

EXCAVATION REGULATIONS
FOR THE

TOWN OF FRANCONIA

FEBRUARY 11, 1992

TOWN OF FRANCONIA

EXCAVATION REGULATIONS

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TOWN OF FRANCONIA

EXCAVATION REGULATIONS

ARTICLE I GENERAL PURPOSE AND AUTHORITY

These regulations are adopted in accordance with the authority granted by New Hampshire RSA 155:E relative to the local regulation of excavations. The purpose of this regulation is to provide for reasonable opportunity for excavation, to minimize safety hazards created by open excavation; 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.

ARTICLE II DEFINITIONS

- 2.1 **“Abutter”**: Shall mean 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 purpose of receiving testimony only, and not for purposes of notification, the term **“abutter”** shall include any person who is able to demonstrate that his/her land will be directly affected by the proposal under consideration.
- 2.2 **“Applicant”**: Shall mean the owner of the property to be excavated or the owner’s agent, so designated in writing as part of the excavation application.
- 2.3 **“Application”**: Shall mean a completed application for an excavation permit.
- 2.4 **“Commercial”**: Shall mean 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 materials such as, but not limited to, concrete, asphalt and other building materials shall be considered commercial.
- 2.5 **“Dimension Stone”**: Shall mean 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 internal 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 2.06.

- 2.6 **“Earth”**: Shall mean sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally occurring unconsolidated materials that normally mask the bedrock.
- 2.7 **“Excavation”**: Shall mean a land area which is used, or has been used, for commercial taking of earth.
- 2.8 **“Excavation Area”**: Shall mean the area within an excavation site where excavation has occurred or is eligible to occur under this regulation.
- 2.9 **“Excavation Site”**: Shall mean any area of contiguous land in common ownership upon which excavation takes place.
- 2.10 **“Expansion”**: Shall mean either 1) the removal of topsoil from a new area or 2) excavation beyond the limits of the Town and /or the area which in 1979 had been contiguous to and in common ownership with the excavation and has been appraised and inventoried for tax purposes as part of the same tract.
- 2.11 **“Fees”**: Shall mean the following:
 - a. **Filing fee** shall mean the required fee, to be paid upon submission of an excavation application to the Planning Board, to defray the cost of the Town of reviewing the application.
 - b. **Excavation fee** shall mean those fees paid by the applicant to the Planning Board before issuance of a permit to defray the cost of permit compliance.
 - c. **Inspection fee** shall mean any costs associated with site inspections should the Planning Board require the advice of an engineer or other agent to ensure compliance with the conditions of the permit.
- 2.12 **“Notice of Intent”**: Shall mean a written notice to the Planning Board and to the Conservation Commission informing 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.
- 2.13 **“Reclamation”**: Shall mean the restoring of an excavation site to a minimum standard as outlined in Article VIII of these regulations.
- 2.14 **“Regulator”**: Shall mean the Franconia Planning Board.
- 2.15 **“Stationary Manufacturing and/or Processing Plants”**: Shall mean facilities which are permanently placed on a site for the

purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated earth material.

ARTICLE III **PERMIT REQUIRED**

No owner shall permit any excavation of earth on his/her premises without first obtaining a permit. Excavations in operation at the time of adoption of this regulation shall have until August 4, 1991 to file an application with the planning Board.

Exceptions to the excavation permitting requirement are:

