TOWN OF ALLENSTOWN

Earth Removal Regulations

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Earth Removal Regulations

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Town of Allenstown
Earth Removal Regulations
Adopted and Approved July 16, 2008
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Section I: Authority

Chapter 155-E of the New Hampshire Revised Statutes Annotated stipulates that, with some exceptions, all earth excavations in the State are subject to regulation from the local municipality in which the operation occurs. Pursuant to the authority of RSA 155-E, the Planning Board adopts the following regulations to govern the excavation of earth materials in the Town of Allenstown.

Section II: Purpose and Scope

The goals of this regulation are to: provide for reasonable opportunities for excavation; minimize safety hazards which can be created by open excavations; ensure that the public health and welfare will be safeguarded; protect natural resources and the environment; and maintain the aesthetic features of the Town. For the purpose of achieving these goals, no earth materials in the Town shall be removed except in conformance with these regulations.

Section III: Definitions

A. **Abutter** means:
   (1) Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration.
   (2) For the 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.
   (3) 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.
   (4) For the purposes of notification and receiving testimony, abutter means all affected towns and the regional planning commission(s) in the case of a development having regional impact, as determined by the Board.

B. **Applicant** means the owner of the property to be excavated or the owner's agent, so designated in writing as part of the excavation application.

C. **Board** means the Planning Board of the Town of Allenstown.

D. **Commercial Excavation** means excavation of earth intended for commerce, and may include excavation that is conducted for the purpose of alteration, renovation, improvement or construction to the property on which the excavation takes place. Earth of more than Five hundred (500) cubic yards leaving the property for sale, barter or exchange is considered to be a commercial operation.

E. **Contiguous** means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town, except in the case of stationary manufacturing plants as described in RSA 155-E: 2, III whose perimeter is not defined by town boundaries.

F. **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 is 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 below.

G. **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.

H. **Excavation** means land area, which is used, or has been used for the commercial taking of earth, including all slopes.

I. **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. This is also known as the pit area.

J. **Excavation Site** means any area of contiguous land in common ownership upon which excavation takes place.

K. **Existing Excavation** means any excavation, which lawfully existed as of August 24, 1979, from which earth material of sufficient weight, or volume to be commercially useful has been removed during the 2-year period before August 24, 1979.

L. **Expansion:**

(a) Of existing excavations means excavation beyond the limits of the Town and the area which on August 24, 1979 had been contiguous to and in common ownership with the excavation site and has been appraised and inventoried for tax purposes as part of the same tract as the excavation site.

(b) Of stationary manufacturing plants means to any contiguous lands that were in common ownership with the site of the plant on August 4, 1989 whether or not state and local permits were granted before August 4, 1989.

M. **Reclamation** means the restoring of an excavation site to a standard at least equal to those outlined in Section X of these regulations.

N. **Regulator** means the Planning Board of the Town of Allenstown. (hereinafter referred to as the "Board").

O. **Stationary Manufacturing and/or Processing Plants** means facilities which are placed on a site for the purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated earth materials.

Section IV: Projects Requiring a Permit

Permit Required. – No owner shall permit any excavation of earth on his premises without first obtaining a permit therefore, except as follows:

A. EXISTING EXCAVATIONS. The owner of an excavation which lawfully existed as of August 24, 1979, from which earth material of sufficient weight or volume to be commercially useful has been removed during the 2-year period before August 24, 1979, may continue such existing excavation on the excavation site without a permit, subject to the following:

1) Such an excavation site shall be exempt from the provisions of local zoning or similar ordinances regulating the location of the excavation site, provided that at the time the excavation was first begun, it was in compliance with such local ordinances and regulations, if any, as were then in effect.

2) Such an excavation area may not be expanded, without a permit under this chapter, 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 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 paragraph 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. It is further provided that when 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, expansion may be restricted or modified 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.

3) Such an excavation 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. Any violations of those standards shall be enforceable pursuant to RSA 155-E:10.

4) The owners or operators of any existing excavation area for which no permit has been obtained under this chapter shall file a report with the local regulator within one year after receiving written notice of this requirement from the regulator and in no case later than 2 years following August 4, 1989. The report shall include:

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 subparagraph (b), which are claimed to apply to the excavation;

c) An estimate of the area which has 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.

5) The exemption from local zoning or site location regulations as stated in subparagraph (a) shall 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 therefore under this chapter.

