

Earth Excavation and Reclamation Regulations for the Town of Pembroke

CHAPTER 197. EARTH EXCAVATION AND RECLAMATION REGULATIONS

Adopted July 23, 1991 and amended July 26, 2011

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CERTIFICATE OF ADOPTION

In accordance with New Hampshire RSA 155-E:11 Regulations, 155-E:7 Hearing, in the same fashion as RSA 675:6 Method of Adoption and 675:7 Notice Requirements for Public Hearing , the Pembroke Planning Board, having held a duly noticed public hearing on July 26, 2011 hereby adopts and certifies these Earth Excavation and Reclamation Regulations, dated July 26, 2011.

Alan Topliff, Chair

Brian Seaworth, Vice Chair

Kathy Cruson

Robert E. Bourque

John Duggan, Selectmen's Representative

Kevin Krebs

Ron Nowe, Alternate

Larry Young Sr.

This document was received and recorded by the Town Clerk on _____,
2011.

Signed:

James F. Goff, Pembroke Town Clerk

Seal:

Earth Excavation and Reclamation Regulations for the Town of Pembroke

ARTICLE I. General Provisions

§197.1. Title.

This chapter shall hereafter be known, cited and referred to as the "Earth Excavation and Reclamation Regulations of the Town of Pembroke."

§197.2. 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 vested in the Planning Board of Pembroke, hereinafter referred to as the "regulator" and RSA 155-E, the Planning Board adopts the following Regulations on July 23, 1991 and amended on July 26, 2011 to govern the excavation of earth materials and reclamation of excavation sites in the Town of Pembroke.

§197.3. Jurisdiction.

This Chapter shall apply to all earth excavations as identified under RSA 155-E within the Town of Pembroke. These regulations do not supersede any previously existing excavations with a valid town permit, or agreements between an excavator and the Town of Pembroke.

§197.4. Purpose and Scope.

In recognizing that earth excavation is permitted by Special Exception within certain zones of the Town of Pembroke, the goals of the Earth Excavation Regulations are:

- a. To minimize safety hazards which can be created by open excavation;
- b. To ensure that the public health and welfare will be safeguarded;
- c. To protect natural resources and environment, including but not limited to soils, water, forests, and wildlife;
- d. To maintain the aesthetic features of the Town; and
- e. To prevent land and water pollution and to promote soil stabilization.

For the purpose of achieving these goals, no earth materials in the Town shall be removed, except in conformance with these regulations.

§197.5. Definitions.

For terms for which no definition is provided, refer to the Pembroke Zoning Ordinance or RSA 155-E; whichever definition is more stringent applies.

Abandoned Excavations: An excavation site from which no earth of sufficient weight or volume to be commercially useful has been removed from that excavation site during any two-year period, either before, on, or after August 4, 1989, for which the affected area has not yet been brought into complete compliance with reclamation standards, or no bond or security has been posted nor timetable submitted approved by the Planning Board, nor has a permit been secured. (RSA 155-E:2 II (a)).

Abutter: See RSA 672:3.

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Agricultural Excavation: Excavation of earth by the owner of the land to be used on the owners land exclusively for agricultural use.

Applicant: The owner of the excavation site or person designated by the owner in writing at the time of application.

Application: A complete submission of information and plans as required by RSA 155-E and the Town of Pembroke Earth Excavation Regulations.

Application for Amendment: An application to amend an existing excavation permit pursuant to the provisions of RSA 155-E:6.

Aquifer: A geologic formation, group of formations, or part of a formation that is capable of yielding quantities of ground water usable for a municipal or private water supply.

Authorized Agent: The Designee of the Planning Board for the Town of Pembroke

Board: The Planning Board of the Town of Pembroke, New Hampshire.

Buffer: The area between the excavation site and (1) a highway right-of-way (2) an abutting property line, or (3) a river, stream, wetland, or protected wetland.

Commercial Excavation: Excavation of earth intended for commerce, this may also include excavation that is strictly conducted for the purpose of alteration, renovation, improvement or construction to the property on which the excavation takes place. Any material leaving the property for whatever reason is considered to be a commercial operation.

Compliance Review: A mandatory review of any Excavation Permit, which has been granted by and is under the jurisdiction of the Town of Pembroke Planning Board (See Article XV (A)(2)).

Contiguous: Land for which its perimeter can be circumscribed without interruption in common ownership, except for roads or other easements, in a single town.

Dimension Stone: Granite 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 building 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.

Earth: Sand, gravel, rock, topsoil, 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.

Commercially Useful Volume: The volume of earth which is commercially useful is 1,000 cubic yards or more per calendar year.

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

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Excavation Area Limits: The location of the final proposed top of slope of any and all proposed excavation areas on an excavation site which will exist upon completion of the project as displayed on the approved final plan in accordance with the provisions of the Town of Pembroke Earth Excavation Regulations.

Excavation site: Any area of contiguous land in common ownership upon which excavation takes place.

Existing Excavation: any excavation, as described in RSA 155-E:2, I, 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 and had submitted the report as required by RSA 155-E:2, I, (d).

Expansion: 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.

Express Standards: Those operational and reclamation standards outlined in these Regulations. Express standards are considered to be the minimum standards applied to any excavation that requires a permit.

Geomorphic Assessment – The process of surveying a river, or some other component of the natural landscape, such as a hillside, for the purpose of determining its natural form and condition, and to identify, to the extent possible, the processes that are influencing said form and condition.

Incidental Excavation: Excavation of earth which has been granted an exception from an excavation permit by the regulator.

Minor Topological Adjustment: A one time removal of earth from the site of less than 1,000 cubic yards that is exclusively necessary to change the physical configuration of the land for a specified use or situation.

Normal Landscaping: The on-site alteration and contouring of the land exclusively devoted to improving the functional utility and planting of the grounds.

Noise: Any undesired audible sound that annoys or disturbs humans or that causes or tends to cause an adverse psychological or physiological effect on humans.

Operational Equipment: The operation of any motorized equipment or vehicles or the use of back-up warning devices or other noise-generating devices. It includes excavation activities, as well as any activity ancillary to excavation, such as land clearing or reclamation, which generates noise from power equipment such as bulldozers or chainsaws. The term does not include the use of personal passenger vehicles to access or inspect the site or normal conversation.

Overburden: Earth and other natural materials over and around the minerals which will be displaced by excavation operations.

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Permit: Permission granted by the Planning Board after a Public Hearing to engage in excavation activities in accordance with these regulations and with the requirements of RSA 155-E, subject to any reasonable conditions set forth by the Planning Board.

Reclamation: The restoring of an excavation site to a standard at least equal to those outlined in Article VIII of the regulations.

Regulator: The Pembroke Planning Board.

Silvicultural Excavation: Excavation of earth by the owner of the land to be used on the owners land exclusively for forestry use.

Stationary Manufacturing and/or Processing Plants: Facilities which are permanently placed on a site for the purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated earth materials. Stationary manufacturing/processing plants can also include asphalt & concrete plants.

Structure: A combination of materials that form a construction for use, occupancy or ornamentation, whether installed on, above or below the surface of land.

Temporary Processing Equipment: Machinery or equipment placed temporarily on a site for the purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated materials.

Trip: A single or one-direction vehicle movement with either the origin or the destination (exiting or entering) inside a study site. For trip generation purposes, the total trip for a land use over a given period of time is the total of all trips entering plus all trips exiting a site during a designated time period.

Visual Barrier: A human-made structure or natural vegetative growth. This includes, but is not limited to vegetated fence rows; forested land whether managed or undisturbed, natural or planted. Where no effective barrier exists, the Board may require the planting of a row of evergreens at least 4 feet in height at planting, which will grow to a dense vegetative buffer no less than 6 feet high, or the construction of a Board-approved fence that is opaque, neatly maintained, and not less than 6 feet high.