- 3.1 Pre-1979 Lawful Excavations:** An excavation which lawfully existed as of or before August 24, 1979 from which earth material of sufficient weight or volume to be commercially useful has been removed during the 2 year period before August 24, 1979 may continue to excavate on the excavation site without a permit subject to:
 - a.** The excavation site shall be exempt from local zoning, provided that at the time the excavation was first begun, it was in compliance with any local ordinances that may have been in effect.
 - b.** The excavated area may not be expanded beyond the limits of the Town in which it is situated and the area which, on August 24, 1979 and at all times subsequent thereto, has been contiguous to and in common ownership with the excavation site of that date, and appraised and inventoried for property tax purposes as part of the same tract as the excavation site. 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 a permitted use in that location by the Franconia Zoning ordinance or when it is only allowed by special exception, expansion may be restricted or modified with conditions by order of the Planning Board 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.
 - c.** The excavation shall be performed in compliance with the express operational and reclamation standards in RSA 155E.
 - d.** The owners or operators of an existing excavation area for which no permit has been obtained shall file an excavation report with the Planning Board no later than August 4, 1991. Any existing excavation that fails to file a report before this date shall obtain a permit from the Planning Board before continuing excavation of the site.

- 3.2 Pre-1979 Operating Contiguous Excavation:** Excavations from a site contiguous to, or contiguous land in common ownership with, stationary manufacturing and processing plants in operation as of August 24, 1979, which use earth from said excavation site. Such excavations shall be performed in compliance with the express operational and reclamation standards contained in RSA 155E.
- 3.3 Pre-1979 Permitted Contiguous Excavation:** Excavations from a site contiguous to or contiguous land in common ownership with, stationary manufacturing and processing plants which have been granted state or local permits since August 24, 1979, and which use earth obtained from said site. The operation and reclamation of such sites shall be governed by the conditions of the stat or local permit and any extensions or renewals thereof.
- 3.4 Highway Project Excavations:** An excavation performed exclusively for the lawful construction, reconstruction, or maintenance of a Class I, II, III, IV, or V highway or an agent of the unit of government which has a contract for the construction, reconstruction, or maintenance of the highway, provided that:
- a. A copy of the pit agreement executed by the owner, the agent and the governmental unit shall be filed with and accepted by the Planning Board prior to the start of excavation, and such excavation shall not be exempt from the provisions of Articles 6, 7 and 8 of this regulation, nor from any other land use regulations of the municipality.
 - b. Such excavations shall not be exempt from local zoning or other applicable ordinances unless such exemption is granted pursuant to subparagraph ©, or from the express operational and reclamation standards, which express standards shall be the sole standards with 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:
 - 1) The excavation shall comply with the express operational and reclamation standards or RSA 155E:4-a, RSA 155E:5, and RSA 155E:5-a.
 - 2) The excavation shall not be within 50 feet of the boundary of a disapproving abutter or within 10 feet of the boundary of an approving abutter, unless requested by aid abutter.
 - 3) The excavation shall not be unduly hazardous or injurious to the public welfare.
 - 4) Existing visual barriers in the area specified in RSA 155E:3, III shall not be removed, except to provide access to the excavation.

- 5) The excavation shall not substantially damage a known aquifer, so designated by the U.S.G.S.
 - 6) All required permits for the excavation from state or federal agencies have been obtained.
- c. The New Hampshire Department of the Transportation or its agent may apply to the appeals board created under RSA 21L 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 115E:2, IV-(c).
- 3.5 Incidental Excavation:** An excavation that is exclusively incidental to the lawful construction or alternation of a building or structure or the lawful construction or alternation 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 Agricultural/Silvicultural Excavations:** An excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment.
- 3.7 Dimension Stone Excavations:** An excavation from a granite quarry for the purpose of producing dimension stone is such excavation requires a permit under RSA 12E.
- 3.8 Governmental Taking of Contiguous Land:** 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 constructions site and may remove the earth at a later date after written notification to the regulator.

ARTICLE IV ABANDONED EXAVATIONS

The permit exemptions under Article III shall not apply to any abandoned excavations as defined in Article 4.1.