B. STATIONARY MANUFACTURING PLANTS.

1) No permit shall be required under this chapter for 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. Such excavation shall be performed in compliance with the operational standards as expressly set forth in RSA 155-E:4-a and the reclamation standards as expressly set forth in RSA 155-E:5 and 155-E:5-a, which express standards shall be the sole standards with which such excavations must comply in order to retain their non-permit status as provided under this paragraph. Loss of such non-permit status shall be preceded by written notice from the regulator that the excavation is not in compliance and the owner shall have failed to bring such excavation into compliance within 30 days of receipt of such notice. Such excavation may be expanded without a permit under this chapter to any contiguous lands which were in common ownership with the site of the plant on August 4, 1989, except as limited by RSA 155-E:4-a, I, II, and III.

2) No further permit shall be required under this chapter for 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. It is further provided that their operation and reclamation shall continue to be regulated by such local or state permits and any renewals or extensions thereof by the permitting authority or authorities.

C. HIGHWAY EXCAVATIONS. No permit shall be required under this chapter for excavation which is performed exclusively for the lawful construction, reconstruction, or maintenance of a class I, II, III, IV or V highway by a unit of government having 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, subject, however, to the following:

1) A copy of the pit agreement executed by the owner, the agent, and the governmental unit shall be filed with the regulator prior to the start of excavation. The failure to file such agreement, or the failure of the excavator to comply with the terms of such agreement, shall be deemed a violation of this chapter, and may be enforced pursuant to RSA 155-E:10.

2) Such excavation shall not be exempt from local zoning or other applicable ordinances, unless such exemption is granted pursuant to subparagraph (c), or from the operational and reclamation standards as expressly set forth in RSA 155-E:4-a, 155-E:5 and 155-E:5-a, which express standards shall be the sole standards with which such excavations must comply in order to retain their non-permit status as provided under this paragraph. Before beginning such excavation, the governmental unit or its agents shall certify to the regulator that:

a) The excavation shall comply with the operational and reclamation standards of RSA 155-E:4-a, RSA 155-E:5, and 155-E:5-a.

b) 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, unless requested by said approving abutter.

c) The excavation shall not be unduly hazardous or injurious to the public welfare.

d) Existing visual barriers in the areas specified in RSA 155-E:3, III shall not be removed, except

to provide access to the excavation.

e) The excavation shall not substantially damage a known aquifer, so designated by the United States Geological Survey.

f) All required permits for the excavation from state or federal agencies have been obtained.

3) The department of transportation or its agent may apply directly to the appeals board created under RSA 21-L to be exempted from the provisions of local zoning or other ordinances or regulations, with respect to the excavation or transportation of materials being used exclusively for the lawful construction, reconstruction, or maintenance of a class I, II, or III highway.

a) The application shall state whether the applicant has requested any exceptions or variances which may be available at the local level, and shall describe the outcome of such requests.

b) Prior to acting on the application, the board shall hold a hearing in the municipality whose ordinance or regulation is at issue. At least 7 days prior to such hearing, notice shall be published in a newspaper of general circulation in the municipality, and shall be sent by certified mail to the applicant, the municipality's chief executive officer as defined in RSA 672:9, the chairman of its governing board as defined in RSA 672:6, the chairman of the local regulator as defined in RSA 155-E:1, the chairman of its conservation commission, if any, and, if the proposed exemption concerns an excavation site, to the abutters of that site as defined in RSA 672:3.

c) Following the hearing, the board shall issue a written decision, copies of which shall be mailed to the applicant and the parties to whom notice was sent. If an exemption is granted, the written decisions shall include:

1) A statement of the precise section of the ordinance or regulation from which the applicant is exempted. The applicant shall not be exempt from any section or provisions not so listed.

2) An identification of the public interest being protected by the ordinance or regulation.

3) A statement of the state interest involved, and of why, in the opinion of the board, that state interest overrides the interest protected by the ordinance or regulation.

4) Any conditions to be imposed on the applicant, to protect the public health, safety, or welfare.

d) The decision of the board may be appealed in the manner provided for zoning decisions in RSA 677:4-14; provided, however, that a decision under this section shall be considered a rehearing under RSA 677, and no further motion for rehearing shall be required.

Section V: Projects Exempt From a Permit

A. The following projects are exempt from a permit:

a) Excavation that 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 when total earth removal quantity is not more than 500 cubic yards. This excavation cannot be started, however, until all required state and local permits have been issued.

b) Excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment when total earth removal quantity is not more than 500 cubic yards. In the event of questions, the Board shall determine what is incidental.

c) 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. Incidental excavations exceeding 500 cubic yards may be granted an exemption by the regulator based upon the facts and circumstances of the proposed project.