Well: A hole or shaft sunk into the earth to tap an underground supply of water.

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ARTICLE II. Excavation Projects

Projects may also be subject to site plan review at the determination of the Code Enforcement Officer when a zoning determination is issued.

§197.6. Projects Requiring a Permit.

The following projects require a permit to excavate within the Town of Pembroke per RSA 155-E:2. Performance bonds are required for projects requiring a permit.

- A. Excavations that **commenced operations after August 24, 1979** without first obtaining a permit, unless specifically exempted by Article IV below. (155-E:2-I)
- B. Excavations that have lawfully operated prior to August 24, 1979 and wish to **expand the excavation area beyond the Pembroke town line or to an area which at all times subsequent thereto has been contiguous to and in common ownership with the excavation site** of that date and has been not appraised and inventoried for property tax purposes as part of the same tract as the excavation site as of that date. (155-E:2-I(b))
- C. Excavations after August 4, 1989 that involve **quarrying or crushing bedrock** to occur for the first time on any excavation site. (155-E:2-I(e))
- D. Excavations that from an area 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 wish to **expand to any non-contiguous lands**. (155-E:2-III(a))
- E. **Expired permits or amendments to existing permits.**
- F. Excavations that have **not been granted an exception** under RSA 155-E:2-a.

§197.7. Projects Exempt from a Permit.

The following projects do not require a permit, but are nevertheless subject to the Minimum and Express Operational Standards set forth in RSA 155-E:4-a and Minimum and Express Reclamation Standards set forth in RSA 155-E:5 and 155-E:5-a.(155-E:I(c)). In the event of a question regarding compliance, the Board may require the owner/operator to come before the Board and submit such information as may be necessary to demonstrate compliance with said standards.

- A. Existing Excavations. Excavations which lawfully existed as of August 24, 1979 from which earth material of sufficient volume (1,000 cubic yards) to be commercially useful has been removed during the 2-year period before August 24, 1979, subject to the following:
 - (1) Such an excavation shall be exempt from local zoning or other ordinances regulating the location of the excavation site, provided that at the time operation began it was in compliance with any local ordinances that may have been in effect.

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- (2) The owner or operator of such an excavation area shall have filed an excavation report per RSA 155-E:2(I)(d) with the Board no later than August 4, 1991.(155-E-I(d))
- B. Other Excavations. The following projects do not require a permit, but remain subject to the Minimum and Express Operational Standards set forth in RSA 155-E:4-a and Minimum and Express Reclamation Standards set forth in RSA 155-E:5 and 155-E:5-a.
- a. Compliance with these standards is mandatory in order to retain the non-permit status. Loss of such non-permit status can occur only after the Board has given written notice that the excavation is not in compliance and the owner has failed to bring it into compliance within 30 days of receipt of such notice as per RSA 155-E:2, III(a).
- (1) Excavations from a site which on August 4, 1989 was contiguous to or was contiguous land in common ownership with stationery manufacturing and process plants which were in operation as of August 24, 1979 and which use earth obtained from such excavation site. RSA 155-E:2, III(a).
 - (2) Excavations from a site which on August 4, 1989 was contiguous to or contiguous land in common ownership with stationary manufacturing and processing plants for which local or state permits has been granted since August 24, 1979 and before August 4, 1989, which used earth obtained from such site. The operation and reclamation of such excavations shall continue to be regulated by such permits and any renewals or extensions thereof by the permitting authority or authorities. RSA 155-E:2, III(b).
 - (3) Highway. An excavation performed exclusively for the lawful construction, reconstruction, or maintenance of a Class I, II, III, IV, or V highway. A copy of the pit agreement executed between the pit owner and the governmental unit shall be filed with the Board prior to excavation. Other provisions of RSA 155-E:2-IV are to be complied with.
- C. Other Exceptions. The following projects do not require an excavation permit, but are required by the Board to be in compliance with Minimum and Express Operational Standards set forth in RSA 155-E:4-a and Minimum and Express Reclamation Standards set forth in RSA 155-E:5 and 155-E:5-a:
- (1) Excavation that is exclusively incidental to the construction or alteration of a building or structure, of a parking lot or way, including a driveway on a portion of the premises where the removal occurs. This excavation cannot commence until all required state and local permits or approvals have been issued. Any excavation exceeding 1 acre of impacted area shall require a permit under these Regulations. (155-E:2-a-I(a))
 - (2) Excavation that is incidental to agricultural or silvicultural activities, normal landscaping, or minor topographical adjustment. (155-E:2-a-I(b))
 - (3) 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). (155-E:2-a-I(c))

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§197.8. Abandoned Excavations.

Any excavation for which the affected area has not been brought into complete compliance with the reclamation standards of these regulations shall be considered abandoned if:

- A. No material of sufficient weight or volume to be commercially useful has been removed from the site during any 2-year period either before, on, or after August 4, 1989. (155-E:2.II (a)(1))
- B. The excavation is in use, but either has not been brought into compliance with the incremental reclamation standards of this regulation, or a bond has not been posted and a reclamation timetable has not been approved by the Board. (155-E:2.II (a)(2))
- C. The owner or operator of the excavation has neither secured a permit pursuant to these regulations nor filed a report of existing excavation pursuant to 155-E:2.I(d). (155-E:2.II (a)(3))
- D. In the event the Board determines that any abandoned excavation presents a hazard to the public health, safety or welfare, the owner may be required, following a public hearing, to comply with the timetable and bonding requirements outlined above, or to complete reclamation within a reasonable period of time. Should reclamation not be completed, the Board may request the Town to authorize reclamation at the Town's expense. The Town's costs shall constitute an assessment against the owner, and shall create a lien against the property. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes. (155-E:2.II (b))

§197.9. Stationery Manufacturing Plants

Areas previously excavated must be reclaimed in accordance with RSA 155-E:5. In order not to reclaim the area upon which a stationery manufacturing plant would reside, an exception must be obtained under 155-E:5-b, Exceptions.

Prior to the exception, applicants for stationery manufacturing plants must follow the Town of Pembroke Site Plan Review Regulations and obtain site plan approval. All other local, state, and federal approvals must be in place prior to granting the exception, including but not limited to Zoning Board of Adjustment Special Exception. Pollution and noise controls must also be in place.

§197.10. Prohibited Projects

The Board shall not grant a permit for projects with the following prohibitions:

- A. For excavations which will not be in compliance with the operational minimum and express standards outlined in **§197.12** of these regulations. (155-E:4-I)
- B. For excavations within 100 feet of the boundary of a disapproving abutter or within 100 feet of an approving abutter unless approval is requested by said abutter.

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- C. Where the excavation is not permitted by zoning or other applicable ordinances, unless a Special Exception is granted in certain zones in the Town. (155-E:4-III)
- D. 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, impact to groundwater or danger from operation. (155-E:4-IV)
- E. Where visual barriers existing along the outermost boundary of the proposed excavation area would be removed, except to provide access to the excavation. Where removal of a visual barrier is required for this purpose, the width of removal shall not exceed 50 feet for access. (155-E:4-V)
- F. Where an applicant cannot demonstrate to the Planning Board adequate safeguards to prevent damage to a known aquifer, as designated by the United States Geological Survey. (155-E:4-VI)
 - (1) Excavation operations shall be performed in such a manner as to not cause damage to any aquifer. The Planning Board shall determine whether or not damage to the aquifer will be incurred by considering the following criteria:
 - i. The excavation shall not detrimentally affect the quality of groundwater contained in the aquifer by directly contributing to pollution or by increasing the long term susceptibility of the aquifer to potential pollutants;
 - ii. 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.
 - iii. The Planning Board may require that the applicant provide data or reports prepared by a professional groundwater consultant, which assess the potential aquifer damage that could be caused by the proposed excavation project. The Planning Board may require that the information submitted be reviewed by its own groundwater expert at the applicant's expense.
- G. When an applicant has not received necessary land use permits from state or federal agencies. (155-E:4-VII)
- H. Where the project cannot comply with the reclamation requirements of 155-E:5, 155-E:5-a, and **Article IV** of these Regulations. (155-E:4-VI)

§197.11. Non-Conforming Expansions.

