

# **EXCAVATION REGULATIONS**

## **HAMPTON FALLS, NEW HAMPSHIRE**

**Adopted by Hampton Falls Planning Board**

**May 6, 1991**

**Amended June 24, 1997**

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## EXCAVATION REGULATIONS

(ADOPTED BY PLANNING BOARD MAY 6, 1991 AND AMENDED JUNE 24, 1997)

**SECTION 1      GENERAL PURPOSE AND AUTHORITY**

Chapter 155-E of the New Hampshire Revised Statutes Annotated 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 and of these locally adopted Excavation Regulations 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.

**SECTION 2      DEFINITIONS**

"Abutter" means 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.

"Application" means a completed application for an excavation permit. An application shall not be considered complete until all of the Excavation Application Checklist items (Appendix B) have been completed and accepted to the satisfaction of the Regulator in addition to any other requirements of this regulation.

"Commercial" means 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 other land whose ownership is different than the ownership of the land 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.

"Dimension stone" means 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.

"Earth" means 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" means a land area which is used, or has been used, for commercial taking of earth, including all slopes.

"Excavation area" means the 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 site" means any area of contiguous land in common ownership upon which excavation takes place.

"Notice of Intent" means a written notice to the Regulator 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.

"Regulator" means the planning board of the municipality.

### SECTION 3 PERMIT REQUIRED

All excavation areas require a permit except:

- 3.1 The owner of an excavation which lawfully existed as of August 24, 1979, and from which earth material of sufficient weight or volume to be commercially useful has been removed during the two-year period before August 24, 1979 may continue such existing excavation on the excavation site without a permit, subject to the following:
  - 3.1.1 Such an excavation site shall be exempt from local zoning and other regulations, provided that at the time the excavation was first begun, it was in compliance with any local ordinances and regulations that may have been in effect.
  - 3.1.2 Such an excavation area may not be expanded, without a permit 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 site of that date, and appraised and inventoried for property tax purposes as part of the same tract as the excavation site.
  - 3.1.3 Whenever such excavation is not allowed in that location by local zoning or similar ordinances in effect on August 4, 1989. Or when such ordinances permit such excavation only by special exception, expansion may be restricted or modified with conditions by order of the Regulator if after notice to the owner and a hearing, the board finds that such expansion will have a substantially different and adverse impact on the neighborhood.
  - 3.1.4 Such an excavation shall be performed in compliance with the operational and reclamation standards in these regulations (Sections 6, 7, and 8).
  - 3.1.5 The owners or operators of any existing excavation area for which no permit has been obtained shall file an excavation report with the Regulator within one year of written notification by the Regulator and in no case later than August 4, 1991. Any existing excavation that fails to file a report within the one year time period shall be determined to be abandoned per 4.1.3.

The report shall contain the following information:

- 3.1.5.1 the location of the excavation - tax map and lot number;

- 3.1.5.2 the date the excavation first began;
  - 3.1.5.3 a description of the permissible limits of expansion as described in Section 3.1.2;
  - 3.1.5.4 an estimate of the area which has been excavated to date; and
  - 3.1.5.5 an estimate of the amount of commercially-viable earth materials still available on the parcel.
- 3.2 Excavations 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 in operation as of August 24, 1979, which use earth obtained from said site. Such excavations shall be performed in compliance with the operational and reclamation standards contained in Sections 6, 7 and 8 of this regulation. Such express standards shall be the sole standards with which such excavations must comply in order to retain their permit-exempt status. If such excavations violate any of the standards in Sections 6, 7, and 8 and fail to be brought into compliance within 30 days of receiving notice from the Regulator, the excavations lose their permit-exempt status and will then be subject to the entire local regulatory process with which new excavations must comply.
- 3.3 Excavations from a site which on August 4, 1989 was contiguous to, or contiguous land in common ownership with, stationary manufacturing and processing plants which have been granted state or local permits since August 24, 1979, and which use earth obtained from said site. The operation and reclamation of such areas shall be governed by the conditions of the state or local permit and any extensions or renewals thereof.
- 3.4 An excavation performed exclusively for the lawful construction, reconstruction, or maintenance of a class I, II, or III 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:
- 3.4.1 A copy of the pit agreement executed by the owner, the agent and the governmental unit shall be filed with and accepted by the Regulator prior to the start of excavation; and such excavation shall not be exempt from the provisions of Sections 6, 7 and 8 of this regulation, nor from any other land use regulations of the municipality. In addition, a plan must be filed with the Regulator which identifies and limits the exemption granted to only that portion of the pit that is necessary for the public highway project. Failure to file a copy of the pit agreement or the above referenced plan with the municipality or to comply with the terms of the agreement constitutes a violation enforceable under the provisions of Section 16 of these regulations.
  - 3.4.2 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).
  - 3.4.3 Such excavations must comply with the express standards in Sections 7 and 8 herein in order to retain their permit-exempt status.
  - 3.4.4 Before beginning such excavation, the governmental unit or its agents shall certify to the regulator that:
    - 3.4.4.1 The excavation shall comply with the express standards in Sections 6, 7, and 8 herein;