C. 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 Board.

Section VI: Abandoned Excavations

1) The permit and zoning exemptions under RSA 155-E:2, I shall not apply to any abandoned excavation, as defined in subparagraph (a).

a) For purposes of this section, any excavation, except for excavations or excavation sites described in RSA 155-E:2, III, whether subject to a permit under this chapter or not, for which the affected area has not yet been brought into complete compliance with the reclamation standards of RSA 155-E:5 shall be deemed "abandoned" if:

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 RSA 155-E:5; or

2) The excavation site is in use and is not an excavation or excavation site as described in RSA 155-E:2, III, but does not conform with the incremental reclamation requirement of RSA 155-E:5-a, 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 subparagraph (a)(1); 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 subparagraph I(d) within the prescribed period.

b) In addition to the enforcement remedies of RSA 155-E:10, the regulator 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 subparagraph II(a)(1), or to complete reclamation in accordance with this chapter within a stated reasonable time. Such an order shall only be made following a hearing for which notice has been given in accordance with RSA 155-E:7, if the regulator finds that the public health, safety, or welfare requires such reclamation. If the owner fails to complete reclamation within the time prescribed in the order, 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 which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

c) 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.

Section VII: Prohibited Projects

The Board shall not grant a permit under the following conditions:

A. For excavations within 50 feet of the boundary line 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 Board 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 IX, X, and XI of these regulations.

Section VIII: Criteria For Non-conforming Expansions

Expansion of existing excavations located in an area in which excavations are no longer permitted by local zoning that was in effect on August 4, 1989 may be restricted or modified with conditions by the Board, if after notice to the owner and a public hearing, the Board finds that the expansion will have a substantially different and adverse impact on the neighborhood. Impacts will vary depending upon the particular neighborhood; nevertheless, the following criteria will be taken into consideration:

- The excavation will not cause a diminution in area property values or unreasonably change the character of the neighborhood.
- The excavation will not create any nuisance or create health or safety hazards.
- The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof.

Section IX: Operational Standards

A. For excavations which are not subject to a permit pursuant to RSA 155-E:2, the following standards apply. For those excavations requiring a permit, these standards are considered to be the minimum; more stringent standards such as are consistent with the purpose of these regulations may be applied, as deemed necessary by the Board.

1. No excavation shall be permitted within 50 feet of the boundary of a disapproving abutter, closer than 150 feet to an existing dwelling or to a site for which a building permit has been issued at the time the excavation permit is granted.
2. 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.
3. Vegetation shall be maintained or provided within the peripheral areas of items 1 and 2 of this section.
4. No fuels, lubricants or other toxic or polluting chemicals shall be stored onsite unless in compliance with Federal, State and Local laws and rules pertaining to the storage of such materials.
5. Where temporary slopes will exceed a 1:1 grade, a fence, minimum of four feet in height, or other suitable barricade shall be erected to warn of danger and/or to limit access to the site.
6. Appropriate drainage shall be provided to prevent the accumulation of freestanding water for prolonged periods.
7. Excavation practices that result in continued siltation of surface waters or any degradation of water quality of any public or private water supplies are prohibited.(RSA 485:17)
8. 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 State of New Hampshire Department of Environmental Services.
9. Nothing herein contained shall be construed to forbid the creation of a lake or pond; provided that adequate provision has been made for the runoff of water in such manner as will not injure any roads, highways, or abutting property. All Federal, State, and Local laws and regulations must be followed. If more than 500 cubic yards of earth will be removed from the parcel as a result of the project, an excavation permit shall be obtained. All ponds must have a slope no less than 3:1.
10. 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 provisions of RSA 155-E:4-a.VII, as amended and as applicable.

11. Nothing in this Section shall be deemed to supersede or preempt applicable environmental standards or permit requirements contained in other state laws, and no exemption under these Regulations shall be construed as an exemption from any other state statute.

B. Processing

1. Processing machinery shall be erected or maintained on the lot as approved within the operational plan and such machinery shall be removed from the lot upon expiration of the permit or as otherwise provided in the permit.
2. No material shall be stock piled or located outside the permit area.
3. Except for those excavations exempt from permiting under Section V of these Regulations, no blasting or crushing shall occur without receiving approval during the permitting process.