Expansion of existing excavations permitted by local zoning in effect on August 4, 1989 that are located in an area in which excavations are no longer allowed, or when such excavation is permitted by Special Exception, may be restricted or modified with conditions by the Planning 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. Any potential impacts

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will be determined by the Board during a duly noticed public hearing. (155-E:2-I(b)). The following criteria will be taken into consideration.

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

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ARTICLE III. Operational Standards

§197.12. Minimum and Express Operational Standards.

For excavations exempt from a permit, the express operational standards of RSA 155-E:4-a shall apply. (155-E:2-I(c)) For those excavations requiring a permit, the following standards are considered to be the minimum. In addition, reasonable conditions, as deemed necessary by the Board, and which are more stringent than these minimum standards, may be imposed pursuant to RSA 155-E:8.

- A. No excavation shall be permitted below road level within 50 feet of the right-of-way of any public highway as defined in RSA 229:1 unless such excavation is for the purpose of said highway. (155-E:4-a(I))
- B. Proximity to Abutting Properties.
 - (1) No excavation shall be permitted within 100 of the property line of a disapproving abutter, or within 100 feet of the property line of an approving abutter unless approval is granted, in writing, by said abutter. In no case shall the Planning Board allow blasting any closer than 50 feet from a property line.
 - (2) No excavation shall be permitted any closer than 150 feet to an existing dwelling or building site for which a building permit has been issued at the time an excavation permit is granted.
- C. Vegetation shall be maintained or provided within the peripheral areas required by **§193.12-B.1 and 2** above. (155-E:4-a(III))
- D. No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with State laws or rules pertaining to the storage of such materials. (155-E:4-a(V))
- E. Where temporary slopes will exceed a 1:1 grade, a fence or other suitable barricade shall be erected to warn of danger and/or limit access to the site. (155-E:4-a(VI))
- F. Appropriate drainage systems shall be provided and maintained to prevent the accumulation of free standing water for prolonged periods. (155-E:4-a(IV))
 - (1) Excavation practices which result in continued siltation of surface waters are prohibited.
 - (2) Excavation practices which result in any degradation of water quality or quantity of any public or private water supplies are prohibited.
 - (3) No excavation shall be permitted within the Aquifer Conservation District or Shoreland Protection District without a Special Use Permit.
 - (4) No excavation within 75 feet of any great pond or navigable river, or within 25 feet of any natural water course which normally flows throughout the year, or any naturally occurring standing body of water less than 10 acres, prime wetland as

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designated in accordance with RSA 482-A:15, I or any other wetland greater than 5 acres in area as defined by the Wetlands Board. (155-E:4-a(II-a))

- G. Prior to the removal of topsoil or other overburden material from any land area that has not yet been excavated, the excavator shall file a reclamation bond or other security as prescribed by the regulator, sufficient to secure the reclamation of the land area to be excavated. (155-E:4-a(VII))

§197.13. Performance Standards.

The applicant shall maintain the site according to the following standards. The applicant may request, in writing, a Planning Board exception, to one or more of these site standards and conditions, or a waiver under **§193.38, Waivers**, for those items which are not required by Statute. When an exception needs to be filed with the Registry of Deeds, the amount of the filing fee shall be removed from the Legal Escrow account. All supplemental studies, Plans, and other materials shall be conducted, designed, and performed in accordance with best management practices, where applicable.

- A. Topsoil. Prior to excavation of materials, all topsoil shall be stripped and stored on-site for site reclamation upon the completion of the excavation project. This shall be done in a phased manner to minimize possible erosion. Topsoil, whether on site or hauled in, shall consist of a loose friable soil with no admixture, refuse, or material toxic to plant growth. Topsoil shall be free from stones, lumps, stumps, or similar objects, with no more than 5% to 10% being greater than 2 inches but, in no case, greater than 4 inches. Prior to stripping material to be used as topsoil, it shall have demonstrated by the occurrence upon it of healthy crops, grass or other plant growth, that it is of good quality.
- B. Visual Barriers. A vegetative or topographical visual barrier or buffer of a minimum of 50 feet shall be maintained between surrounding roads, commercial and residential land uses and the excavation site and shall be indicated as such on the excavation plan. The regulator shall direct the applicant as to specific requirements for the proposed excavation site.
- C. Timber removal. The applicable New Hampshire statutes and regulations pertaining to forest practice and timber harvesting shall apply to the removal of vegetative cover at excavation sites.
- D. Access Roads. Access roads leading to and from the excavation site shall intersect existing streets and roads at locations that have been duly approved by State and local officials and in a manner that will not endanger the safety of highway users and local residents. The provisions of RSA 236:13 and 14 shall be adhered to by the applicant and shall be shown on the excavation plan. Access roads shall be obliterated upon depletion and/or completion of the project unless requested to be retained by the regulator. Access over Class VI roads, bridges, or ways shall be defined in writing and made a part of said plan. The provisions for access under the Subdivision Regulations for the Town of Pembroke Editor's Note: See Ch. 205, Subdivision of Land shall be adhered to by the applicant and shall be shown on the excavation plan.

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- E. Vehicular Barrier. A locked barrier to prohibit vehicular access when the excavation site is not in operation shall be required. A means of access for the Fire Department shall be provided as required by the Designee of the Planning Board (i.e., keyed entry box).
- F. Hours of Operation. Removal operations shall not be conducted closer than fifty (50) feet to a public street (155-E:2-VI(b)(2), 155-E:4-ii, 155-E:4-a-II). Start-up time for all operational equipment associated with excavation and removal of material from the site shall be no earlier than 6:30 a.m. and shall be kept at low idle, with no movement of said equipment permitted until 7:00 a.m.; all processing must be shut down by 7:00 p.m. Monday through Friday and termination of removal from the site shall be no later than 6:00 p.m. Operations are permitted from 6:30 a.m. to noon on Saturdays, with all activity to cease at noon. No operations shall take place on Saturday afternoons or Sundays.
- G. Dust Control. A dust control plan shall be submitted by the Applicant and dust control measures will be instituted and monitored by the Planning Board or its duly authorized agent, where necessary and at the expense of the Applicant, to protect abutting property owners. No fugitive dust shall leave the excavation site.
- H. Crushing. Crushing may not be introduced without a written request submitted to the regulator who will hold a duly-noticed public hearing. Additional restrictions may apply.
- I. Noise Control Study and Abatement Plan. The applicant shall, utilizing recognized methodology and qualified personnel, determine the ambient noise level, utilizing the appropriate sound scale, at the property lines of the parcel(s) which contain the proposed excavation area. The applicant shall provide a Noise Control and Abatement Plan which will manage noise emanating from operations to a level not to exceed 5 decibels, at the appropriate scale, over the ambient level at any property line or at all property boundaries, including public rights of way. To ensure continued compliance with the established noise criteria, continuous monitoring shall be conducted at several locations surrounding the site by means of weatherproof noise monitors, installed semi-permanently and programmed to operate continuously. These shall be programmed to provide hourly statistical sound levels, which will be downloaded monthly, with the data submitted to the Town by a third party, at the expense of the applicant, to demonstrate continued compliance. Logs shall be maintained for 30 days by the applicant.
- J. Road Repair. The applicant shall be held liable for the repair of Town-maintained roads and bridges which are damaged as a result of hauling earth from the site at any time during the course of site operation. The Planning Board shall require the submission of performance security, according to the provisions of **Article XI** of these Regulations, to ensure adequate repair of damaged road segments following site restoration. During seasonal postings of local roads by the Board of Selectmen, hauling shall be coordinated with the Public Works Director, who reserves the right to regulate said hauling in accordance with State law.
- K. Maintenance of Traffic. It shall be the Applicant's responsibility to provide and bear the cost for adequate means of traffic control at all hours of excavation operations. Said means shall include, but not be limited to, flag persons, signage, barriers, traffic details, warning flashers and lights, special duty police details and gates. Adequacy of traffic maintenance shall be determined by the Designee of the Planning Board. Should the

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Designee of the Planning Board determine that traffic is not being adequately maintained, said determination shall be considered a violation of the Excavation Permit.