- 3.4.4.2 The excavation shall not be within 50 feet of the boundary of a disapproving abutter or within 10 feet of the boundary of an approving abutter;
  - 3.4.4.3 The excavation shall not be unduly hazardous or injurious to the public welfare;
  - 3.4.4.5 Existing visual barriers in the area shall not be removed, except to provide access;
  - 3.4.4.6 The excavation shall not damage a known aquifer - designated by the United States Geological Survey;
  - 3.4.4.7 All required permits for the excavation from state and/or federal agencies have been obtained.
- 3.5 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.
- 3.6 Excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment.
- 3.7 Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E.
- 3.8 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 regulator.

#### SECTION 4 ABANDONED EXCAVATIONS

The permit and zoning exemptions under Section 3 shall not apply to any abandoned excavations as defined in Section 4.1.

- 4.1 Any excavation, except for stationary manufacturing plants, for which the affected area has not been brought into complete compliance with the reclamation standards of this regulation (Sections 6 and 8) shall be deemed abandoned if:
- 4.1.1 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 Regulator may extend the 2 year period if the owner/operator submits an acceptable time table for reclamation to the Regulator and posts a bond or other financial security in a form and amount prescribed by the Regulator sufficient to cover the costs of reclamation; or
  - 4.1.2 the excavation site is still in use and is not a stationary manufacturing plant, but does not conform with the Site Reclamation requirements of Section 8 of this regulation, or the owner or operator has not submitted an acceptable reclamation timetable to the Regulator and posted a bond or other financial security sufficient to cover the costs of reclamation; or

- 4.1.3 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 specified in 3.1.5.
- 4.2 The Regulator, after notice and hearing pursuant to RSA 155-E:7, may order the owner of any land containing an abandoned excavation to either file a reclamation time table and bond or other financial security, acceptable to the Regulator, within six months of notification by the Regulator to do so, or to complete the reclamation in accordance with this regulation within one year of notification. The time periods stated above may be changed for particular applications only if specifically authorized in writing by the Regulator.

Failure to complete said reclamation within the prescribed time period may result in the Regulator 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.

## SECTION 5 APPLICATION FOR PERMIT

Except as provided in Section 3, 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 Regulator for a permit for excavation and submit a reclamation plan. The permit application shall be signed and dated by the applicant and shall contain at least the following information in addition to that required by the Excavation Application Checklist (Exhibit B) and other applicable regulations. Upon written request, the Regulator may waive items listed under this section. All expenses for preparation of all plans, maps, and reports accompanying the application shall be borne by the applicant.

- 5.1 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;
- 5.2 An Excavation Plan at a scale of no less than one inch equals one hundred feet (1":100') and showing the area to be excavated, appropriate buffers, and any dwelling units, septic systems, and wells within 150 feet of the perimeter of the area to be excavated. All plans submitted to the Regulator shall comply with the Erosion and Sedimentation Control provisions in the Town's Subdivision Regulations. 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 Regulator prior to issuance of a permit.

The Excavation Plan shall include:

- 5.2.1 seal or signature of an engineer registered in the State of New Hampshire;
- 5.2.2 existing topography at contour intervals of two feet, based on a permanent assumed benchmark;
- 5.2.3 proposed topography at two foot intervals at the completion of excavation and restoration;

- 5.2.4 the excavation site acreage, the breadth, depth and slope of the proposed excavation, (and existing excavation where applicable), volume of material to be removed and a description of project duration and phasing;
- 5.2.5 existing vegetation;
- 5.2.6 all surface drainage patterns including wetlands and standing water, lakes, streams, and the like;
- 5.2.7 location of all easements, on or below the ground;
- 5.2.8 names, location and width of all public roads and rights-of-way;
- 5.2.9 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;
- 5.2.10 location and extent of any stone walls, ledge outcroppings, wells, existing buildings, septic systems, utilities, significant natural and man-made features, and the like;
- 5.2.11 a locus map, at a scale of one inch equals one thousand feet (1":1000'), showing the proposed operation in relation to existing roads;
- 5.2.12 any existing and all proposed excavation areas;
- 5.2.13 any existing and all accessory facilities/activities;
- 5.2.14 existing and proposed access roads, including width and surface materials;
- 5.2.15 existing and proposed fencing, buffers or visual barriers, including height and materials;
- 5.2.16 storage areas for topsoil to be used in reclamation;
- 5.2.17 all measures to control erosion, sedimentation, water pollution, air pollution, and hazards to human safety;
- 5.2.18 the location of existing buildings, structures, septic systems and wells on abutting properties within one hundred and fifty (150) feet of the property boundary;
- 5.2.19 the location of all driveways and road intersections within two hundred (200) feet of the property boundary;
- 5.2.20 aquifer locations and limits as identified by the U.S. Geological Survey and other acceptable sources;
- 5.2.21 zoning districts;
- 5.2.22 Specific actions 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.