C. On-site Storage – Solid Waste

1. Waste, building materials and rubble shall not be stored or buried on the site unless the owner obtains separate site plan approval from the Planning Board, and, the proposed activity does not violate the Town of Allenstown Zoning Ordinance, State or Federal statute, or any other local regulation or requirement. If approved by the Board, the burial/storage site will be noted on the plan and performed in accordance with all local, state and federal regulations.
2. Stumps and brush, if originated on the site, shall be allowed to be buried or stored on site so long as the stumps and tree parts are buried in a manner to preclude the development of sink hole 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. The site plan and property deed will provide:
   a. A statement that the property has been used for the disposal of stumps and tree parts;
   b. The date the activity took place:
   c. The location of the burial areas(s) with sufficient specificity as to allow an independent third party to locate the area(s); and
   d. The estimated quantity of waste disposed on the property.
   e. The owner shall furnish the regulator a copy of all Federal and State permits for disposal.
3. The site will not be used for storage of junk vehicles, machinery, etc. as defined in RSA 236:112, and in local ordinances.

Sections X: Site Reclamation Standards

A. For excavations not requiring a permit, the following standards apply, except for Section B.7 below. For excavations requiring a permit, all of these standards are considered to be the minimum; more stringent standards such as are consistent with the purpose of these regulations may be applied, as deemed necessary by the Board.

B. Within 12 months following the expiration date of a permit issued under these regulations, or the completion of any excavation, whichever occurs first, the excavated area shall be reclaimed in accordance with the following standards:

1. 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.
2. On any sites visible from the public way, the Board shall require planting of trees or other vegetation as screening.
3. Except for exposed rock ledge, all disturbed areas shall be spread with topsoil or other soil capable of maintaining permanent vegetation, and shall be planted with tree seedlings or grass suitable to prevent erosion.
4. All earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed.
5. All graded areas covered with soil shall be seeded or planted with tree seedlings. The area shall be maintained and nurtured until a permanent vegetative crop is established.

6. 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 Board. Changes of slope shall not be abrupt, but shall blend with the surrounding terrain.
7. For excavations requiring a permit under these Regulations, all finish grade elevations shall maintain a minimum two (2) foot separation above the seasonal high water table, except for when a pond is created or the regulator grants an exception. The regulator may grant an exception when presented with affirmative evidence that risk to ground water contamination is properly mitigated.
8. Any standing bodies of water created by the excavation that has been judged by the Board to constitute a hazard to health and safety shall be eliminated.
9. 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 original and natural proportions of flow.
10. For excavation projects requiring an Alteration of Terrain Permit from the New Hampshire Department of Environmental Services, the provisions of RSA 485-A: 17 shall supersede the regulation in number 9. Copies of all such permits shall be filed with the Board.

Section XI: 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 Section X of these regulations within 12 months following such depletion or 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 Board for approval. Each operator, other than the operator of stationary manufacturing plants which are exempt from permit requirements pursuant to RSA 155-E:2, III, 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.

Section XII: Performance Guarantee

A. No permit shall be granted until an applicant submits appropriate financial assurance in the form of cash collateral, a performance bond, or such other form of security and in such amount as the Planning Board deems adequate and sufficient to secure the applicant's obligations under the permit to reclaim disturbed areas, to repair any damage to roads or other Town property, to ensure compliance with the conditions of the permit, and to cover the costs of inspection by the Towns. The security may be phased to coincide with phasing of work. New sections of an approved excavation shall not be opened unless and until security specifically for the part of the operation has been posted. The security shall not be released unless the Planning Board is satisfied that all conditions of the permit have been met, including but not limited to, all site reclamation completed and all outstanding inspections paid.

B. For excavations which do not require a permit, but which are subject to RSA 155-E:5 and RSA 155-E:5-a for all new excavation areas opened, shall be required to post appropriate financial assurance in the form of cash collateral, performance bond, or such other form of security and in such amounts to secure such reclamation requirements as may be imposed by RSA 155-E:5 and RSA 155-E:5-a.

Section XIII: Waivers

Due to the diverse nature of excavation operations, the Board may, upon application and following a duly-noticed hearing, grant any waiver in writing, of Sections IX, X and XI contained in these

Regulations for good cause shown in accordance with RSA 155-E:5-b. The written decision shall state specifically what requirements are being waived and may include any reasonable alternatives.

Section XIV: Application Procedures

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

A. Filing of the Application
   1. Applications for excavation permits shall be filed with the Board at a regularly scheduled meeting.
   2. The application will be reviewed with the applicant at the meeting, and will be accepted by the Board only if it is found to meet all submission requirements for a completed application. Should the application not be accepted as complete, another meeting must be scheduled for resubmission.