L. On-site Storage of Solid Waste.

- (1) Excavation site shall be kept free of all discarded waste material; i.e., machine parts, cables, cans, etc. In addition, **no** solid and/or hazardous waste, septage, dredge spoils, or organic waste and debris shall be disposed of on the excavation site unless specifically authorized and/or permitted by the appropriate federal, state, or local authority(s), including state approval under RSA 149:M.1 or other appropriate State regulations.
- (2) Stumps and slash generated during the site preparation may be chipped on site and the resulting chips used on site for erosion control, or removed from the site, or stumps and slash may be land filled if said disposal site is approved by the State of New Hampshire in accordance with RSA 149:M, NHDES Chapter Env-Sw 1000, or current State regulation. Stumps and brush 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 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);
 - d) the estimated quantity of stumps and slash disposed on the property; and
 - e) a statement regarding the preventative measures taken to preclude the development of sink holes and erosion.
- (3) The site will not be used for storage of junk vehicles, machinery, etc. as defined in RSA 236:112.
- (4) The resulting stumps and slash may alternatively be composted on site.

M. Earth, concrete, and asphalt that did not originate from the site shall not be brought in, or stored upon, the site without prior approval by the regulator.

N. Tree Seedling Specification. Non-homogenous plantings. Plantings shall be native plantings capable of surviving in droughty conditions. A minimum of eight indigenous varieties or species per acre shall be planted.

- (1) Tree seedlings shall be two (2) year old plants or plants furnished under standard nursery order.
- (2) Seedlings without center buds and seedlings without pruned roots will not be accepted.

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- (3) Seedlings shall be set out in accordance with accepted horticultural practices at eight (8) foot spacing in both directions.

O. Seeding Procedures. All seeding shall be accomplished in conformance with the State of New Hampshire, Department of Transportation, Standard Specifications for Road and Bridge Construction, latest edition, Section 644-Grass Seed; Sub-Sections 1.1 through 3.7.3 inclusive, as may be amended from time to time. Topsoil shall be tested for nutrient content prior to seeding to enable application of proper soil amendments. Results of the testing and a list of amendments to the soil shall be provided to the Town, along with certificates attesting to seed compliance with DOT standards, however, as a minimum, there shall be at least 1 soil sample for every 500 cubic yards of loam to be installed.

P. Revegetation

- (1) All disturbed areas shall be spread with topsoil or any other soil capable of maintaining vegetation, and shall be planted with tree seedlings and/or grass suitable to prevent erosion.
- (2) At a minimum, areas from which trees have been removed shall be replanted in accordance with **§197.13.N** of these Regulations.
- (3) At a minimum, areas where low brush or grass has been removed shall either be planted with seedlings or a seed mixture conforming to the standard in XIII(B)(16) of these Regulations.

Q. Signage

- (1) All excavation sites shall be properly identified at all vehicle access points by signs clearly stating name, owner, and permit number.
- (2) Perimeters of excavation sites shall be posted with signs at a maximum 50 foot interval, notifying trespassers of potential danger.

R. Slopes. The regulator may in its discretion specify excavation slopes that will provide a slope to minimize erosion from reclamation work or heavy rain and snow load. A slope of three to one (3:1) will generally be considered acceptable, except for a long slope where a bench may be required. For shorter slopes, when the soil is suitable, a two-to-one (2:1) slope may be deemed acceptable.

S. Proximity to Public. All equipment for sorting, washing, crushing, drying, processing and treating, or other operation machinery, shall not be used closer than one hundred (100) feet from any public street or from any adjoining lot line.

T. Lateral Support. Lateral support shall be maintained for all adjacent properties as determined by a registered professional engineer.

U. Rate of Reclamation. All excavations must be reclaimed so as to comply with RSA 155-E:5 and this chapter by the end of one (1) year following the cessation of excavation operations or the expiration of a permit. Except for excavation sites of operating

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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 RSA 155-E:5, within 12 months following such depletion or 2-year non-use to comply with incremental reclamation provisions of 155-E:5-a.

- V. **Setback.** If the proposed site is close to surface water, such as a stream, river or pond, particular attention shall be paid to the setback of the excavation from the water in accordance with 155-E:4-a-11-a. The regulator will need to be assured that, even in the case of flood, the setback will be sufficient to prevent any water which may have entered the excavation from reentering the surface water source. All setbacks must be in compliance with NH Department of Environmental Services (NHDES) regulations and the Environmental Protection Agency (EPA) regulations.
- W. **Reporting.** All excavation operators shall report the amount of material removed to the Designee of the Planning Board. Permitted excavations shall submit an estimate of the total volume to be excavated during the duration of project's permit. These reports shall be submitted biannually at the end of July and December. The Designee of the Planning Board shall determine whether an on-site inspection is necessary.
- X. **Processing Machinery.** 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.
- Y. **Fuel Storage and Refueling.** All fuel storage and refueling shall take place in a secure designated area constructed especially for said purpose. No underground storage of fuels will be allowed. The Excavation Plan shall clearly show refueling area and facilities. No fuels, lubricants, or other toxic or polluting materials shall be stored on-site unless in compliance with state laws or rules pertaining to such materials in accordance with 155-E:4-a-V.

§197.14. Depth of excavation.

- A. The maximum depth of excavation shall be a minimum of eight (8) 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.
- B. The regulator shall grant an exception for excavations which propose to dig within the eight (8) feet above seasonal high water table, provided the following conditions are met:
 - (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;
 - (2) The applicant provides a plan which depicts the proposed depth of excavation and its relation to the seasonal high water table;

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- (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
 - (4) Where an excavation 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.
- C. Written notice of such exception shall be recorded in the registry of deeds, and one copy filed with the department of environmental services (155-E:11-II)

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ARTICLE IV. Reclamation Standards

§197.15. Minimum and Express Reclamation Standards for No Permit Required.

For excavations exempt from a permit, the express reclamation standards set forth in RSA 155-E:5 shall apply.

§197.16. Minimum and Express Reclamation Standards for Permit Required.

