

Town of Sandown Excavation Regulations

July, 1990

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1. General Purpose and Authority

Chapter 155-E of the New Hampshire revised Statutes requires that, with several exceptions, all mining and excavation operations in the State obtain prior approval and permit from the local municipality in which the operation is to occur. The purpose of the Statute and of these locally adopted Excavation Regulations is to minimize safety hazards created by the open excavations; to safeguard the public health and welfare; to preserve our natural assets of soil, water, forests and wildlife; to maintain aesthetic features of our environment; to prevent land and water pollution; and to promote soil stabilization.

2. Definitions

- 2.1 “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.
- 2.2 “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.
- 2.3 “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.
- 2.4 “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 2.5.

- 2.5 “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 make the bedrock.
- 2.6 “Excavation” means a land area which is used, or has been used, for commercial taking of earth, including all slopes.
- 2.7 “Excavation site” means any area of contiguous land in common ownership upon which excavation takes place.
- 2.8 “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.
- 2.9 “Regulator” means the planning board of the municipality of Sandown.

3. Permit Required

All excavations require a permit except:

- 3.1 An excavation which lawfully existed and was in use on or before August 24, 1979 may continue to excavate without a permit subject to:
 - 3.1.1 Such an excavation site shall be exempt from local zoning, provided that at the time the excavation was first begun, it was in compliance with any local ordinances and regulations that may have been in effect.
 - 3.1.2 Such an excavation site may not be expanded beyond the limits of the Town in which it is situated and the area which, on August 24, 1979, and at all times subsequent thereto has been contiguous to and in common ownership with the excavation 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 When such excavation is not allowed by local zoning or similar ordinances in effect on the effective date of this section regulating the location of the excavation site, 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 site 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 area contiguous to, or contiguous land in common ownership with, stationary manufacturing and processing plants in operation as of August 24, 1979, which use earth from said area. Such excavations shall be performed in compliance with the operational and reclamation standards contained in Sections 6, 7 and 8 of this regulation.
- 3.3 Excavations from an area 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 area. 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, III, IV, or V highway by a unit of government which has jurisdiction for the highway or an agent of the unit of government which has a contract for the construction, reconstruction, or maintenance of the highway, provided that:
- 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 exempted excavation shall comply with 7 and 8 herein.

- 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.

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 for which the affected area has not been brought into complete compliance with the reclamation standards of this regulation (Sections 6 and 7) shall be deemed abandoned if excavation occurred on the site subsequent to August 24, 1979, and :
 - 4.1.1 No earth material has been removed from the excavation site during any three (3) year period; the Regulator may extend the 3 year period if the owner/operator submits an acceptable time table for reclamation to the Regulator and posts a bond or other surety in a form and amount prescribed by the Regulator sufficient to cover the costs of reclamation; or
 - 4.1.2 The excavation is still in use, but the owner or operator has not brought the affected area into compliance with the incremental reclamation requirements of this regulation within three (3) years of August 4, 1989 or posted a bond or other surety 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 may order the owner of any land containing an abandoned excavation to either file a reclamation time table and bond or other surety 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 by the Regulator.

Failure to complete said reclamation within the prescribed time period may result in the regulator requesting the government 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.

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 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 and other applicable regulations. The Regulator may waive items listed under this section.

