excavation.
 13. Topsoil storage sites during the excavation phase.
 14. The plan shall be drawn at a scale and contour interval which allows a thorough understanding of project scope. Sectional drawings may be required by the Regulator.

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15. The location of property lines with bearings and distances.
16. Sketch and description of the location and boundaries of the proposed and any existing excavations; the breadth, depth and slope of the proposed and existing excavations; any reclaimed areas.
17. The location of existing subdivisions, buildings, structures, septic systems and wells, onsite and within 200 feet of the property boundary.
18. Any easements on-site.
19. Intended transportation routes to be used to and from the pit; the numbers and types of trucks and equipment to be used; hours of operation; maximum number of daily trips.
20. A plan for noise control and abatement.
21. A plan for dust control.
22. One hundred year flood elevation line, where applicable.
23. 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.
24. A plan for comprehensive site safety of authorized and unauthorized persons.
25. All measures to control erosion, sedimentation, water pollution, air pollution and so on.
26. Plans for stormwater management in accordance with the Town of Alton Site Plan Review Regulations; or,
Copies of the NH DES Alteration of Terrain Permit and the plans submitted as part of the application for said permit.
27. Plans for snow removal and storage.
28. Plans for fuel and chemical handling and storage and equipment maintenance.
29. Methods to prevent materials from the site from being tracked onto public roadways.
30. The location of existing vegetation and plans for the removal and disposal of invasive species found onsite. Invasive species are those found on the New Hampshire Prohibited Invasive Species and Restricted Invasive Species Lists.
31. The proposed location of stump dumps and/or plans for brush and slash disposal.
32. Plans for materials processing, e.g. crushing, if requested by the Applicant.
33. A circulation plan of the interior of the lot showing provisions for both auto and pedestrian circulation.
34. A sign off block for Regulator approval. Endorsement statement shall read: "Excavation Plan approved by the Alton Planning Board on _____ . Certified by _____, Chairman."

15. EXCAVATION STANDARDS

In addition to the Minimum Operational Standards listed in Section 6, the following excavation standards shall be incorporated into the site excavation plan and/or conditions for permit approval:

- A. Excavation Site Access Roads. Access roads leading to and from the excavation site shall intersect existing streets and roads at locations that have been duly approved by State and/or local officials and in a manner that will not endanger the safety of highway users and local residents. The provisions of RSA 236:13 and 14 and the Town of Alton Driveway Standards shall be adhered to by the applicant and shall be shown on the excavation plan. Access roads shall be eliminated upon depletion and/or completion of the excavation unless requested to be retained by the Regulator, for reason of access for code compliance or other appropriate functions.
- B. Traffic Circulation and Truck Routes (RSA 155-E:3, III). Permit approval shall be conditioned on compliance by the Applicant with street and highway regulations promulgated by Federal, state and local units. Traffic access to the lot and work area shall be so arranged as to minimize traffic hazards on the street and to avoid nuisance to the residents of the area. Suitable off street parking shall be provided.
- C. Excavation Within Aquifer Areas (RSA 155-E:4, VI). No excavation project shall substantially damage any aquifer identified on mapping prepared by the U.S. Geological Survey. The Regulator shall determine whether or not substantial damage to the aquifer will be incurred by considering the following criteria:
 - 1. the excavation shall not detrimentally affect the quality of the ground water contained in the aquifer by directly contributing to pollution or by increasing the long term susceptibility of the aquifer to potential pollutants.
 - 2. the excavation shall not cause a significant reduction in the long term volume of water contained in the aquifer or in the storage capacity of the aquifer.

The Regulator may require that the Applicant provide data or reports prepared by a qualified licensed Professional Engineer or professional geologist, acceptable to the Regulator which assess the potential aquifer damage caused by the proposed excavation project. All costs to be borne by the Applicant.

- D. Topsoil Cover. Prior to the withdrawal of material at a new excavation site, topsoil material shall be stripped and stored for subsequent site restoration. This should be undertaken in a phased manner to minimize erosion potential. Topsoil

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shall be protected during the period of storage by seeding, covering or some other acceptable method.

No topsoil shall be removed from the site without specific approval from the Regulator.

No material shall be stockpiled or located outside the permit area.

See Section 11 regarding Performance Guarantee.