- 4.1 Definition:** Any excavation for which the affected area has not been brought into complete compliance with the reclamation standards of this regulation (Article VI and VIII) shall be deemed abandoned if excavation occurred on the site subsequent to August 24, 1979, and:
- a. No earth material of sufficient weight and volume to be commercially useful has been removed from the excavation site during any two (2) year period either before, on or after August

4, 1979. The owner or operator may, however, extend the period by submitting a reclamation time table to the Planning Board and posting a bond or other surety in a form and amount prescribed by the regulator sufficient to cover the costs or reclamation; or

- b. The excavation is in use and is not an excavation or excavation site as defined, but the owner or operator has not brought the affected area into compliance with incremental reclamation requirements of this regulation within three (3) years of August 4, 1979 or posted a bond or other surety sufficient to cover the costs or reclamation; or
- c. The owner or operator of the excavation has neither secured a permit pursuant to this regulation nor filed a report of an existing excavation within the prescribed time period.

4.2 Reclamation of Abandoned Excavations:

- a. The Planning Board may order the owner of any land containing and abandoned excavation to either file a reclamation time table and bond or other surety, or to complete the reclamation in accordance with this regulation within a stated reasonable time. Failure to complete said reclamation within the prescribed time period may result in the regulator requesting the governing body to cause reclamation to be completed at the expense of the municipality. The municipality's cost 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.
- b. 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 these regulation may be made subject to the remedy prescribed in 4.2a 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.

ARTICLE V

APPLICATION FOR PERMIT

Any owner or owner's designee subject to this chapter shall, prior to excavation of or continuance or expansion of excavation of any land, apply to the Planning Board for a permit for excavation and submit a reclamation plan. The permit application shall be signed and dated by the applicant and shall contain at least the following information in addition to other regulations, checklist and site plan review requirements. The Planning Board may waive one or more of the items listed under this section.

5.1 Ownership of Land: 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 Excavation Plan: An Excavation Plan at a scale of no less than one (1) inch equals one hundred (100) 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 shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. AT least three (3) copies of final plans shall be filed with the Planning Board prior to issuance of the permit.

The Excavation Plan shall include:

- a. A locus map, at a scale of one inch equals one thousand feet (1" = 1000), showing the proposed operation in relation to existing roads;
- b. Existing topography at contour intervals of five or fewer feet, based on mean sea level. The Planning Board may require two foot contour intervals if deemed necessary;
- c. Cross sections of existing topographic conditions;
- d. The breadth, depth and slope of the proposed excavation, and existing excavation where applicable, and the estimated duration of the excavation;
- e. Wooded and heavily vegetated areas;
- f. All surface drainage patterns including wetlands, standing water and intermittent streams;
- g. Location of all easements, on or below the ground;
- h. Location and width of all public roads and rights-of-way;
- i. Aquifer locations based on most recent USGS mapping;
- j. A Log of boring or test pits that extend to either the seasonal high water table, ledge or a minimum of six (6) feet below the maximum proposed excavation depth, including location and soils data;
- k. Location and extent of any stone walls, ledge outcroppings, wells, existing building, septic systems, utilities and the like on site;
- l. The location of existing buildings, structures, septic systems, and sells within one hundred and fifty (150) feet of the boundary;
- m. Existing zoning districts, tax map numbers of owners and abutters lots;

- n. Any existing and all proposed excavation areas;
- o. Any existing and all accessory facilities and/or activities;
- p. Existing and proposed access roads, including width and surface materials;
- q. Existing and proposed parking areas;
- r. Existing and proposed fencing, buffers or visual barriers, including height and materials;
- s. Storage areas for topsoil and stabilization plan;
- t. All measures to control erosion, sedimentation, using the method and standards in the publication "Erosion and Sediment Control Design Handbook for Developing Areas of New Hampshire", as amended;
- u. Stump, stone and debris storage and/or disposal areas;
- v. All measures to minimize air pollution, noise and hazards to human safety;
- w. The location for all driveways and road intersections within two hundred (200) feet of the property boundary;
- x. Hauling information including routes, weight of vehicles, trips per day, etc; and regulations;
- y. Copies of any applications, plans and permits required by state or federal regulations.