- 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 and showing the area to be excavated and the land falling within 200 feet of the perimeter of the area to be excavated. All plans submitted to the Regulator shall comply with the Erosion and Sedimentation Control provisions in the Town of Sandown 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 mean sea level;
- 5.2.3 proposed topography at two foot intervals at the completion of excavation, prior to restoration;
- 5.2.4 the excavation site acreage, the breadth, depth and slope of the proposed excavation (and existing excavation where applicable), volume of the material to be removed, and a description of project duration and phasing;
- 5.2.5 wooded and heavily vegetated areas;
- 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 name, location and width of all public roads and rights-of-way;
 - 5.2.9 a log of borings or test bits 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":1,000'), 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 parking areas;
 - 5.2.16 existing and proposed fencing, buffers or visual barriers, including height and materials;
 - 5.2.17 storage areas for topsoil to be used in reclamation;
 - 5.2.18 all measures to control erosion, sedimentation, water pollution, air pollution, and hazards to human safety;
 - 5.2.19 the location of existing buildings, structures, septic systems and wells on abutting properties within one hundred and fifty (15) feet of the property boundary;
 - 5.2.20 the location of all driveways and road intersections within two hundred (200) feet of the property boundary;
 - 5.2.21 aquifer locations and limits as identified by the U.S. Geological Survey;
 - 5.2.22 distances between disturbed areas and closest property lines;
 - 5.2.23 the towns in which the project and the access routes to public highways lie; and
 - 5.2.24 zoning districts.
- 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 Sandown Subdivision Regulations. All plans submitted shall be of a quality what they are easily understood and of an accuracy that compliance can easily be checked. At least six (6) copies of final 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 artificial and/or modified drainage facilities;
 - 5.3.5 schedule of final reclamation activities including seeding mixtures, mulching cover vegetation, fertilizer types, and 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 photographs of the site before excavation: one aerial (e.g., USDASCS aerial photo), and one from the ground level.
 - 5.3.9 subsequent use of the site, if known;
 - 5.3.10 cross sectional views showing existing, excavated, and restored topography configuration;
 - 5.3.11 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, 148: 5-a), Wetland Board (RSA 483-a), stump disposal, State Highway Department (access permit, RSA 249:13-18), 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 as per the Excavation Application Form (Appendix A).

6. Additional Permit Requirements

6.1 Size and Reclamation Time Limit on New Excavations

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 reconstructing existing Town road(s) which access the excavation site, and

for the repair of Town maintained roads which are damaged as a result of the hauling earth from the site. The Regulator may require these costs to be bonded prior to the granting of a permit to excavate.

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 unless specifically authorized by the Regulator.
- 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 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.
- 7.4 Vegetation shall be maintained or provided within the buffer areas required by Section 7.1, 7.2, and 7.3.
- 7.5 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.
- 7.6 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 Sandown Subdivision Regulations.
- 7.7 Where the depth of excavation will exceed 15 feet and temporary slopes will exceed 1:1 in grade, a fence or other suitable barricade shall be erected to warn of danger and/or limit access to the site.
- 7.8 Excavation practices which result in siltation in streams or degradation of any water supplies are prohibited.
- 7.9 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).
- 7.10 All temporary structures required during excavation operations shall be removed from the site within 30 days after such operations cease.
- 7.11 All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.
- 7.12 No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with State laws or rules pertaining to such materials.
- 7.13 Prior to the removal of topsoil or other material from a new excavation area, the excavator shall file a reclamation bond or other surety, as prescribed by the Regulator, sufficient to cover the cost of site reclamation.

- 7.14 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.
- 7.15 Permit approval shall be conditioned on compliance by the applicant with street and highway regulations promulgated by federal, state and local units.
- 7.16 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:
- 7.16.1 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,
- 7.16.2 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.
- 7.16.3 The Board may require that the applicant provide data or reports prepared by a professional engineer or ground-water consultant which assess the potential aquifer damage caused by the proposed excavation project.
- 7.17 The applicable state statutes and regulations pertaining to forest practice and timber harvesting shall apply to the removal of vegetative cover at excavation sites.
- 7.18 Start-up time for all machinery associated with a gravel or sand pit shall be no earlier than seven (7:00) a.m. and all machinery must be shut down by five (5:00) p.m. These operating hours shall be for Monday through Saturday. No operation will take place on Sundays, and on both State and Federal holidays. Hours of operation other than those stipulated may be allowed if specifically authorized by the Regulator.