- E. Timber Removal. The applicable New Hampshire statutes and regulations pertaining to forest practice and timber harvesting shall apply to the removal of vegetative cover at excavation sites.
- F. Visual Barriers. A vegetative or topographical visual buffer shall be maintained between surrounding streets, highways, commercial, and residential land uses and the excavation site wherever possible, and shall be indicated as such on the excavation plan. The Regulator shall direct the applicant as to specific requirements for the proposed excavation site. To the extent possible, existing barriers should be retained as the excavation project is conducted.
- G. Waste Disposal. No disposal of any waste material, including solid and/or hazardous waste, septage, dredge spoils, or refuse shall be undertaken on the site without appropriate State approval under RSA 149-M, or other appropriate State regulation.
- H. Vehicular Barrier. A barrier to prohibit vehicular access when the pit is not in operation shall be required.
- I. Hours of Operation. Hours of operation associated with an Excavation Operation shall be seven days a week, normal business hours and in accordance with the Town of Alton Noise Ordinance.
- J. Maximum Excavation Limit. Final excavation grade shall be not less than six feet above documented seasonal high water table, provided, however, that pursuant to RSA 155-E:11, II, an exception shall be granted if the application demonstrates to the Regulator's satisfaction that excavation below this height will not adversely affect water quality and quantity. The Regulator reserves the right to have an outside review of the information submitted as part of any proposal to excavate within six feet of the documented seasonal high water table, at the Applicant's expense. Written notice of such an exception shall be recorded in the Belknap County Registry of Deeds at the Applicant's expense, and one copy shall be filed with the New Hampshire Department of Environmental Services.
- K. Stump and Slash Disposal. Stumps and slash generated during the site preparation shall either be chipped onsite and the resulting chips used onsite for erosion control, or removed from the site unless a site is approved by the State of New Hampshire to allow the stumps and slash to be landfilled.

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Stumps and brush shall be allowed to be buried or stored onsite so long as the stumps and tree parts are buried in a manner to preclude the development of sink holes and erosion of cover materials and will be protective of the environment, public health and safety. The burial or storage will be performed in accordance with all local, state and federal regulations, and shall be shown on the plan.

- L. Fuel Storage and Refueling. All fuel storage and refueling shall take place in a secure designated area constructed especially for said purpose. No underground storage of fuels will be allowed. The excavation plan shall clearly show the refueling area and facilities.
- M. Hauling Plan. Hauling information, including routes to be utilized to and from the pit, the type of motor vehicles involved, and the frequency and schedule of operations of such vehicles shall be provided to the Regulator as part of the excavation plan. The Regulator may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. The Regulator reserves the right to require submission of a traffic study, environmental impact study and a noise impact study to ensure that public safety, neighborhood compatibility, environmental issues, and road capacity and condition have been properly considered and addressed in the permit application and hauling plan.
All vehicles transporting excavated material shall use adequate covering and other measures to prevent dust and spillage when loaded.
- N. Dust Control. The excavator shall provide such dust control procedures as to eliminate any annoyance or inconvenience to the inhabitants of the area.
- O. Material Processing. The Regulator recognizes that as part of an excavation operation there may be occasions that material processing, such as, crushing and screening, is needed as temporary and incidental accessory activity. Such activities may only take place if approved by the Regulator upon request of the Applicant during the application process. Such approval is not intended to approve, nor shall it constitute approval of, an ongoing permanent commercial/industrial crushing or processing operation. The Regulator reserves the right to set limitations on the processing of materials, including, but not limited to, hours of operation.
- P. Stopping of Removal/Excavation Operations. If removal/excavation operations stop for more than one year with no notice thereof provided to the Regulator and said stoppage is not in accordance with the approved excavation plan or due to bad weather, the excavation permit may be revoked and the performance bond forfeited with its proceeds used for reclaiming the land in accordance with the approved reclamation plan.

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- Q. Alteration of Terrain Plans and Permits. The Applicant shall submit one copy of any plans or reports that are approved by the NH DES Alteration of Terrain Bureau within 30 days of said approval.