5.2.23 Such other information or other special investigative studies as the Regulator may reasonably deem necessary.

5.3 A Reclamation Plan at the same scale as the Excavation Plan, and covering the same area. All plans submitted to the Regulator shall comply with the Erosion and Sedimentation Control provisions in the Town's Subdivision Regulations. Reclamation plans shall address the effects of the proposed excavation on soil, surface water and groundwater, vegetation, overburden, topography, and fill material, shall demonstrate compliance with Section 8 herein, and shall include a timetable for reclamation of fully depleted areas within the excavation site. 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 Regulator prior to issuance of a permit.

The Reclamation Plan shall include:

- 5.3.1 seal and signature of an engineer registered in the State of New Hampshire;
- 5.3.2 all boundaries of the area proposed for reclamation;
- 5.3.3 final topography of the area proposed for reclamation;
- 5.3.4 final surface drainage pattern, including the location and physical characteristics of all drainage facilities;
- 5.3.5 schedule of vegetative and temporary reclamation activities including seeding mixtures, mulching materials, fertilizer types, lime, and application rates;
- 5.3.6 soil conditioning specifications, i.e. liming and fertilizing required based on UNH or other equivalent soils analysis organizations;
- 5.3.7 the plant materials to be used in the restoration, and their quantities and sizes;
- 5.3.8 subsequent use of the site, if known;
- 5.3.9 cross sectional views showing existing, excavated, and restored topography configuration;
- 5.3.10 erosion and sedimentation control plan on an excavation area of any size.

5.4 Copies of related permit approvals and other documents pertinent to the excavation proposal, such as WSPCD (RSA 485-A:17), Wetland Board (RSA 482-a), stump disposal, State Highway Department (access permit, RSA 236:13), any other permits required by state or federal regulations, and such other information as the Regulator may reasonably require.

5.5 Hauling information, including routes to be utilized, the type and weight of motor vehicles involved, and the frequency and schedule of operations of such vehicles shall be provided to the Regulator prior to the issuance of an Excavation Permit. 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 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 addressed in the hauling plan.

- 5.6 All application fees and other costs as per the Excavation Application Form (Appendix A).

**SECTION 6      ADDITIONAL PERMIT REQUIREMENTS**

**6.1      Size and Reclamation Time Limit on New Excavations**

No excavation of a new area shall exceed five acres in size at any one time. Any permitted excavation shall be reclaimed according to the approved application within one (1) year after the permit expiration date. If reclamation of the site is not completed within one (1) year after the permit expiration date, the Regulator, after holding a public hearing, may declare part or all of the bond forfeited, and use these monies to reclaim the site, in addition to the requirements of Section 13 (Issuance of Permit).

**6.2      Additional Conditions**

In accordance with Section 9, Prohibited Projects, the Regulator may attach reasonable conditions to permit approval. Such conditions may include, but not be limited to, the following.

- 6.2.1 The applicant shall be responsible for a proportionate share of refurbishing existing Town road(s) which access the excavation site, and for the repair of Town maintained roads which are damaged as a result of hauling earth from the site. The Regulator, with the approval of the Board of Selectmen, may require these costs to be bonded prior to the granting of a permit to excavate.
- 6.2.2 No solid and/or hazardous waste, septage, dredge spoils, or organic waste and debris shall be disposed of on the excavation site unless specifically authorized and/or permitted by the appropriate Federal, State and local authority(s).

**SECTION 7      OPERATIONAL STANDARDS**

- 7.1 No excavation covered under RSA 155-E shall be permitted closer than 50 feet of the boundary of a disapproving abutter. If concurrence is received from an abutter, in writing, then the boundary setback shall be ten feet.
- 7.2 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.
- 7.3 No excavation shall be permitted within 100 feet of any wetland as defined in the Hampton Falls Zoning Ordinance.
- 7.4 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.
- 7.5 Vegetation shall be maintained or provided within the buffer areas required by Sections 7.1, 7.2, 7.3 and 7.4.
- 7.6 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. The Regulator shall have the authority to require additional screening (e.g., vegetation or fencing) where necessary.
- 7.7 Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process. Excavations shall comply with the Erosion and Sedimentation Control provisions in the Town's Subdivision Regulations.
- 7.8 Where the depth of excavation will exceed 15 feet and temporary slopes will exceed 1:1 in grade, every reasonable effort shall be made to warn of danger and/or limit access to the site. In addition, in accordance with RSA 31:41-b, the Regulator may require removal, stabilization, or fencing of such hazardous embankments, for the protection of the health and safety of the public.
- 7.9 Excavation practices which result in siltation in streams or degradation of any water supplies are prohibited.
- 7.10 Topsoil shall be stripped from the excavation area and stockpiled for use in subsequent reclamation of the site. It shall be protected from erosion (e.g., by seeding, covering, or other acceptable practices). No topsoil shall be removed from the site without specific approval from the Regulator.
- 7.11 All temporary structures required during excavation operations shall be removed from the site within 30 days after such operations cease.
- 7.12 All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.
- 7.13 No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with State and federal laws or rules pertaining to fuels and lubricants, or other toxic or polluting chemicals.
- 7.14 Prior to the stripping of topsoil, removal of stumps, or other material from any land area that has not yet been excavated, the excavator shall file a reclamation bond or other financial security, as prescribed by the Regulator, sufficient to cover the cost of site reclamation.