For those excavations which require a permit, the following minimum standards shall apply. In addition, reasonable conditions, as deemed necessary by the Board, and which are more stringent than these minimum standards, may be imposed pursuant to RSA 155-E:8. Within twelve (12) months after the expiration date in the permit issued under these Regulations or after the completion of the excavation or any of its phases, whichever first occurs, the owner of the excavated area shall reclaim the areas affected by the excavation to meet each of the following minimum standards:

- A. Areas visible from a public way, or by a residential abutter, from which trees have been removed, shall be replanted with tree seedlings as described in **§197.13.N-P** and planted in accordance with acceptable horticultural practices. (155-E:5-I)
- B. 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 or any other soil capable of maintaining vegetation and shall be planted with tree seedlings and/or grass suitable to prevent erosion. (155-E:5-I)
- C. Where a floodplain has been excavated, a geomorphic assessment shall be made prior to reclamation to determine if adjusted channel conditions will be impacted and what degree and type of fill will be most suited to preserve, among other issues, the hydraulic conductivity of the aquifer. An amended reclamation plan in conformance with this geomorphic assessment shall be developed and followed.
- D. Earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of. Topsoil shall remain on site. (155-E:5-II)
- E. All slopes, except 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. With no exception shall any slope be steeper than 2:1. A 3:1 slope is preferred to facilitate seeding. (155-E:5-III)
- F. Any standing bodies of water created by the excavation that are judged by the Town of Pembroke to constitute a hazard to health and safety shall be eliminated. (155-E:5-IV)
- G. 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. (155-E:5-V)
- H. Any excavation project which requires a permit from the Water Division of New Hampshire Department of Environmental Service pursuant to RSA 485-A:17 shall abide

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by the reclamation standards which are most stringent, whether they be in these Regulations or the alteration of terrain permit. Copies of all such permits shall be filed with the Board. (155-E:5-V)

§197.17. 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 **Article IV** 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. (155-E:5-a) Any permit holder failing to reclaim in accordance with a permit shall be subject to **§197-37.D**, entitled "Suspension of Permit."

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ARTICLE V. Exceptions to Operational and Reclamation Standards

§197.18. Exceptions Granted by Board.

Due to the diverse nature of excavation operations, which vary in scale and scope, and due to the varying conditions of the land to be excavated, the Board may, upon written application following a duly-noticed hearing, grant any exception in writing to the standards contained in 155-E:4-a, 155-E:5, 155-E:5-a, and **Articles III and IV** for good cause shown. (155-E:5-b)

- A. To show good cause, the applicant must demonstrate:
 - (1) The granting of the exception will not be detrimental to the public safety, health, or welfare or injurious to other property;
 - (2) The particular physical surroundings, shape or topographical conditions of the specific property involved, will create a hardship to the owner as distinguished from a mere inconvenience, if the strict letter of these Regulations is carried out.
 - (3) Specific circumstances indicate that the exception will properly carry out the spirit and intent of these Regulations.
- B. Procedures. The procedures for exception hearings shall conform with 155-E:7.
 - (1) A petition for any such exception shall be submitted in writing by the applicant at the time the application is filed for consideration by the Planning Board. The petition shall state fully the grounds for the exception and all of the facts relied upon by the petitioner.
 - (2) Notice of hearing on the requested exception shall be provided to all abutters, and may be included as part of a notice of hearing on the application for an earth excavation permit.
 - (3) If an applicant submits a petition for exception after an application for an earth excavation permit has been filed, and notice has been given to abutters, a new notice to abutters shall be provided giving notice of the petition for exception.
- C. If the exception request is granted then the Board shall issue a written decision indicating what standards are being relaxed and include reasonable alternative conditions or standards. The Board's decision may be appealed in accordance with RSA 155-E:9.
- D. When regulations are not required by Statutes, the procedures for waiver of requirements of these Earth Excavation Regulations are provided in **§193.38, Waivers**.

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ARTICLE VI. Blasting

§197.19. Blasting Application and Certification.

If an 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, along with the rules and regulations for Explosives promulgated by the Division of State Police, NH Department of Safety. No blasting will occur without receiving state and local approval during the permitting process.

§197.20. Local Blasting Permit Required.

- A. Blasting permits are issued and administered by the Designee of the Planning Board. Blasters shall be responsible to pay local blasting permit fees, as may be revised from time to time by the Board of Selectmen.
- B. Blasting permits shall not be issued for excavation sites until an excavation permit has been issued by the Planning Board. The Designee of the Planning Board shall confirm with the Planning Department that conditions of the excavation permit which are related to blasting have been completed and documentation provided prior to issuing a blasting permit.

§197.21. Additional Minimum Requirements for Blasting.

In recognizing that blasting for excavation sites can be intense and frequent for short-term projects or can occur over a period of years, the Planning Board must collect information that will enable it to determine a project's ability to comply with the goals as specified in **§197.4** of these Regulations. To that end, the Planning Board shall require from an applicant, at a minimum, but not be limited to:

- A. Studies that will provide analysis of potential for groundwater or aquifer contamination from blasting, (i.e. – hydro geologic study, etc.);
- B. Detailed Blasting Plan to include drilling, explosives handling and loading procedure; observation procedures; blast evaluation procedures; procedures for handling and storage of blasted rock; and spill prevention measures and mitigation;
- C. As a condition precedent of an excavation permit, the Planning Board may require the Applicant to conduct pre-blast surveys on all structures and wells not controlled by the applicant up to within 2000 feet of the excavation area limits. Applicant shall provide a detailed record of each survey to the Designee of the Planning Board and the Planning Department for placement in the project file. Applicant shall be responsible for providing updated information annually over the term of the excavation permit.

§197.22. Abutter Notification

Notification to abutters about blasting dates and times will be provided a minimum of 5 days in advance. A copy of the notification shall be provided to the Fire Chief, Planning Department, and Code Enforcement Officer within the same timeframe.

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ARTICLE VII. Application for Excavation

§197.23. Application Requirements.

The applicant for an earth excavation permit shall submit to the Board a completed application form, an excavation and a reclamation plan, waiver requests, any other submission documents as requested, and applicable fees. Eight (8) full size copies of all plans, 25 sets of 11" x 17" plans plus one (1) for each abutter on the notification list, shall be filed with the Planning Department prior to a scheduled Technical Review Committee and/or Board meeting, and one copy shall be sent to the Conservation Commission. A registered land surveyor and/or registered engineer shall prepare the Excavation Plan at a scale of 1" = 100', or as required by the NHDES Alteration of Terrain Permit. Refer to **Earth Excavation Fee Schedule** for applicable fees, which must also be submitted with the application. The plans shall be reviewed by Designee of the Planning Board and other consultants as needed at the expense of the applicant.

§197.24. Excavation Plan Sheets and Supporting Information.

The excavation plan shall address specific actions to be taken on the site relative to fuel and chemical handling and storage, blasting, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons. At a minimum, the excavation plan sheets should contain what is required for the NHDES Alteration of Terrain Permit (NHAoT). Where these regulations conflict with the NHAoT requirements, the more stringent regulation applies. The Plan shall also show or refer to and be accompanied by the following items:

A. Sheet 1 Entitled "Cover Sheet: shall contain:

- (1) The name(s) and address(es) of the owner(s) and the excavator (if different) and signature boxes.
- (2) The name(s), address(es), signature(s) and professional stamp(s) of the person(s) preparing the plan and the date of plan preparation.
- (3) Location or site vicinity map at a legible scale, with site highlighted and adjacent roadways and rivers.
- (4) Sheet index to plan sheets.
- (5) Project title, date, bar scale, magnetic and true north arrows, locus map, tax map and lot number(s), and legend (if applicable).
- (6) Table to reflect subsequent revisions to the plan.
- (7) General Notes section of the plan set.
- (8) Planning Board signature box in accordance with Subdivision Regulations Checklist, 205 Attachment 1.
- (9) Other items as identified by the Planning Board or Designee of the Planning Board.