16. RECLAMATION PLAN

Excavation site reclamation plans shall be prepared and submitted by all new and existing excavation site owners except as noted in RSA 155-E:2. The restoration plan shall be drawn at the same scale and shall use the same base survey information as that utilized in the preparation of the excavation plan. The reclamation plan shall address the effects of the proposed excavation on soil, surface and groundwater, vegetation, overburden, topography, and fill material.

The character of the restored landscape shall blend with the surrounding natural features. The restored site shall be rendered in a condition that will not preclude its future use in a manner consistent with the zoning ordinance and map.

The reclamation plan shall contain or be accompanied by the following information:

1. Name, address and signature of the person preparing the plan, with applicable professional seals; date of plan, including revision dates; graphic and written scale; and, north point.
2. All boundaries of the area proposed for reclamation and any other land containing features that logically would be implemented in the reclamation.
3. Final topography of the area proposed for reclamation, at contour intervals of five feet or less.
4. Final surface drainage pattern, including the location and design of all artificial and/or modified drainage facilities.
5. The schedule of final reclamation activities, including seeding mixtures, cover vegetation, fertilizer types, and application rates.
6. The phasing of site reclamation showing designated areas and completion dates.
7. The plant materials to be used in reclamation, their quantities and sizes. All plantings shall be native species and no invasive species shall be permitted. Invasive species are those found on the NH Prohibited Invasive Species and Restricted Species Lists.
8. The subsequent reuse of the site, if known or anticipated.
9. Plans for stormwater management in accordance with the Town of Alton Site Plan Review Regulations; or,
Copies of the NH DES Alteration of Terrain Permit and the plans submitted as part of the application for said permit.
10. Cross sectional views showing existing, excavated and reclaimed topographical configuration.

17. SITE RECLAMATION STANDARDS

In addition to the Minimum Reclamation Standards listed in Section 7, excavations requiring a permit shall also comply with the following standards:

- A. Site Reclamation Timetable on New Excavation. No excavation of a new area shall exceed five (5) acres in size at any one time. Any permitted excavation shall be reclaimed according to the approved application within one year after the permit expiration date. If reclamation is not completed within one year after the permit expiration date, the Regulator may declare all or part of the bond forfeited, and use these monies to reclaim the site.
- B. Reclamation Standards.
 - 1. Ground levels and grades shall be established as shown on the approved reclamation plan as soon as practical during site excavation, but not later than one year after excavation has been completed.
 - 2. Stockpiled topsoil shall be spread over the disturbed area to a depth sufficient to allow establishment and maintenance of vegetation. Areas posing the most critical problems for revegetation shall be given first priority should available topsoil be limited. The disturbed areas should be limed and fertilized, if necessary, and seeded with a grass or grass-legume mixture.
 - 3. If deemed necessary by the Regulator, suitable native trees or shrubs shall 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. Invasive species are not permitted.
 - 4. Nothing in this section should be deemed to prohibit the use of innovative techniques for reclamation - the use of warm season seed mixes, etc. Such techniques shall be approved as part of the reclamation plan.

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18. OTHER INFORMATION

The Regulator reserves the right, per RSA 155-E:3, VII, to request any other information it deems necessary to make an informed decision, or to have plans reviewed by an outside agency. According to the authority vested in the Regulator by RSA 676:4, I (g), any reasonable expense incurred for such information or reviews shall be charged to the Applicant. Failure to pay such costs constitutes valid grounds for the Regulator to deny the application.

19. ADMINISTRATION AND ENFORCEMENT

A. Regulation and Permit Administration

Following the initial approval of the excavation permit by the Regulator, the Applicant shall be required to be inspected every seven (7) years (unless a different schedule is determined by the Regulator during the approval process) to determine whether continued compliance with the conditions of approval and any other applicable standards is being maintained.

B. Permits

1. Permits shall be issued only to the owner or his agent and shall not be transferable without the prior written consent of the Regulator. A copy of the permit shall be prominently displayed at the site or the principal access to the site.
2. Permit Validity. The excavation permit shall be valid for a period of fifty (50) years; or, until such time as the Regulator determines the excavation operation is no longer in compliance with these regulations; or, until such time as the operation shall be deemed to be abandoned as defined in these regulations; or, until such time as the owner informs the Regulator that they will no longer be running the excavation operation; or, until such time as the operation is depleted; or, until the completion date as determined by the Regulator in the regulatory process, in accordance with RSA 155-E:8, whichever first occurs. The permit shall specify the date on which it expires.
3. Failure to file for a permit shall be considered a violation and operators who fail to file will be issued a cease and desist order.
4. The Regulator may include in the permit any such reasonable conditions as are consistent with the purpose of these regulations.