- 7.15 Access roads leading to the excavation site shall intersect existing streets and roads at locations that have been duly approved by state or local officials and in a manner that will not endanger the safety of highway users and local residents. The provisions of RSA 236:13-14 ("Highway Access") shall be adhered to by the applicant and shall be shown on the excavation plan.
- 7.16 Permit approval shall be conditioned on compliance by the applicant with street and highway regulations promulgated by federal, state and local units.
- 7.17 No excavation shall substantially damage any aquifer identified on mapping by the U.S. Geological Survey. The Board shall determine whether or not substantial damage to the aquifer will be incurred by considering the following criteria:
- 7.17.1 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,
  - 7.17.2 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.
  - 7.17.3 The Board may require that the applicant provide data or reports prepared by a professional groundwater consultant which assess the potential aquifer damage caused by the proposed excavation project.
- 7.18 The applicable state statutes and regulations pertaining to forest practice and timber harvesting shall apply to the removal of vegetative cover at excavation sites.
- 7.19 Start-up time for all machinery associated with a gravel or sand pit shall be no earlier than 7:00 a.m. and all machinery must be shut down by 6:00 p.m. Hours of operation other than those stipulated may be allowed if specifically authorized by the Regulator. Specified days of operation (e.g. excluding Sundays and State and/or Federal holidays) will be determined by the Regulator.

## SECTION 8 SITE RECLAMATION STANDARDS

Within 12 months after the expiration date in a permit issued under this regulation, or of the completion of any excavation, whichever occurs first, the owner of the excavated land shall have completed the reclamation of the areas affected by the excavation to meet each of the following minimum standards or when such excavation is not subject to a permit under Section 3 of these regulations, to meet each of the following express standards (this provision shall not apply to excavation sites of operating stationary manufacturing plants):

Except for operators of stationary manufacturing plants, each operator shall prepare and submit for the Regulator's record a reclamation plan for the affected land, including a timetable for reclamation of the depleted areas within the reclamation site.

The Regulator or its designee shall periodically inspect the operations and shall perform a final reclamation inspection in order to ensure that the approved plans have been followed.

- 8.1 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, to the Regulator's satisfaction, that a steeper grade can be adequately vegetated and stabilized. Reclaimed slopes shall blend with the surrounding terrain.

- 8.2 All debris, stumps, boulders, etc. shall be lawfully disposed of in a manner acceptable to the Regulator or its designee.
- 8.3 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.
- 8.4 Stockpiled topsoil shall be spread over the disturbed area to a depth of at least four inches to allow establishment and maintenance of 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 limed and fertilized, if necessary, and seeded with a grass or grass-legume mixture.
- 8.5 If deemed necessary by the Regulator, suitable 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.
- 8.6 The responsible party shall not be released from its performance commitment (reclamation bond) until the Regulator certifies compliance with all terms of the Excavation Plan and the Reclamation Plan.
- 8.7 Any excavated area of 5 contiguous acres or more, which is either fully excavated per the approved plan (excluding bedrock), or from which no earth materials have been removed for a two year period, shall be reclaimed in accordance with Sections 6 and 8 within one year following such full excavation or two year period, regardless of whether other excavation is occurring on adjacent land in contiguous ownership.
- 8.8 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.
- 8.9 Earth and vegetative debris resulting from the excavation shall be buried, removed, or otherwise lawfully disposed of.
- 8.10 The Regulator may require the elimination of any standing bodies of water created in the excavation project that may constitute a hazard to health and safety.
- 8.11 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. For excavation projects which require a permit from the 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.
- 8.12 The character of the restored landscape shall blend with the surrounding

natural features.

**SECTION 9      PROHIBITED PROJECTS**

The Regulator shall not grant a permit:

- 9.1 Where the excavation would violate the operational standards of Section 7;
- 9.2 When the issuance of the permit would be unduly hazardous or injurious to the public welfare, or would unduly endanger the safety of highway uses or local residents;
- 9.3 Where existing visual barriers would be removed, except to provide access to the excavation;
- 9.4 Where the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey;
- 9.5 For excavation 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;
- 9.6 Where the project cannot comply with the reclamation provisions of Sections 6 and 8;
- 9.7 Where the excavation is not permitted by zoning or other applicable ordinances;
- 9.8 Where an excavation is proposed below road level within 50 feet of any highway right-of-way unless such excavation is for the purpose of said highway;
- 9.9 Where the excavation would cause unreasonable diminution in area property value or unreasonably change the character of the neighborhood;
- 9.10 Where the excavation will unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof.
- 9.11 When the excavation requires land use permits from state or federal agencies; but the Regulator may approve the application when all necessary land use permits have been obtained.