B. Board Action on Application
   1. Following a vote to accept the application as complete, the Board will schedule a public hearing to be held within 30 days.
   2. Within 20 days of the close of the hearing on the application, or any continuation thereof, the Board shall make a decision. Notice of this decision shall be recorded in the minutes of the meeting and placed on file in the Town offices within five business days.
   3. The applicant shall receive a written copy of the minutes along with the decision. In the event the application is disapproved, the reasons for the disapproval shall be given.

C. Notices Required for Public Hearing
   1. All abutters and the Conservation Commission will be notified by certified mail, not less than 10 days prior to the meeting at which the application will be submitted for acceptance. Names and addresses of abutters must be taken from Town records not more than 5 days before filing the application.
   2. Public notice will appear in a newspaper of general circulation and in at least three public places not less than 10 days prior to the public hearing.
   3. The notice must include the location and general description of the proposal as well as the date, time, and place of the public hearing.

D. Fees
   1. An application fee in the amount of two hundred dollars ($200.00) shall accompany the application for an excavation.
   2. Abutters notification fee in the amount of ten dollars ($10.00) per abutter shall be paid at the time of application.
   3. Public Notice fee in the amount of two hundred and fifty dollars ($250.00) shall be paid for the publication in a local paper.
   4. In addition to the application fee, an inspection escrow, in an amount no less than $5,000, and as governed under Section XV.C below, shall be required prior to any issuance of a permit to excavate.
   5. A permit fee of fifty dollars ($50.00) shall be paid prior to issuance of any permit or renewal of any permit.
   6. Additional reasonable fees shall be charged should the Board require the advice of an engineer or other expert to review plans or inspect the site to determine permit compliance.
   7. The above fees shall be reviewed from time to time, and may be amended by the Planning Board to cover reasonable costs associated with the application and permitting process.

8. The Board may consult or retain any professional that it reasonably believes would assist the Board to act upon an application, including but not limited to reviewing application materials, inspecting any proposed or existing sties, or any other purpose consistent with these Regulations. The Board may require the Applicant to pay for the costs of all professionals consulted or retained by the Board for the purposes stated in this Paragraph. To secure the payment for such services, the Applicant shall provide an escrow of no less than $1,000.00; the Board may require a larger escrow if, in its discretion, it decides such amount is reasonably necessary to secure anticipated services. The escrow payment provided in this Paragraph shall be in addition to any Performance Guarantees or any other security required by these Regulations.

Section XV: Application Submission Items

The applicant shall submit at least 5 copies of an Excavation and a Reclamation Plan to the Planning Board. The applicant shall submit one copy to the Conservation Commission. The plans shall be at a scale appropriate for the land area involved. Engineered plans are not specifically required unless state or federal regulation requires a site-specific plan or the regulator determines the project is of sufficient scope or contains characteristics, which make an engineered plan desirable.

A. Excavation Plan

The excavation plan shall address 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. The plan shall show in sufficient detail and clarity or be accompanied by the following items.

1. Items required of all excavations:
   a) Name and address of the owner, the excavator (if different) and all abutters.
   b) Sketch and description of the location and boundaries of the proposed and any current existing excavation; the area shall be shown in square feet and acre.
   c) Sketch and description of existing and proposed access roads, including width, surface materials and visual barriers to public highways.
   d) The breadth, depth and slope of the proposed excavation and the estimated duration of the project.
   e) The elevation of the highest annual average ground water table within or next to the proposed excavation.
   f) Name, address, and signature of the person preparing the plan, date, bar scale and north arrow.
   g) Acknowledgment block for Conservation Commission, and other Town Department Heads as deemed appropriate by the Board.
   h) Five approval lines for the Planning Board signatures.
   i) Zoning district boundaries of the proposed area and within 200 feet of the boundary of the project.
   j) A copy of all necessary state and federal permits.
   k) The location of existing buildings, structures, septic systems, and wells within 200 feet of the boundary.
   l) If the excavation requires the blasting of materials, the applicant shall so indicate in the application and certify that all blasting operations shall conform to NH RSA 158:9-f along with the rules and regulations for Explosives promulgated by the Division of State Police, NH Department of Safety, as well as any other local Blasting Regulations. In particular pre-blast inspections shall be completed of all structures, not controlled by the blaster, within 150 feet of the blasting operation. As part of this application, the blaster shall provide a copy of his State of New Hampshire blasting permit, a statement that he has met with the Fire Chief, Town of Allenstown, a copy of his insurance and Statement that he will comply with National fire Protection Association's Explosive Materials Code 1992 edition. If the

Board determines that it is necessary, the Board may require that a Performance Guarantee be provided in conformance with Section XII of these regulations.

m) Amount of material to be removed.

n) Rate of material removal.

o) Operator must comply with all other Allenstown Regulations and Ordinances.