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B. Sheet 2 Entitled "Boundary Plat" shall contain:

- (1) The name(s) and address(es) of the owner(s) and the excavator (if different).
- (2) The name(s), address(es), signature(s) and professional stamp(s) of the person(s) preparing the plan and the date of plan preparation.
- (3) A complete list of abutters, showing their names, addresses, tax map and lot numbers and location of their parcels in relation to the proposed excavation site.
- (4) Date, bar scale, magnetic and true north arrows, locus map, 1"x7" Merrimack County Registry of Deeds block, tax map and lot number(s), acreage, and legend.
- (5) Table to reflect subsequent revisions to the plan.
- (6) Adjacent roads and all waterbodies.
- (7) Survey bearings on all of the subject excavation lots.
- (8) Two-foot (2') to five-foot (5') topographic contours, with source cited in the notes.
- (9) Zoning district boundaries of the proposed area and within 200 feet of the excavation site property lines.
- (10) Lot lines, public streets, driveways, intersections, rights-of-way, and all easements within 200 feet of the excavation site property lines.
- (11) Sketch and description of the location and boundaries of the proposed and any existing excavations, the area in square feet and acres, and affected towns.
- (12) If there will be blasting as part of the proposed project, utilizing publicly available information, Applicant will show the location of property lines, public streets, driveways, intersections, rights-of-way, easements, dimensions and bearings of existing buildings, structures, and community wells/water systems within 500 feet of the property lines of the parcels upon which excavation will take place.
- (13) Other items as identified by the Planning Board or Designee of the Planning Board.

C. Sheet 3, Entitled "Existing Conditions" shall include:

- (1) The name(s) and address(es) of the owner(s) and the excavator (if different).
- (2) The name(s), address(es), signature(s) and professional stamp(s) of the person(s) preparing the plan and the date of plan preparation.
- (3) All surface drainage patterns including wetlands and standing water. Wetlands boundaries shall be delineated and stamped by a certified wetlands scientist.

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- (4) Location and description of existing access roads, including width and surface materials.
- (5) Floodplain elevations and elevation of highest known flooding on site.
- (6) Any easements on the excavation site.

D. Sheet 4, Entitled "Excavation Plan" shall include:

- (1) The name(s), address(es), signature(s) and professional stamp(s) of the person(s) preparing the plan and the date of plan preparation.
- (2) 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 (155-E:3-I)
- (3) Date, bar scale, magnetic and true north arrows, locus map, tax map and lot number(s), acreage, and legend.
- (4) Location and boundaries of the proposed excavation, the number of acres to be involved in the project, and the municipalities and counties in which the project lies. (155-E:3-II)
- (5) The size, depth, and slope of the proposed excavation and the estimated duration of the project. (155-E:3-IV)
- (6) Test pits and test pit data, which shall be stamped by a certified soil scientist or a licensed professional engineer that is a licensed also a licensed septic designer in the State of New Hampshire.
- (7) The location of test pits that extend to the seasonal high water table, ledge, or a minimum of six feet below the maximum proposed excavation depth, including soils data. Boring logs may be submitted separately and referenced on Sheet 6.
- (8) The location and design of site access roads leading to and from public highways.
- (9) The elevation of the highest annual groundwater table within or next to the proposed excavation, including width and surface materials. (155-E:3-V)
- (10) Proposed fencing, buffers or other visual barriers, to public highways and around the site, including height and materials, and existing visual barriers to be retained, as per RSA 155-E:4-V, 155-E:3-III, and 155-E:4-a(III).
- (11) Proposed facilities - if any covered structures other than refueling and/equipment storage areas are proposed, the application may be subject to the Pembroke Site Plan Review Regulations. The Designee of the Planning Board shall make the determination as to whether site plan review is required when a zoning determination is issued.

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- (12) Proposed contours in appropriate increments of 2 to 5 feet, depending on the scope of the project, with spot grades in the flat areas to identify the slope across the bottom. No final grade shall consist of slopes less than 1%.
- (13) Narrative description on all measures to control erosion, sedimentation, water pollution, air pollution and hazards to human safety.
- (14) Planned sequencing or applications for permits showing excavation activities, the location of stockpiles, loam, temporary vegetation and material stockpiles areas, along with any other information as may be requested by the Board.
- (15) Narrative description on the phasing, volume of material to be removed in each phase, total volume of material removed, approximate timing of each phase and the overall duration of the earth excavation operation.
- (16) Information on truck and vehicle trip traffic, designated routes, hours of operation, maximum number of daily trips and weight limits and methods to prevent materials from the site being tracked onto public roadways.
- (17) A description of the proposed equipment, including but not limited to trucks (loaded weight) and crushers, including any water supply and disposal. In addition, plans or descriptions on machine shops and any other equipment must be provided to the regulator with the excavation plan.
- (18) If any waste material is planned to be stockpiled, or stored on the site, the location shall be indicated on the excavation plan. No earth material shall be stockpiled or located outside the permitted area.
- (19) Distances between the limits of the proposed excavation and the closest property lines.
- (20) Aquifer limits/location as identified by the United States Geological Survey and Section 11.24 of the Pembroke Zoning Ordinance. Editor's Note: See Ch. 143, Zoning.
- (21) Any easements encumbering the excavation site.
- (22) An estimate of the total volume of earth to be excavated.
- (23) Other items as identified by the Planning Board or Designee of the Planning Board.

E. Sheet 5, Entitled "Reclamation Plan," shall include the following:

- (1) In accordance with Article VII Minimum and Express Reclamation Standards and RSA 155-E:5, the applicant shall submit a reclamation plan to the regulator. In addition, the character of the restored landscape shall blend with the surrounding natural features. The reclaimed site shall be rendered in a condition that will not preclude its future use in a manner consistent with the Zoning Ordinance and Map.

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- (2) The Reclamation Plan shall be drawn at the same scale and use the same base survey information as the Excavation Plan. The Reclamation Plan shall address the effects of the proposed excavation on soil, surface and groundwater, vegetation, overburden topography, and fill material, and should address future land use consistent with the Master Plan. At a minimum, the plan shall depict or be accompanied by the following items, unless waived by the Board:
 - a) A plan for the reclamation of the area affected by the excavation at least in compliance with RSA 155-E:5 and RSA 155-E:5-a. Such plan shall address the effects of the proposed excavation on soil, surface water and groundwater, vegetation, overburden, topography, and fill material, and shall include a timetable for reclamation of fully depleted areas within the excavation site during said project;
 - b) Specific actions to be taken by the applicant on the excavation site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons; and
 - c) Such other information or other special investigative studies as the regulator may reasonably deem necessary.
- (3) The name(s) and address(es) of the owner(s), the excavator (if different) and signature and professional stamp of the person(s) preparing the plan; date, bar scale and north arrow.
- (4) All boundaries of the area proposed for reclamation and the land within 200 feet of the boundary of this site.
- (5) Sections showing existing, excavated and reclaimed topography configuration at contour intervals of two feet or less along with cross section(s) showing restored topography every 100 feet.
- (6) Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities.
- (7) The phasing of site reclamation showing designated areas and completion dates.
- (8) Schedule of final reclamation activities including soil fertilization, seeding and mulching specifications, plant and other landscaping material to be used in reclamation, and their size and quantities. The specific vegetative reclamation element shall be designed and approved by an agronomist, soil scientist, conservation district representative or other specialist recognized by the State of New Hampshire.
- (9) Erosion and sedimentation control plan indicating the type and location of erosion and sedimentation control methods to be used. The plan must be EPA compliant. The New Hampshire Stormwater Management Manual, prepared by the NH Department of Environmental Services, as may be amended from time to time,

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shall be used at a minimum. The manual can be downloaded from:
<http://des.nh.gov/organization/divisions/water/stormwater/manual.htm>

F. Sheet 6, entitled, "Supplemental Studies, Plans and Materials Index" shall include references to and be accompanied by, but not be limited to, the following. All Plans must be Mine Safety and Health Administration (MSHA) compliant:

- (1) Details Plans;
- (2) Cross sections;
- (3) Overview Plans;
- (4) Stormwater Management Plan, including calculations, models showing pre- and post- development flow.
- (5) Traffic Study, the scope of which to be proposed by developer and reviewed by the Designee of the Planning Board.
- (6) Noise Control Study and Abatement Plan;
- (7) Hydrogeologic Study;
- (8) Dust Emissions Control Plan;
- (9) Site Security Plan;
- (10) Operations and Emergency Response Plan, to include:
 - a) Description of typical operations and activities.
 - b) Description of worker training with regard to emergency response, including identification of key personnel and respective contact information.
 - c) Description of all operational equipment, fuel types and fuel storage containments and policy for equipment placement and storage during non-operational periods.
 - d) Description of all potential groundwater contaminants and method of storage and use, including site restricted materials.
 - e) Description of site security and access control.
 - f) Detailed Emergency Response Plan, including a description and inventory of emergency response kits on site; the name, contact information and copy of emergency response agreement with a qualified environmental services firm; contact information for a site supervisor that can be reached at any time and a description of the response by applicant employees and standby environmental services firm in the event of a spill.

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- g) Detailed description of Groundwater Monitoring Program, as applicable.
- h) Blasting plan (see **Article VI**).
- (11) A narrative description of compliance with future land use consistent with the approved master plan shall be submitted.
- (12) Copies of all necessary Town, State and Federal Permits, along with applications and supporting documentation submitted for such permits.
- (13) Any other studies deemed necessary by the Planning Board.

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ARTICLE VIII. Permit: Hearing, Issuance, Conditions, Expiration, and Progress Reports

§197.25. Public Hearing.

- A. A public hearing on the application, and on any request for exception to operational or reclamation standards, shall be held pursuant to the provisions of RSA 155-E:7.
- B. Following such hearing if the Planning Board determines the application is not prohibited by RSA 155-E:4 and approves the application, then the permit may be granted following the posting of a fee and bond or other security pursuant to RSA 155-E:8.

§197.26. Permit Issuance.

- A. The permit shall contain an expiration date. Permit expiration dates shall be fifteen years from the date of regulator approval.
- B. The permit may contain reasonable conditions in accordance with the provisions of RSA 155-E:8 and these Earth Excavation Regulations.
- C. A copy of the permit shall be prominently posted at the excavation site or the principal access thereto.
- D. A permit shall not be assignable or transferable without the prior written consent of the Planning Board per 155-E:8.

§197.27. Conditions.

Unless otherwise expressly stated or modified in any decision of the Planning Board on an application for earth excavation permit, conditions of any permit shall include, without need for express incorporation by reference: (1) all provisions of these Earth Excavation Regulations, (2) all provisions of RSA Chapter 155-E, (3) all notes, limitations, and representations contained in an application, plans and accompanying documents, as may be amended during the course of the hearing, and (4) all conditions, limitations and requirements of any State or Federal permit relating to use of the site for excavation activities.

§197.28. Expiration.

If at the end of the permit term of fifteen (15) years, the project is not completed, the applicant may submit a new permit application in accordance with the requirements of **Article VII** of these Regulations. Such application will conform to the regulations in place at the time of the new permit application.

§197.29. Progress Reports.

Non-grandfathered operators with an existing permit from the Planning Board must submit, to the Town of Pembroke Planning Department, a copy of the NHDES Alteration of Terrain Bureau application or extension material in accordance with **Env-Wq 1503.02 Permit Required** every five years and **Env-Wq 1503.23 Permit Expiration and Permit Extension** as required in order

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to review excavation progress. Alternatively, a new application with complete new documentation may be submitted. At least once every 15 years, a new application with a full set of application materials must be submitted for Planning Board approval. Applications under which regulations and ordinances they were originally approved are considered grandfathered under those regulations and ordinances for future permit renewals.

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ARTICLE IX. Fees

§197.30. Administrative Fees.

The application fee and administrative fees will be in accordance with the adopted Earth Excavation Fees. 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. Any additional fees incurred for special investigative studies, Designee of the Planning Board review, or other professional review shall be at the expense of the applicant.

§197.31. Escrow Fees.

- A. In addition to the application fee, an Engineering and Review Escrow Account shall be established to reimburse the Town for expenses associated with professional review, peer review of plans, studies and other matters required by the particular application. Said Engineering Escrow Account shall be established at a minimum of an amount determined by a Planning Board estimate to complete the job and shall be replenished at such time that the balance drops to \$750 or less.
- B. Upon approval of an application, an Inspection and Enforcement Escrow account shall be established in accordance with **§197.35.B** of these Regulations.
- C. A Legal Escrow account shall be established to review plans, deeds, and legal documentation as needed. When an exception needs to be filed with the Registry of Deeds, the amount shall be removed from the Legal account. Said Legal Escrow Account shall be established at a minimum of an amount to be determined by a Planning Board estimate to complete the job and shall be replenished at such time that the balance drops to \$750 or less.

§197.32. Issuance Fee.

In accordance with RSA 155-E:8, an excavation fee of fifty dollars (\$50.00) shall be paid upon issuance of a permit.

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ARTICLE X. Administration

§197.33. Enforcement.

- A. The Planning Board or its duly authorized agent is responsible for the enforcement of these regulations, as provided by RSA 155-E:10. The Board or its agents shall visit the site once a year to inspect the site and its condition. The Designee of the Planning Board may visit the site for compliance inspections at any time. The Board or its agents may visit the site at any time and without limitation in response to complaints or to respond to any health, safety or public welfare concerns..
- B. An excavation permit may be suspended or revoked for any applicant who has violated any provision of the permit, the Town's Earth Excavation Regulations or of Chapter 155-E, or made a material misstatement in the permit application upon which the permit was granted. Such suspension or revocation shall be subject to a motion for a rehearing and appeal in accordance with RSA 155-E:9.

§197.34. Site Inspections.

- A. Inspection Agents. The Pembroke Planning Board may contract with a qualified professional consultant, as determined to be appropriate by the Board, or Designee of the Planning Board or other qualified inspection agents appointed by the Planning Board, at the expense of the applicant, to provide inspection services, testing services and other such services as the Board, at its discretion, may require to ensure compliance with any permit to operate a gravel pit within Pembroke.
- B. Inspections. Inspections will be performed for the purpose of confirming that operations are being conducted as specified in these Regulations and that any conditions imposed by the Planning Board during permit approval and/or subsequent compliance reviews are being met. New or start-up operations shall require compliance inspections by the Town's authorized Inspector at least twice a year, during active operations, for the first year, after which the number of inspections annually may be reduced at the sole discretion of the Planning Board, if the applicant has demonstrated good faith in complying with all of the requirements of the permit. For existing operations, the Planning Board reserves the right to send its authorized inspector at any time to observe the site and report back on the status of compliance with an existing permit. These inspections shall be at the cost of the applicant. .
- C. The excavation permit of any individual, corporation or company who has violated any provision of their permit, this chapter or of RSA 155-E, or made a material misstatement in the permit application upon which his permit was granted, may be suspended or revoked. Such suspension or revocation shall be subject to a motion for a rehearing thereon and appeal in accordance with **§197.36** of this chapter.

§197.35. Inspection and Enforcement Costs.

- A. Cost. The Applicant shall be responsible for the costs of all inspections, legal costs, enforcement and administrative activities to be performed pursuant to any permit to operate. Such activities may include, but not be limited to: site inspections, Town road inspections between the excavation site and the State road network, water quality

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sampling and analysis, preparation of an annual report and other such requirements imposed by the Planning Board at the time of approval, or amendment of a permit to operate an excavation site within Pembroke.