**SECTION 10      DEPTH OF EXCAVATION**

The maximum depth of excavation shall be a minimum of four feet above the seasonal high water table existing at the location in question before commencement of excavation. The subsurface information described above shall be derived from test pits, and verified by the Regulator or its designee.

The Regulator may grant an exception for excavations which propose to dig within the four feet above seasonal high water table, provided the following conditions are met:

- 10.1 The applicant demonstrates that the proposed excavation will not adversely affect water quality by directly contributing pollution, or by increasing the long-term susceptibility of groundwater or surface water to potential pollutants;
- 10.2 The applicant provides a plan which depicts the proposed depth of excavation and its relation to the seasonal high water table;
- 10.3 The applicant provides an enforceable restriction (e.g., covenant or easement) prohibiting any future on-site subsurface sewage disposal or any other use which could contaminate groundwater; and
- 10.4 Where an exception is sought for excavation that will create temporary or permanent standing water, the applicant will provide adequate safety measures (e.g., grading perimeter slopes, fencing, etc.) as may be required by the Regulator.

Written notice of such exception shall be recorded in the Rockingham County Registry of Deeds, and one copy filed with the Division of Water Supply and Pollution Control, Department of Environmental Services.

**SECTION 11      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.

**SECTION 12      HEARING**

Prior to the regulator approving an application for an excavation permit or an application for an amended excavation permit, a public hearing shall be held within thirty (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 such hearing shall be published in a paper of general circulation in the town and legal notice thereof shall also be posted in at least three 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 Regulator shall issue a written decision approving or disapproving the application, giving reasons for disapproval.

**SECTION 13      ISSUANCE OF PERMIT**

If the Regulator, after public hearing, approves the application for a permit and determines it is not prohibited by these regulations, it shall grant the excavation permit upon the posting of a bond or other acceptable form of financial security in the amount determined by and acceptable to the Regulator to be sufficient to guarantee compliance with the permit. The performance bond or other financial security shall be for a reasonable time period determined by the Regulator. 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 transferable without the prior written consent of the Regulator. Unless otherwise specifically decided by the Regulator, permit shall be valid for a period of one (1) year from the date of issuance. The Regulator may include in a permit such reasonable conditions as are consistent with the purpose of this regulation and may include excavation permit requirements which are more stringent than the standards set forth in RSA 155-E including the provision of visual barriers to the excavation. A permit fee in an amount determined by the Regulator for application plan review and annual compliance review, by the Regulator or its designated agent, shall be assessed the applicant upon application for permit. In addition, fees may be required for the municipality's designated engineer or other agents of the Regulator to periodically conduct required studies or field reviews at the excavation site to ensure compliance with the approved excavation and reclamation plans.

#### SECTION 14     BONDING

The Regulator shall establish the amount of a performance bond or other acceptable form of financial security prior to the issuance of the excavation permit. The bond amount shall be reasonably sufficient to guarantee compliance with the restoration in compliance with Section 8. The bond requirements shall be based on the acreage of the project or approved phases and the estimated per acre restoration costs. The bond will be returned to the applicant when restoration work has been completed and a final satisfactory site inspection has been conducted by the Regulator or its designee. The applicant shall pay for any bond reviews by the Town Engineer or Town Counsel, or any other professional service necessary to review the proposed excavation/restoration plan. Letters of credit shall conform with Appendix D.

#### SECTION 15     APPEAL

If the Regulator 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 Regulator 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 Regulator shall either grant or deny the request for rehearing within 10 days, and if the request is granted, a rehearing shall be scheduled within 30 days. Any person affected by the Regulator's decision on a motion for rehearing may appeal in accordance with the procedures specified in RSA 677.



**SECTION 16      ENFORCEMENT**

- 16.1 The Regulator 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 15.
- 16.2 Fines, penalties and remedies for violations of this regulation shall be the same as for violations of RSA 676:15, RSA 676:17, RSA 676:17-a, and RSA 676:17-b. In addition, the Regulator or a person directly affected by such violation may seek an order from the superior court requiring the violator to cease and desist from violating any provision of a permit or this regulation and to take such action as may be necessary to comply with the permit and this regulation. If the superior court issues such an order, the superior court in its discretion may award all costs and attorney's fees incurred in seeking such an order to the Regulator or person directly affected by such violation.
- 16.3 The Regulator or its duly authorized agent(s) will conduct site inspections to verify permit compliance on an annual basis unless a more frequent site visitation is necessary due to special characteristics of the excavation or restoration plans. To ascertain if there is compliance with this regulation, a permit issued hereunder or an order issued hereunder, the Regulator 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 August 24, 1979.
- 16.4 Where these regulations are in conflict with other ordinances, regulations or laws, the more stringent shall apply.