2) At the discretion of the regulator, the following items may be required to be shown on plans or to accompany plans:

a) Existing topography at contour levels of five feet or less.

b) All surface drainage patterns including wetlands and standing water.

c) Proposed fencing, buffers or other visual barriers, including height and materials.

d) Public streets, driveways, intersections, rights-of-way, and all easements within 200 feet; road network to be affected; intended transportation routes to be used.

e) All measures to control erosion, sedimentation, water pollution, air pollution, and any hazards to human safety.

f) Plans for storm water management.

g) Areas where blasting will take place.

h) Plans for equipment maintenance.

i) Methods to prevent materials from the site from being tracked onto public roadways.

j) A State Certified Soil Scientist shall evaluate test pits that extend to the seasonal high water table, ledge, or a minimum of six feet below the maximum proposed excavation depth, including location and soils data. Boring logs may be submitted separately.

B. Reclamation Plan

The reclamation plan shall address the effects of the proposed excavation on soil, surface and groundwater, vegetation, overburden, topography, and fill material, and should address future land use consistent with the Master Plan. The plan shall show or be accompanied by the following items:

1. Name, address, and signature of the person preparing the plan; date, bar scale and north arrow.
2. All boundaries of the area proposed for reclamation and the land within 200 feet of the boundary of this site.
3. Final topography of the proposed area to be disturbed by excavation at contour intervals of five feet or less or as otherwise determined by the regulator.
4. Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities.
5. Timetable as to fully depleted sites within the excavated area.
6. Schedules of final reclamation activities including seeding mixtures cover vegetation, fertilizer types, and application rates.

C. Other Information

The Board reserves the right, pursuant to 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 Board by RSA 676:4, I (g), any reasonable expenses incurred, or anticipated, for such information, anticipated inspections, or reviews shall be charged to the applicant. Failure to pay such costs constitutes valid grounds for the Board to deny the application.

Section XVI: Administration and Enforcement

A. Permits

1. Permits shall be issued only to the owner or his agent and shall not be transferable. A copy of the permit shall be prominently displayed at the site or the principal access to the site at all times during the life time of the permit.

2) A permit shall be valid for **three (3) years** and the expiration date shall be three (3) years from the date of the vote taken by the Planning Board. The expiration date shall be noted on the Permit, however, failure to note such a date shall note otherwise invalidate the term of the permit.
3) It shall be the responsibility of the permitted entity/individual to apply for and obtain a new permit prior to the expiration of the current permit.
4) Failure to secure a permit shall be considered a violation. The Board may issue a Notice of Violation to any operator who fails to file for a new permit.
5) The Board may include in the permit any such reasonable conditions as are consistent with the purpose of these regulations.
6) The Board will establish a schedule by which all permitted sites are inspected on a regular basis.
7) All permit applications shall submit materials in accordance with the checklists in Sections XVII and XVIII below.

B. Permits for Existing Operations

In addition to any materials, studies, or opinions that the Board reasonably believes is necessary to act upon an application for a new permit or for amending an existing permit, Existing Operators shall provide the Board with the following when submitting an application for a new permit or for amending an existing permit:

i. A written narrative provided by the Applicant specifying the following:
   1. A brief history of pit operations, providing the identity of the current owner of the property and the identity of the excavator of the property.
   2. A statement providing the quantity of Earth to be excavated during the life of the current permit, AND, the quantity of Earth to be excavated in accordance with the approved plan upon which the permit was granted.
   3. A statement providing the quantity of Earth that has been excavated and will be excavated in the event that the new permit is granted.
   4. A statement providing whether the existing operator has excavated more Earth, less Earth, or the same Earth materials as depicted on the approved plan, AND on the approved permit.
   5. A statement detailing any reclamation activities that have been completed.
   6. A statement providing the amount remaining on any reclamation bond. A statement of the account as provided by the financial institution shall be included as part of the application package.
   7. A copy of any drainage studies, state permits or other state documents that accompanied the initial application.

ii. A copy of the current plan AND permit under which the excavation is operating.

iii. An aerial photograph of the site.

iv. A completed application, fees and completed checklist (found in Section XVII of these Regulations), with any waivers requested in writing in accordance with Section XIII of these Regulations,

v. Any other materials reasonably required by the Board in accordance with Section XVII of these Regulations.

vi. When the Board is considering an application for an existing operator, the Board shall take the following actions to aid its decision:
   1. The Board shall conduct a site walk. The existing operator shall stake for inspection the following items as depicted on the current plan:
      i. Setback lines.

ii. The geographic limit of all excavation activities.

iii. The lowest points for all excavation areas.

iv. Any drainage structures.