- B. **Inspection and Enforcement Escrow Account.** The Town shall create and the applicant shall fund an interest bearing escrow account in the name of the applicant to ensure payment of the above-referenced costs. The account shall include a sufficient amount to cover all estimated costs for any pre-operation phase as well as anticipated inspections and testing for two years of excavation site operations. An accounting of disbursements from this account will be made to the applicant on a regular basis, to be arranged, but no less than annually. The applicant shall make an annual payment to the escrow account as necessary to bring it up to two years worth of estimated costs based on an estimate provided by the Planning Board.
 - (1) **Funds Return.** Upon completion of the closure plan after operations at the excavation site have ended and all vegetative reclamation certified healthy, the Town shall return any remaining funds in the escrow account to the current owner. Should the closure plan not be completed within 3 years after operations at the excavation site have ended, the Town shall utilize the escrow account to complete the closure plan.
 - (2) **Estimated Cost.** The estimated cost and amount of the escrow account shall be determined by the Planning Board after consultation with its agents and shall reflect reasonable current cost for inspection services, for each site, on an annual basis. The fund is to be replenished when the balance reaches \$1,000 or less. Sites comprising more than five acres of proposed excavation activity shall be required to provide \$50 per acre in addition to the minimum fee.

§197.36. Appeals

Any person, aggrieved by the final decision of the Planning Board, may appeal for a rehearing on such decision as provided by RSA 155-E:9.

§197.37. Other Administrative Provisions

- A. **Other Regulations.** Where these Regulations are in conflict with other local ordinances and/or regulations, the more stringent shall apply. These Regulations are intended to be self supporting of other local land use regulations in Pembroke.
- B. **Adoption.** These Regulations shall become effective after a public hearing, adoption and certification by the Planning Board and placed on file with the Board of Selectmen, the Town Clerk. A copy of these Regulations shall also be forwarded to the New Hampshire Office of Energy and Planning.
- C. **Penalties.** Fines, penalties, and remedies for violations of regulations shall be the same as for violations of RSA title LX, as stated in RSA 676:15, 676:17, 676:17-a and 676:17-b. These fines may include violations based on failure to obtain a permit and/or commencing work before a permit is issued.

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- D. Suspension of Permit. The terms of these Regulations and Chapter 155 of the State of New Hampshire RSAs are specifically incorporated into all permits issued hereunder.
- E. Remedy. At the Planning Board's discretion, rather than initiating legal action in response to minor violations which do not involve health or safety issues, the Planning Board may work with an excavator to remedy the violation and to impose lesser sanctions, including administrative fines and short suspensions of the permit. At any time and for any reason, the Planning Board may choose to initiate legal action if its attempt to work with the excavator is unsuccessful.

§197.38. Waivers

Some requirements of these Regulations may be waived at the discretion of the Board, on request of an applicant, any interested party, or on its own motion, by majority vote.

- A. Waiver may not be granted for operational and reclamation standards in **Articles III and IV** of these Regulations, which must be followed unless the applicant requests an Exception, with notice to Abutters, as provided in **Article VIII** of these Regulations. A waiver is likewise not available for minimum application contents required by RSA 155-E:3, and other conditions of state law. However, the Board may waive requirements of these Regulations that RSA 155-E does not mandate, and for which the Exception procedure is not required.
- B. Applicants wishing to have any specific provision or requirement of these Regulations waived by the Board shall make a request in writing, identifying the provision, stating reasons for waiver, and demonstrating that:
 - (1) Strict conformity with the regulations would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of these regulations; or
 - (2) Specific circumstances relative to the excavation, or conditions of the land in such excavation, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Earth Excavation and Reclamation Regulations for the Town of Pembroke

ARTICLE XI. Performance Guarantee and Liability Insurance

§197.39. Financial Surety.

Prior to the granting of an excavation permit, the applicant shall submit to the Board of Selectmen sufficient financial surety, as determined by the Planning Board or Designee of the Planning Board, to guarantee reclamation of the site and all or any part of the cleaning of the site upon completion of the work, to repair any blasting damage or Town roads if damaged as result of the excavation, and to ensure compliance with the excavation performance guarantee. The cleaning of a site shall include, but is not limited to the removal of stumps, large boulders, general cleanup and other miscellaneous debris.

- A. Amount and Type of Performance Guarantee. Performance guarantee shall be in the amount of 100% of the estimated costs of reclamation and potential damages for the land currently under excavation. In the case of completed or abandoned excavations, the amount of the financial guarantee shall be based on the amount of disturbed or unreclaimed land. The surety may be phased to coincide with the phasing of work, in an amount sufficient to guarantee reclamation of the applicable section, to be released as sections are completed. Prior to a new section being opened, new securities shall be posted. As an excavation site is reclaimed, the amount of the bond may be adjusted up or down reflecting the amount of work on the site completed. In no case will the amount of the bond be reduced to less than ten percent (10%) of the original bond amount, as outlined under **§197.39.C**. The following are acceptable forms of surety:
- (1) A certified check or bank check properly endorsed to the Town of Pembroke.
 - (2) A surety bond issued to the Town of Pembroke by a surety company authorized to do business in New Hampshire.
 - (3) An irrevocable letter of credit with an automatic call provision drawn on a New Hampshire bank.
 - (4) Other form approved by the Board of Selectmen.
- B. Review of financial guarantee. The amount of the financial guarantee shall be reviewed by the regulator on an annual basis. The applicant shall be responsible for any additional increase in the amount of the financial guarantee before a new permit is issued.
- C. Financial guarantee release. The financial guarantee shall not be released until after the regulator, or its designee, has made a site inspection and certified the completion of the required reclamation in accordance with the reclamation plan. Upon acceptance of the site by the regulator, the Board of Selectmen shall be authorized to release up to seventy percent (70%) of the financial guarantee. The Board of Selectmen shall retain twenty percent (20%) of the total value of the financial guarantee for a period of twelve (12) months to insure the stabilization of the vegetation. The remaining 10% shall be retained for 3 years (36 months) after work is completed for final assurance that the plantings are viable and the work has not eroded.
- D. Review by Town Counsel. Town Counsel shall review the suitability and enforceability of the Performance Guarantee.

Earth Excavation and Reclamation Regulations for the Town of Pembroke

§197.40. Proof of Liability Insurance.

The Planning Board may require an applicant to provide and maintain proof of liability insurance deemed sufficient by the Board to protect owners of lands and properties that may be damaged by any act of omission, commission, or negligence in connection with the use of and operations on the excavation site by the applicant, the owner of the site, and its/their successors, agents, invitees, and guests.

APPENDIX I

PERMIT

Earth Excavation and Reclamation Regulations for the Town of Pembroke

PEMBROKE, NEW HAMPSHIRE

EXCAVATION PERMIT PURSUANT TO RSA 155-E

PERMIT #: _____ ISSUE DATE: _____

EXPIRATION DATE: _____

STREET: _____

MAP #: _____

LOT #: _____

OWNER (S): _____

ADDRESS:

CONDITIONS:

- 1.
- 2.
- 3.

THIS PERMIT IS NON TRANSFERABLE WITHOUT THE PRIOR, WRITTEN APPROVAL OF THE PEMBROKE PLANNING BOARD PURSUANT TO RSA 155-E:8

NOTE: Pursuant to RSA 155-E:10 – 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 chapter or made a material misstatement in the application upon which h is permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with RSA 155-E:9.

Issued by:
Pembroke, NH Planning Board

Chairman

THIS PERMIT IS TO BE PROMINENTLY POSTED AT THE EXCAVATION SITE OR AT THE PRINCIPAL ACCESS PURSUANT TO RSA 155-E:8.