5.3 Reclamation Plan: A Reclamation Plan at the same scale as the Excavation Plan, and covering the same area. 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 three (3) copies of final plans shall be file with the Planning Board prior to issuance of a permit.

The Reclamation Plan shall include:

- a. All boundaries of the area proposed for reclamation;
- b. Phasing plan for restoration;
- c. Final topography of the area proposed for reclamation showing final grades;
- d. Cross sections of final topography, visual barrier location and types;
- e. Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities;

- f. Schedule of final reclamation activities including: top soiling, seeding mixtures, cover vegetation, fertilizer types, and rates;
- g. Photographs of the site before excavation (from at least two different vantage points);
- h. Subsequent use of the site, if known or anticipated and
- i. Copies of related permit approvals and other documents pertinent to the excavation proposal, such as WSPCD, Wetland Board, stump disposal, State Highway Department (access permit), any other permits required by stat or federal regulations, and such other information as the Planning Board may reasonably require.

The Planning Board may require on environmental assessment of the proposed excavation and restoration plan. All costs for such assessments shall be borne by the applicant.

ARTICLE VI ADDITIONAL PERMIT REQUIREMENTS

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

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

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

If reclamation of the site is not completed within the one (1) year permit period the Town may declare part or all of the bond forfeit,

and use these monies to reclaim the site, in addition to the requirements of Article XIII (Issuance of Permit). At no time shall more than one permit be allowed on a lot of record.

- 6.3 Hours of Operation:** The hours of operation shall be determined by the Planning Board during the permit process. The Planning Board shall establish start-up and shut-down times for all machinery associated with the excavation. The Planning Board may also specify days or week for operation. The level of operation and the type of neighborhood affected shall be considered by the Planning Board in establishing these hours.
- 6.4 Hauling Information:** 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 Planning Board prior to the issuance of an Excavation Permit. The Planning Board may require modifications to such plans and/or may place conditions upon such operations, depending upon surrounding land uses and road conditions. The Planning Board reserves the right to conduct a traffic study at the applicant's expense to ensure that public safety, neighborhood compatibility and road capacity and condition have been properly considered and optimized in the hauling plan.

ARTICLE VII OPERATIONAL STANDARDS

- 7.1 Setback from Property Lines:** No excavation covered under RSA 155E shall be permitted closer than 50 feet to the boundary of a disapproving abutter or within 10 feet of an approving abutter unless approval of a lesser distance is requested by the abutter.
- 7.2 Setback from Dwelling:** No excavation covered under RSA 155E 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 Setback from Roadway:** No excavation shall be permitted below road level within 50 feet of the right-of-way of any public highway as defined in RSA229:1 unless such excavation is for the purpose of said highway.
- 7.4 Visual Buffers:** Vegetation shall be maintained or provided within the peripheral areas required by Articles 7.1, 7.2 and 7.3.
- 7.5 Natural Vegetative Buffers:** 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.

- 7.6 Size Limit:** No actual excavation is to exceed five (5) acres at one time unless specifically authorized by the Planning Board.
- 7.7 Environmental Quality:** Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process.
- 7.8 Depth Limit:** No excavation shall be permitted so close to the seasonal high water table or to bedrock (as indicated by the required borings or test pits) as would preclude the subsequent re-use of the site in accordance with existing public health standards, local zoning, and local master plan.
- 7.9 Fencing:** 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.
- 7.10 Drainage:** No area shall be excavated which will cause the accumulation of free standing water for prolonged periods. Appropriate drainage shall be provided.
- 7.11 DES-WSPCC Permit:** Excavation projects requiring a permit from the Water Supply and Pollution Control Division of Department of Environmental Services (DES) under RSA 149:8-a shall file a copy of the permit with the Planning Board prior to receiving a permit.
- 7.12 Topsoil Removal:** Topsoil shall be stripped from the excavation area and stockpiled on-site for use in subsequent reclamation of the site. No topsoil shall leave the site.
- 7.13 Temporary Structures:** All temporary structures required during excavation operations shall be removed from the site within 30 days after such operations cease.
- 7.14 Transport Vehicles:** All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.
- 7.15 On-Site Storage of Fuels and Chemicals:** No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with State laws and rules pertaining to such materials and as so approved by the Planning Board.
- 7.16 Site Reclamation:** Prior to the removal of topsoil and other material from a new excavation area, the excavator shall file a reclamation bond or other surety, as prescribed by the Planning Board, sufficient to cover the cost of site reclamation. See Article XV of these regulations.