2. The Board shall assess whether the geographic limits under the current permit, as depicted on the previously approved plan, have been exceeded. The Board may consult with the Town Engineer or any other professionals as the Board deems necessary. The existing operators shall pay for all costs incurred by the Board pursuant to Section XIV.D.

3. If the Board determines that the limits in the current plan have been exceeded or if the Board determines that the material submitted does not clearly specify whether the limits of the current plan have been exceeded, the applicant shall be required to submit new plans.

C. Inspections

The Board or its designee may make periodic inspections of all excavation sites to determine if the excavation operation is in conformance with the permit, town regulations, and the approved plans.

D. Suspensions and Revocations

The Board may suspend or revoke a permit;

1) If the Board determines that any provision of the permit has been violated,

2) If a material misstatement was made in the application upon which a permit was granted, or

3) If any unsafe or hazardous conditions exist as determined by a site inspection.

Such suspension or revocation shall be subject to a motion for rehearing thereon and an appeal in accordance with these regulations. The Town of Allenstown Building Inspector shall have the power to represent the Planning Board in person when inspecting violations on site and on paper when issuing notices of violation to Operators.

E. Appeals

Any person affected by the Board's decision to approve or disapprove an application by any amendment thereto or any suspension or revocation of a permit, may appeal to the Planning Board 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 Planning Board 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 Board's decision on a motion or rehearing may appeal in accordance with RSA 677:4-15.

F. Penalties

Fines, penalties and remedies for violations of this regulation shall be the same as for violations of RSA 676:15, 17, 17-a, and 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, these Regulations or the requirements of RSA 155-E, as applicable depending upon the excavation operation, and to take such action as may be necessary to comply with the permit, these Regulations or the requirements of RSA 155-E, as applicable. If the superior court issues such an order, the superior court in its discretion may award all costs and attorneys' fees incurred in seeking such an order to the regulator or person directly affected by such violation.

SECTION XVII: APPLICATION CHECKLIST

The following checklist is intended as a reference for the Board to use in determining whether an application meets all the requirements for submission as specified in the regulations (Section XIV). Item #3, a-n, and #4, a-f are those items the Board expects to see on the plan; items # 5-1 1 of this

checklist are those projects the law defines as prohibited and that the Board, during the application review process, must determine to be in compliance with the law. The Planning Board reserves the right to request and require, and paid for by the applicant, any additional materials, studies and third party opinions as may be needed to act on a pending application.

REQUIRED			SUBMITTED	
Yes	No		Yes	No
____	_____	1. Signed and dated application form.	____	____
____	_____	2. Copies of any required local, state or federal permits.	____	____
____	_____	3. Excavation Plan at a scale of 1"-100' showing the following information:	____	____
____	_____	a. Name and address of owner, excavator, and all abutters.	____	____
____	_____	b. Name, address and signature of person preparing the plan; date of plan, scale, and north arrow.	____	____
____	_____	c. Sketch and description of the location and boundaries of proposed and any existing excavations in square feet and acres, and the municipalities involved.	____	____
____	_____	d. Zoning district boundaries of excavation area and within 200 feet of the area boundary.	____	____
____	_____	e. Lot lines, public streets, driveways, intersections, rights-of-way, and all easements within 200 feet of the excavation.	____	____
____	_____	f. Location of existing dwellings, structures, septic systems and wells within 200 feet of the excavation.	____	____
____	_____	g. Topography at contour intervals of five feet or less.	____	____
____	_____	h. All surface drainage patterns including wetlands and standing water.	____	____
____	_____	i. Sketch and description of existing and proposed access roads, including width and surface materials.	____	____
____	_____	j. Breadth, depth and slope of the proposed excavation.	____	____