**SECTION 17      WAIVERS**

The Regulator, upon application and following a hearing, may grant a waiver in writing, to the standards contained in these Regulations for good cause shown except as prohibited by RSA 155-E. The written decision shall state specifically what standards, if any, are being relaxed and include reasonable alternative conditions.

Appendix A, page 1 of 3

## EXCAVATION APPLICATION FORM

**Introduction:** Pursuant to RSA 155-E, the following application must be submitted to the Regulator to obtain an Excavation Permit. Prior to issuance of a permit, the Regulator shall determine that the provisions of RSA 155-E, these Regulations, and any other applicable regulations or ordinances are met.

1. Submit completed application together with fees and additional required information to:

a. Chairperson  
Planning Board  
Town Office  
1 Drinkwater Road  
Hampton Falls, New Hampshire 03844

and

b. Chairperson  
Conservation Commission  
Town Office  
1 Drinkwater Road  
Hampton Falls, New Hampshire 03844

2. Date of submission \_\_\_\_\_

3. Name of owner \_\_\_\_\_

Address (mailing) \_\_\_\_\_

\_\_\_\_\_

4. Name of applicant (if different) \_\_\_\_\_  
(Include written authorization from owner)

Address (mailing) \_\_\_\_\_

\_\_\_\_\_

5. Indicate which person listed above should receive all communications: \_\_\_\_\_

\_\_\_\_\_

6. Location of proposed/existing excavation (municipality, nearest roads, other locational information, tax map and lot #).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. Tax map and lot number, name and address of all abutters including any professional whose stamp appears on the plan (see definition). Names must be current, based on Town records, five days prior to the submission of the application. (List below or attach separate sheet and show clearly on plan).
- 
- 
8. State permits required and obtained (if applicable):
- WSPCD (RSA 485-A:17)
  - Wetlands Board (RSA 482-A)
  - Department of Transportation (Access Permit, RSA 236:13)
  - State Pit Agreement (per NHDOT Standard Specifications for Road and Bridge Construction, Section 106)
9. Excavation/Reclamation Plan; this information is required to be submitted as plans attached to this application.
- a. Site surveyed by a Registered Land Surveyor, to establish an accurate base map showing boundary lines, topography, and significant features.
  - b. Excavation Plan to show:
    - property lines
    - existing topography
    - limits of excavation
    - excavation depths (excavated topography)
    - total area of excavation in acres
    - access road(s) and intersection with town or state highways
    - vegetation buffer
    - abutters names and addresses
    - distances from excavation limits to property lines
    - schedule of excavation volumes; phasing of excavation (areas and dates)
    - test pit groundwater elevations
    - topsoil storage area
    - drainage improvements (if necessary)
    - photographs of existing conditions
    - erosion and sediment control
  - c. Reclamation Plan to show:
    - reclaimed topography
    - soil conditioning specifications
    - seeding and mulching specifications
    - plant materials/quantities/sizes
    - phasing of reclamation (areas and dates)
    - sections showing existing, excavated and reclaimed topography
10. Hauling Information:
- a. Routes to be utilized
  - b. Frequency of truck traffic over routes
  - c. Size and weight of trucks used

EXCAVATION APPLICATION FORM

Appendix A, Page 3 of 3

11. Fees: \$ 50.00 application fee

\$ 2.00 plus postage per abutter identified in #7  
\$300.00 engineering, professional review costs

12. Reclamation Bond:

A reclamation bond shall be required prior to the issuance of an excavation permit. The bond amount is established by multiplying the excavation pit surface, or approved phase acreage by \$2,000 per acre. All letters of credit must comply with Appendix D.

13. An excavation permit, if issued, will be valid for a period of one (1) year. An application for permit renewal must be submitted to the Regulator by the permit-holder if excavation is to be continued beyond the termination date. The renewal application must identify and adjust all information contained in the original application that no longer is effective for the renewal period.

14. List any waivers being requested from the Excavation Regulations: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

This is to certify that the information contained in this application is completed and true to the best of my knowledge.

Submitted by: \_\_\_\_\_  
Signature (owner, designee)

\_\_\_\_\_  
Date

Appendix B, page 1 of 2

## EXCAVATION APPLICATION CHECKLIST

In order to be complete, application for an excavation permit must contain the following information, where appropriate.