ARTICLE VIII

SITE RECLAMATION STANDARDS

The Planning Board or its designee shall periodically inspect the operations and shall perform a final reclamation inspection in order to ensure that the approved plans have been followed. All costs relative to these inspections shall be borne by the applicant.

- 8.1 Slope Standards:** No slope in soil material shall be left steeper than 3:1 (three horizontal feet from each one foot of vertical drop) unless it can be demonstrated by the applicant that a steeper grade can be adequately vegetated and stabilized. Under no case shall a soil material slope be left steeper than 2:1.
- 8.2 Debris Removal:** All debris, stumps, boulders, etc. shall be lawfully disposed of in a manner acceptable to the Planning Board or its designee.
- 8.3 Grades:** 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 Topsoil:** 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, seeded with a grass or grass-legume mixture and mulched. Re-fertilizing one year after the completed reclamation shall also be required.
- 8.5 Vegetation:** If deemed necessary by the Planning Board, suitable trees or shrubs shall be planted in order to provide screening and natural beauty and to aid in erosion control. Such planted areas shall be protected from erosion during and appropriate establishment period by mulch and structural erosion control devices. Age and size of the trees or shrubs shall be determined by the Planning Board or their designee.
- 8.6 Drainage:** 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.
- 8.7 Release of Surety:** The responsible party shall not be released from its performance commitment (reclamation bond) until the planning Board certifies compliance with all terms of the Excavation Plan and the Reclamation Plan.
- 8.8 Time Limit:** 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 one year period, shall be reclaimed in accordance with these regulations within one year.

ARTICLE IX

PROHIBITED PROJECTS

The Planning Board shall not grant a permit:

- 9.1 **Violation of Article VII:** where the excavation would violate the operational standards of Article VII;
- 9.2 **Injury to Public Welfare:** where the issuance of the permit would be unduly hazardous or injurious to the public welfare;
- 9.3 **Visual Buffers:** where existing visual barriers would be removed, except to provide access to the excavation;
- 9.4 **Aquifer:** where the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey;
- 9.5 **Impact on Waterbodies:** where the excavation is planned beneath or adjacent to inland surface waters or wetlands in such a manner that a permit is required from the Department of Environmental Services or federal agencies with jurisdiction over the premises; but the Planning Board may approve the application when all the necessary permits have been obtained;
- 9.6 **Violation of Articles VI and VIII:** where the project cannot comply with the reclamation provision of Articles VI and VIII;
- 9.7 **Violation of Local Ordinances:** where the excavation is not permitted by other applicable ordinances.

ARTICLE X

WAIVERS

The Planning Board, upon application and following a hearing, may grant a waiver in writing, to the standards contained in Articles VI, VII, VIII and IX for good cause shown. The written decision shall state specifically what standards, if any, are being relaxed and include reasonable alternative conditions.

ARTICLE XI

APPLICATION FOR AMENDMENT

When the scope of a project for which an excavation permit has been issued is proposed to be altered so as to affect either the size or location of the excavation, the rate of removal or the plan for reclamation, the owner shall submit an application for amendment of his excavation permit. The amended application shall be subject to approval in the same manner as provided from an excavation permit. An application for amendment to increase the size of a permitted excavation may be allowed if at least one-half of the area covered by the prior permit is reclaimed in accordance with the approved site Reclamation Plan.