C. Renewal and Amendment of the Excavation Permit

1. Permit Renewal. The applicant may renew the excavation permit and continue excavation operations by making application to the Regulator following the same procedures as those required for the original excavation permit. The excavation permit application for renewal need only describe those information items which have changed in content from the previous application submission. Fees and bonding will be established by the Regulator for the renewal period.
2. Permit Amendment. If adherence to the permit conditions (including the excavation/reclamation plans) cannot be maintained, or if the owner wishes to alter the size or location of the excavation or the rate of removal, the owner shall apply to the Regulator for a permit amendment following the same procedures as those required for the original excavation permit.

D. Inspections

The Regulator or its designee may conduct site inspections of all excavation sites, both permitted and exempt, to verify permit compliance on an annual basis unless

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a more frequent site visitation is necessary due to special characteristics of the excavation/reclamation plans.

If Professional Services are required by the Regulator to affirm compliance with the excavation permit conditions and reclamation plan, any related charges shall be borne by the Applicant.

E. Suspensions and Revocations

The Regulator may suspend or revoke a permit if the Regulator determines that any provision of the permit has been violated, a material misstatement was made in the application upon which a permit was granted, or any unsafe or hazardous conditions are determined by a site inspection to exist. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with these regulations.

F. Appeals

Any person affected by the Regulator's decision to approve or disapprove an application or any amendment thereto or any suspension or revocation of a permit, may appeal to the Regulator for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall be filed within ten (10) days of such decision and shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable. The Regulator shall either grant or deny the request for rehearing within ten (10) days, and if the request is granted, a rehearing shall be scheduled within thirty (30) days. Any person affected by the Regulator's decision on a motion for rehearing may appeal in accordance with RSA 677:4-15.

G. Penalties

Fines, penalties and remedies for violations of this regulation shall be the same as outlined in RSA 676:15 and 17. Whoever violates any provision of this regulation, a permit or a valid order issued hereunder shall be guilty of a misdemeanor.

20. WAIVERS & EXCEPTIONS

Due to the diverse nature of excavation operations which vary in scale and scope, and due to the varying conditions of the land to be excavated, the Regulator may, upon application and following a duly-noticed hearing, grant any waivers in writing to the standards contained herein only when the Regulator finds, by majority vote, that:

1. strict conformity to the Excavation Regulations would pose an unnecessary hardship to the Applicant and a waiver would not be contrary to the spirit and intent of the regulations, or,
2. specific circumstances relative to the application, or conditions of the land in the subject property, indicate that the waiver will properly carry out the spirit and intent of the regulations.

A waiver of any specific requirement shall not be construed as a waiver in full or in part of any other requirement, nor shall such waiver constitute a waiver of requirements on any other excavation operation. The basis for any waiver granted by the Regulator shall be recorded in the minutes.

Exceptions may be granted to Section 6, Minimum and Express Operational Standards, Section 7 Minimum and Express Reclamation Standards, and Section 8 Incremental Reclamation, upon application to the Regulator and following a hearing held in accordance with Section 12. The Regulator may grant an exception in writing to those standards for good cause shown. The written decision shall state specifically what standards, if any, are being relaxed, and include reasonable alternative conditions or standards. The Regulator's decision on any request for such exception may be appealed in accordance with Section 19.

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21. SEPERABILITY

The invalidity of any provision, sentence, paragraph, etc., of this regulation shall not affect the validity of any other provision, sentence, paragraph, etc.

22. CONFLICTING PROVISIONS

- A. Where these regulations are in conflict with other local ordinances and/or regulations, or state laws, the more stringent shall apply.
- B. Nothing in this regulation shall be deemed to supersede or pre-empt applicable environmental standards or permit requirements contained in State laws, and no exemption under this regulation shall be construed as an exemption from any State statute.

23. EFFECTIVE DATE

These regulations shall take effect upon adoption by the Planning Board and as amended.

Adopted May 19, 1980
Amended April 18, 2017