8. Site Reclamation Standards

Within 12 months after the expiration date in a permit issued under this chapter, or of the completion of any excavation, whether subject to permit or not, 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 conditions:

The Regulator or its designee shall periodically inspect the operations and shall perform a final reclamation inspection in order to ensure that the approval 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 that a steeper grade can be adequately vegetated and stabilized. In no case shall a soil material slope be left steeper than 2:1. Changes in slope shall not be abrupt, but 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 after site excavation has been completed, but no later than one year.
- 8.4 Stockpiled topsoil shall be spread over the disturbed area to a depth to allow and maintain vegetation. Areas posing the most critical problems for re-vegetation shall be given first priority should available topsoil be limited. The disturbed area(s) shall be fertilized, if necessary, and seeded with a grass or grass-legume mixture.
- 8.5 If deemed necessary by the Regulator, suitable trees or shrubs may be planted in order to provide screening and natural beauty and to aid in erosion control. Such planted areas shall be protected from erosion during an appropriate establishment period by mulch and structural erosion control devices.
- 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 either is depleted of commercial earth materials, excluding bedrock, or from which no earth materials have been removed for a two year period, shall be reclaimed in accordance with Sections 7 and 8 within one year following such depletion or two-year non-use, 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. 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 to the satisfaction of the Regulator.
- 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 Division of Water Supply and Pollution Control 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.
- 8.13 The restored site shall be rendered in a condition that will not preclude its future use in a manner consistent with the zoning ordinance and map.
- 8.14 The restored site shall be rendered in a condition that will not preclude its future use in a manner consistent with the zoning ordinance and map.

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 For an excavation within 50 feet of the boundary of a disapproving abutter;
- 9.3 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;
- 9.4 Where existing visual barriers would be removed, except to provide access to the excavation;
- 9.5 Where the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey;
- 9.6 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;
- 9.7 For excavation within 50 feet of poorly drained and 100 feet from any other wetlands as defined in the Sandown Zoning Ordinance;
- 9.8 Where the project cannot comply with the reclamation provisions of Sections 7 and 8;
- 9.9 Where the excavation is not permitted by zoning or other applicable ordinances;
- 9.10 For disposal of any waste material, including solid and/or hazardous waste, septage, dredge spoils, or organic waste and debris on the excavation site;
- 9.11 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
- 9.12 Where the excavation would cause unreasonable diminution in area property value or unreasonably change the character of the neighborhood;

9.13 Where the excavation will unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof.

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 shall 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.

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.

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 30 days on such 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 planning board shall issue a written decision approving or disapproving the application, giving reasons for disapproval.

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 surety in the amount determined by the Regulator to be sufficient to guarantee compliance with the permit. The performance bond or other surety 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 permit such reasonable conditions as are consistent with the purpose of this regulation 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.

14. Bonding

The Regulator shall establish the amount of a performance bond 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 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. All bonding shall conform with Appendix E.

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.

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 rehearsing 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 and RSA 676:17.

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 ordinance, regulations, or laws, the more stringent shall apply.

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 provided by RSA 155-E. The written decision shall state specifically what standards, if any, are being relaxed and include reasonable alternative conditions.

Appendix A
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. Chairman or Secretary
Planning Board
Sandown Town Office
P.O. Box 1756
Sandown, NH 03873

And

- b. Chairman or Secretary
Conservation Commission
Sandown Town Office
P.O. Box 1756
Sandown, NH 03873

2. Date of Submission _____

3. Name of owner/applicant _____
Address (mailing) _____

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

5. Tax Map and Lot Number, name and address of all abutters (see definitions). 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.) In addition, applicant shall submit for each abutter, a correctly addressed envelope with 1) correct

postage affixed (not metered); 2) green return receipt (form 3811), completed; 3) white certified receipt (form 3800), completed (reference Appendix D).

6. State permits required and obtained (if applicable):
 - WSPCC (RSA 485-A:17, RSA 148:5-a)
 - Wetland Board (RSA 483-A)
 - State Highway Department (Access Permit, RSA 249:13-18)
 - State Pit Agreement (per NHDOT Standard Specifications for Road and Bridge Construction, Section 106)

7. Excavation/Reclamation Plan; this information is 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
 - 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

8. Hauling information:
 - a. Routes to be utilized
 - b. Frequency of truck traffic over routes

c. Size and weight of trucks used

9. Fees:

\$50.00 application fee

\$1.00 per abutter identified in #5

\$300.00 Engineering, professional review costs (make a separate check payable to "Sandown PREA")

10. 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 acreage by \$2,000 per acre. All bonding must comply with Appendix E.