ARTICLE XII **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 and 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 3 public places in the town; the 14 days shall not include the day of publication or the day of the meeting, but shall include any Saturdays, Sundays and legal holidays within said period. Within 20 days of said hearing or any continuation thereof, the Planning Board shall tender a decision approving or disapproving the application, giving reasons for any disapproval.

ARTICLE XIII **ISSUANCE OF PERMITS**

If the Planning Board, after public hearing, approves the application for a permit and determines it is not prohibited by Article IX it shall grant the excavation permit upon receipt of an excavation application fee of \$50, and the posting of a bond or other surety with the municipal treasurer in the amount determined by the Planning Board to be sufficient to guarantee compliance with the permit. The performance bond or other surety shall be for a period of 2 years. 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 Planning Board. A permit shall specify the date upon which it expires. The Planning Board may include in a permit such reasonable conditions as are consistent with the purposes of this regulation including the provision of visual barriers to the excavation. In addition, a permit fee in an amount determined by the Planning Board for application plan review and annual compliance review, by the Planning Board or its designated agent, shall be assessed the applicant prior to issuance of a permit. This permit fee shall also include sufficient funds for the municipality's designee or other agents of the Planning Board to periodically conduct field reviews at the excavation site to ensure compliance with the approved excavation and reclamation plans.

ARTICLE XIV **WITHDRAWAL OF PERMIT**

A permit to excavate is automatically withdrawn if no substantial work is done on the site for a period of three (3) years. Reclamation of areas already worked is mandatory.

ARTICLE XV **BONDING**

The Planning Board shall establish the amount of a performance bond prior to

the issuance of the excavation permit. The bond amount shall be reasonable sufficient to guarantee compliance with the reclamation standards in Article VIII. The bond requirements shall be based on the acreage of the project or approved phases and the estimated per acre reclamation costs. The bond will be returned to the applicant when reclamation work has been completed and a final satisfactory site inspection has been conducted by the Planning Board of its designee. The applicant shall pay for any bond reviews by the Town, or any other professional service necessary to review the proposed excavation/reclamation plan.

ARTICLE XVI **APPEAL**

If the Planning Board disapproves or approves an application for an excavation permit or an application for an amended permit, any interested person affected by such decision may appeal to the Planning Board to a rehearing on such decision or any matter determined thereby. The motion for rehearing shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable and said appeal shall be filed within 10 days of the date of decision appealed from. The Planning Board shall either grant or deny the request for rehearing within 10 days, and if the request is granted, a rehearing shall be scheduled within 30 days. Any person affected by the Planning Board's decision on a motion for rehearing may appeal in accordance with the procedures specified in RSA 677.

ARTICLE XVII **ENFORCEMENT**

- 17.1 Suspension of Revocation of Permit:** The Planning Board or its duly authorized agent may suspend or revoke the permit of any person who has violated any provision of his/her permit or this regulation or made a material misstatement in the application upon which his/her permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with Article XVI. Failure to file for a permit as required by this regulation shall be considered a violation subject to the enforcement provision of this regulation.

- 17.2 Fines:** Fines, penalties and remedies for violations of this regulation shall be the same as for violation of RSA 676-15 and RSA 676-17.

- 17.3 Ascertaining Compliance:** To ascertain if there is compliance with this regulation, a permit issued hereunder or an order issued hereunder, the Planning Board or its duly authorized agent(s) may enter upon any land on which there is reason to believe an

excavation is being conducted or has been conducted since the effective date of this regulation.

17.4 Misdemeanor: Whoever violates any provision of this regulation, a permit issued hereunder, or a valid order issued hereunder, shall be guilty of a misdemeanor.

17.5 Cease and Desist Orders: Operators who fail to file for permit will be issued a cease and desist order.

ARTICLE XVIII SEPARABILITY

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

ARTICLE XIX EFFECTIVE DATE

This regulation shall become effective immediately upon its adoption (February, 11, 1992).