- \_\_\_\_\_ 1. A copy of application and plan submitted to Conservation Commission.
- \_\_\_\_\_ 2. A signed and dated application.
- \_\_\_\_\_ 3. Name and address of owner, the person doing the excavation and all abutters.
- \_\_\_\_\_ 4. An Excavation Plan which:
  - \_\_\_\_\_ a. is at a scale no less than 1" = 100';
  - \_\_\_\_\_ b. shows area to be excavated, appropriate buffers, and any dwelling units, septic systems, and wells within 150 feet;
  - \_\_\_\_\_ c. is easily understandable and clear;
  - \_\_\_\_\_ d. six copies are submitted;
  - \_\_\_\_\_ e. has the seal and signature of a registered engineer;
  - \_\_\_\_\_ f. has existing topography at two foot contours;
  - \_\_\_\_\_ g. shows the breadth, depth and slope of proposed excavation, (and existing excavation where applicable), volume of material to be removed, and estimated duration;
  - \_\_\_\_\_ h. shows existing vegetation;
  - \_\_\_\_\_ i. shows all surface drainage patterns including wetlands and standing water;
  - \_\_\_\_\_ j. shows location of all easements on or below the ground;
  - \_\_\_\_\_ k. includes location and width of all public roads and rights-of-way;
  - \_\_\_\_\_ l. includes a log of borings or test pits to include groundwater levels;
  - \_\_\_\_\_ m. shows stone walls, ledge outcroppings, wells, existing buildings, septic systems, utilities and the like;
  - \_\_\_\_\_ n. includes a LOCUS map at a scale of one inch = one thousand feet showing the proposed operation in relation to existing roads;
  - \_\_\_\_\_ o. shows any and all accessory facilities/activities;
  - \_\_\_\_\_ p. shows existing and proposed excavation areas;
  - \_\_\_\_\_ q. includes existing and proposed access roads including width and surface materials;
  - \_\_\_\_\_ r. shows existing and proposed parking areas;
  - \_\_\_\_\_ s. shows the location of driveways and road intersections within 200 feet of the property boundary;
  - \_\_\_\_\_ t. includes fencing, buffers and other visual barriers including height and materials;
  - \_\_\_\_\_ u. identifies storage areas for topsoil to be used in reclamation;
  - \_\_\_\_\_ v. identifies all measures to control erosion, sedimentation, water pollution, air pollution and safety hazards;
  - \_\_\_\_\_ w. identifies zoning districts;
  - \_\_\_\_\_ x. includes copies of all state or federal permits required for the excavation.
- \_\_\_\_\_ 5. Application fee and performance bond submitted.
- \_\_\_\_\_ 6. A site reclamation plan which:
  - \_\_\_\_\_ a. is at the same scale as the excavation plan;
  - \_\_\_\_\_ b. is clear and easily understandable;
  - \_\_\_\_\_ c. six copies are submitted;
  - \_\_\_\_\_ d. includes the seal and signature of a registered engineer;
  - \_\_\_\_\_ e. shows all boundaries of the area proposed for reclamation;

EXCAVATION APPLICATION CHECKLIST

Appendix B, Page 2 of 2

- \_\_\_\_\_ f. includes the final topography of the reclaimed area;
- \_\_\_\_\_ g. shows final surface drainage patterns;
- \_\_\_\_\_ h. includes the schedule of final reclamation activities including seeding mixtures, cover vegetation, fertilizer types, and rates;
- \_\_\_\_\_ I. includes photographs of the site before excavation (one from the air and one from ground level).
- \_\_\_\_\_ j. identifies subsequent use of the site, if known or anticipated.
- \_\_\_\_\_ 7. Rockingham County Conservation District Review Authorization Form signed (see Appendix E ).
- \_\_\_\_\_ 8. Completed checklist with justification/explanation for any omissions.

## Appendix C, page 1 of 2

## REVIEW CHECKLIST FOR EXCAVATION PLANS

- \_\_\_\_\_ 1. The excavation is not below road level within 50 ft. of any highway right-of-way.
- \_\_\_\_\_ 2. The excavation is not within 150 ft. of an existing dwelling or a dwelling for which a building permit has been issued at the time the excavation is begun.
- \_\_\_\_\_ 3. The excavation is permitted by current zoning ordinances.
- \_\_\_\_\_ 4. The excavation will not be unduly hazardous or injurious to the public.
- \_\_\_\_\_ 5. Existing visual barriers will be maintained except to provide access to the excavation.
- \_\_\_\_\_ 6. The excavation will not substantially damage a known aquifer.
- \_\_\_\_\_ 7. All other applicable state and federal permits have been obtained.
- \_\_\_\_\_ 8. If new, the excavation is 5 or less acres in size and can be reclaimed in 1 year or less.
- \_\_\_\_\_ 9. Hauling information has been provided and the hauling activity is deemed to be compatible with the public safety, the surrounding land uses, and road capacity and condition.
- \_\_\_\_\_ 10. The excavation area is at least 50 ft. from the lot line of a disapproving abutter. If concurrence is received from an abutter, in writing, the excavation area may be 10 ft. from the lot line.
- \_\_\_\_\_ 11. Natural vegetation on areas which are not intended for excavation has been maintained or provided.
- \_\_\_\_\_ 12. The excavation and reclamation plans comply with the Soil Erosion and Sedimentation Control requirements and the Site Plan Review Regulations.
- \_\_\_\_\_ 13. The excavation is not within four feet of the seasonal high water table.
- \_\_\_\_\_ 14. Appropriate drainage is provided.
- \_\_\_\_\_ 15. Provision is made for the removal of all temporary excavation related structures within 30 days after operations cease.
- \_\_\_\_\_ 16. All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.
- \_\_\_\_\_ 17. Permit fee paid for plan and implementation reviews and monitoring for plan compliance.
- \_\_\_\_\_ 18. All plans and studies reviewed by town's engineer or other agents as determined by the regulator.