11. An excavation permit will be valid for a period of one (1) year. An application for permit renewal must be submitted to the Regulator by the owner 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.

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
Excavation Application Checklist

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

- _____ A copy of application submitted to Conservation Commission
- _____ A signed and dated application
- _____ Name and address of owner, the person doing the excavation and all abutters. In addition, correctly addressed and stamped envelopes with the required forms, properly filled out (see Application for #5).
- _____ An Excavation Plan which:
 - _____ a. is at a scale no less than 1"=100';
 - _____ b. shows area to be excavated and all land within 200 feet of the perimeter and dwellings 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 elevation, and existing excavation and estimated duration;
 - _____ h. shows wooded and heavily vegetated areas;
 - _____ 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 equals 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
- _____ Application fee and performance bond submitted
- _____ 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;
 - _____ 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 the ground level); and
 - _____ j. identifies subsequent use of the site, if known or anticipated
- _____ Rockingham County Conservation District Review Authorization Form signed (see Appendix F)
- _____ Completed checklist with justification/explanation for any omissions

Appendix C

Review Checklist for Excavation Plans

- _____ The excavation is not below road level within 50 ft. of any highway right-of-way
- _____ 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 of the excavation is begun
- _____ The excavation is permitted by current zoning ordinances
- _____ The excavation will not be unduly hazardous or injurious to the public
- _____ Existing visual barriers will be maintained except to provide access to the excavation
- _____ The excavation will not substantially damage a known aquifer.
- _____ All other applicable state and federal permits have been obtained
- _____ If new, the excavation is 5 or less acres in size and can be reclaimed in 1 year or less.
- _____ 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.
- _____ The excavation area is at least 50 ft. from the lot line of an abutter.
- _____ Natural vegetation on areas which are not intended for excavation has been maintained or provided.
- _____ The excavation and reclamation plans comply with the Soil Erosion and Sedimentation Control provisions in the Subdivision Regulations.
- _____ The excavation is not within four feet of the seasonal high water table.
- _____ If necessary, a fence or barricade is provided.
- _____ Appropriate drainage is provided.
- _____ Provision is made for the removal of all temporary excavation related structures within 30 days after operations cease.
- _____ All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.
- _____ Permit fee paid for plan and implementation reviews and monitoring for plan compliance.
- _____ All plans and studies reviewed by town's engineer or other agents as determined by the regulator.

Reclamation Plan

- _____ No slope shall be left steeper than 3:1
- _____ All debris, stumps, boulders, etc. are being lawfully disposed of in a manner acceptable to the Regulator
- _____ Ground levels and grades are being established as soon as practical after site excavation, but no later than one year.

- _____ Stockpiled topsoil will be spread over the disturbed area at an adequate depth and distribution to allow revegetation. Disturbed areas will be fertilized and reseeded.
- _____ 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.
- _____ 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.
- _____ An adequate reclamation bond is provided to ensure the successful completion of the Reclamation Plan.

Appendix D
Sample Letter of Credit

Town of Sandown
P.O. Box 1756
Sandown, NH 03873
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 Sandown on behalf of _____ (hereinafter "excavator"). This irrevocable letter of credit is issued to guaranty completion of all reclamation/improvements required by the Sandown Planning Board and Town of Sandown Excavation Regulations in conjunction with an excavation and reclamation plan entitled " _____", dated _____, prepared by _____, and approved by the Sandown 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 Sandown Planning Board, then this letter of credit shall be automatically considered to have been called, and without further action by the Town of Sandown, or its Planning Board, the _____ Bank shall forthwith forward a check in the amount of \$_____ to the Treasurer of the Town of Sandown. 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 no 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)

Appendix E
Rockingham County Conservation District Review Authorization

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

Rockingham County Conservation District
32 Front Street
Exeter, NH 03833

Dear Mr. Chairman:

The Sandown 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, _____ (name), of _____ (representative) agree to a review of the above proposal, and further agree to be responsible for any charges that may result from this review.

Signature _____

Date _____