REQUIRED Yes	REQUIRED No		SUBMITTED Yes	SUBMITTED No
____	____	k. Elevation of the highest annual average ground water table within or next to the proposed excavation.	____	____
____	____	l. Test pit data to within either the seasonal high water table or a minimum of six feet below the proposed excavation depth.	____	____
____	____	m. Fencing, buffers, or other visual barriers, including height and materials.	____	____
____	____	n. Measures to control erosion and sedimentation, water and air pollution, and any hazards to public safety.	____	____
____	____	o. Plans for storm water management.	____	____
____	____	p. Plans for equipment maintenance.	____	____
____	____	q. Methods to prevent materials from the site from being tracked onto public roadways.	____	____
____	____	r. Copies of all necessary state and/or federal permits.	____	____
____	____	s. Will Blasting take place on this site.	____	____
____	____	t. Amount of material to be removed	____	____
____	____	u. Rate of material removal	____	____
		4. Reclamation Plan at a scale of 1-100' showing the following information:		
____	____	a. Name, address and signature of the person preparing the plan; date of plan, scale and north arrow.	____	____
____	____	b. All boundaries of the area proposed for reclamation, and the land within 200 feet of these boundaries.	____	____
____	____	c. Final topography at contour intervals of five feet or less.	____	____
____	____	d. Final surface drainage pattern.	____	____

___	___	e. Timetable as to fully-depleted sites within the project area.	___	___
___	___	f. Schedule of final reclamation activities, including seeding mixtures, cover vegetation, fertilizer types and application rates.	___	___

Section XVIII: EXCAVATION AND RECLAMATION CHECKLISTS

The following checklist is used by the Board to determine compliance with the provisions of RSA 155-E during application review and inspections of excavation sites, both for new operations as well as yearly inspections of existing operations. For existing, non-permitted operation, only items #1-10 apply, while new, permitted operations are subject to all items in the checklist. The items in the reclamation checklist apply to all operations at the time of reclamation

D. OPERATING STANDARDS

Yes	No		
___	___	1.	The excavation is not closer than 50 feet to the boundary of a disapproving abutter.
___	___	2.	The excavation is not closer than 150 feet to an existing dwelling or to a site for which a building permit has already been issued.
___	___	3.	The excavation is not below road level within 50 feet of a public right-of-way.
___	___	4.	Vegetation is maintained within the peripheral areas of items 2 and 3 above.
___	___	5.	Fuels, lubricants, or other toxic or polluting materials are not stored on the site, unless in compliance with applicable state regulations.
___	___	6.	If temporary slopes exceed a 1:1 grade, an appropriate barricade or fence of at least four feet in height is provided.
___	___	7.	The excavation does not cause the accumulation of freestanding water for prolonged periods.
___	___	8.	The excavation does not result in continued siltation of surface water degradation of water quality of any public or private water supplies.
___	___	9.	The excavation is not within 75 feet of any great pond, navigable river, or any other standing body of water 10 acres or more in area.

___ ___ 10. The excavation is not within 25 feet of any stream, river, or brook that normally flows throughout the year, or any naturally-occurring standing body of water less than 10 acres, prime wetland, or any other wetland greater than 5 acres in area.

___ ___ 11. The excavation is permitted by the zoning ordinance.

Yes No

___ ___ 12. The excavation will not diminish area property values or unreasonably change the character of the neighborhood.

___ ___ 13. The excavation will not create any nuisance or health or safety hazards

___ ___ 14. The excavation will not unreasonably accelerate the deterioration of highways or create any safety hazards in their use.

___ ___ 15. Existing visual barriers will not be removed, except to gain access to the site.

___ ___ 16. The excavation will not substantially damage a know aquifer.

E. RECLAMATION STANDARDS

___ ___ 1. Except for exposed rock ledge, all areas which have been stripped of vegetation shall be spread with soil capable of sustaining vegetation, and shall be planted with seedlings or grass.

___ ___ 2. Areas visible from a public way from which trees have been removed shall be replanted with tree seedlings in accordance with acceptable horticultural practices.

___ ___ 3. Provision is made for the removal or disposal of all stumps and other vegetative debris.

___ ___ 4. Slopes, except for exposed rock ledge, will be graded to natural repose according to the soil type, or at a ratio of horizontal to vertical proposed by the owner and approved by the Board.

___ ___ 5. No standing bodies of water created by the excavation will be left if they create a public safety hazard.

6. The topography will 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.

Section XVII: Severability

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

Section XX: Effective Date

The Allenstown Planning Board, having held a duly noticed public hearing on January 21, 2009, hereby adopts these Earth Excavation Regulations. Effective date shall be February 1, 2009. Effective Date of any revisions shall be the date adopted; see page 5.

Chairman