REVIEW CHECKLIST FOR EXCAVATION PLANS

Appendix C, page 2 of 2

## RECLAMATION PLAN

- \_\_\_\_\_ 1. No slope shall be left steeper than 3:1.
- \_\_\_\_\_ 2. All debris, stumps, boulders, etc. are being lawfully disposed of in a manner acceptable to the Regulator.
- \_\_\_\_\_ 3. Ground levels and grades are being established as soon as practical during site excavation, but not later than one year after excavation has been completed.
- \_\_\_\_\_ 4. Stockpiled topsoil will be spread over the disturbed area at an adequate depth and distribution to allow revegetation. Disturbed areas will be limed, fertilized, and reseeded.
- \_\_\_\_\_ 5. Suitable trees or shrubs will be planted to provide screening and natural beauty and to aid in erosion control. These plantings will be protected from erosion during establishment.
- \_\_\_\_\_ 6. The topography will be left such that surface water drainage will follow pre-excavation drainage patterns and such that there will be no increase in off-site volume.
- \_\_\_\_\_ 7. An adequate reclamation bond is provided to ensure the successful completion of the Reclamation Plan.



## SAMPLE LETTER OF CREDIT

## APPENDIX D

Town of Hampton Falls  
1 Drinkwater Road  
Hampton Falls, NH 03844

(Date)

Attention of Planning Board

Re: \_\_\_\_\_ Excavation

Dear Town Officials:

By this document the \_\_\_\_\_ Bank (hereinafter "issuer") hereby issues an irrevocable letter of credit in the amount of \$\_\_\_\_\_ to the Town of Hampton Falls on behalf of \_\_\_\_\_ (hereinafter "excavator"). This irrevocable letter of credit is issued to guaranty completion of all reclamation/improvements required by the Hampton Falls Planning Board and Town of Hampton Falls Excavation Regulations in conjunction with an excavation and reclamation plan entitled "\_\_\_\_\_", dated \_\_\_\_\_, prepared by \_\_\_\_\_, and approved by the Hampton Falls Planning Board on \_\_\_\_\_.

It is understood that the improvements guaranteed by this irrevocable letter of credit include but are not limited to the following:

1. Reclamation of \_\_\_\_\_ acres of excavated area. Said excavation area being shown on the above referenced plan.
- 2.
- 3.

It is agreed and understood by the issuer of this letter of credit that it shall be issued for a period of \_\_\_\_\_ months after the excavation permit expiration date. If all improvements guaranteed by this letter of credit are not completed by \_\_\_\_\_ (date) and if a certificate indicating completion of all improvements has not been issued by the Hampton Falls Planning Board, then this letter of credit shall be automatically considered to have been called, and without further action by the Town of Hampton Falls, or its Planning Board, the \_\_\_\_\_ Bank shall forthwith forward a check in the amount of \$\_\_\_\_\_ to the Treasurer of the Town of Hampton Falls. The funds so forwarded to the Town Treasurer shall be used exclusively for the purpose of completing the reclamation/improvements which are guaranteed by this letter of credit. Any funds not needed by the Town to complete improvements required by the excavation/reclamation plan referred to above shall be returned to the \_\_\_\_\_ Bank.

Additionally, for out-of-state banks, the following sentences shall be an integral part of the irrevocable letter of credit. "\_\_\_\_\_ (bank) hereby consents to the jurisdiction of the New Hampshire Court System for adjudication of any dispute arising from this letter of credit, and agrees that any such litigation shall be maintained in the Rockingham County Superior Court. The parties agree that this letter of credit shall be interpreted under New Hampshire law."

Dated \_\_\_\_\_

(Signature of Bank Official)

I have read this letter of credit and agree to its terms.

\_\_\_\_\_  
(Signature of Excavator)

Excavation Regulations

Appendix E

## ROCKINGHAM COUNTY CONSERVATION DISTRICT REVIEW AUTHORIZATION

In accordance with RSA 676:4, I(g), and of the Hampton Falls Excavation Regulations, the following form shall be signed and shall accompany all Excavation permit applications.

Rockingham County Conservation District  
118 North Road  
Brentwood, NH 03833-6614

Dear Mr. Chairman:

The Hampton Falls Planning Board would like to request the following services for the \_\_\_\_\_ proposal.

\*\*\*\*\*  
Plan review for compliance with:

Excavation Regulations

Wetlands ordinance

Erosion and Sediment Control Regulations

A report is required by \_\_\_\_\_  
(Date)

Signature \_\_\_\_\_

Date \_\_\_\_\_

\*\*\*\*\*

## CONSENT

I, \_\_\_\_\_, of \_\_\_\_\_ agree to a review of the  
(Name) (Representing)  
above proposal, and further agree to be responsible for any charges that may result from this review.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date