

ADOPTED 8/1/91

TOWN OF BARNSTEAD, NEW HAMPSHIRE

APPLICATION GUIDELINES FOR NEW GRAVEL PITS

IN ACCORDANCE WITH RSA 155-E

I. GENERAL PURPOSE AND AUTHORITY

RSA 155-E requires, with several exceptions, all mining and excavation operations in the state obtain prior approval and a permit from the local municipality in which the operation is to occur. The purpose of the statute is to minimize safety hazards created by open excavations; to safeguard the public health and welfare; to preserve our natural assets of soil, water, forests, and wildlife; to maintain aesthetic features of our environment; to prevent land and water pollution; and to promote soil stabilization.

II. DEFINITIONS

**APPLICATION:** Means a completed application for an excavation permit. An application shall not be considered complete until all of the application checklist items (Appendix A) have been completed and accepted to the satisfaction of the Board in addition to any other requirements of this regulation.

**BOARD:** Means the Town of Barnstead Planning Board.

**COMMERCIAL:** Means any use of any earth material for sale or resale on or offsite of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported to other land whose ownership is different than the ownership of the land from which the earth was excavated. Excavations which use earth materials in the processing of other material such as, but not limited to, concrete, asphalt, and other building materials shall be considered commercial.

**CONTIGUOUS:** Means land whose perimeter can be circumscribed without interruption except for roads or other easements, in a single town.

**DIMENSION STONE:** Means rock that is cut, shaped, or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes, and used for exterior or interior parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which sections of dimension stone are to be produced. Dimension stone does not include earth as defined in RSA 155:E1 I.

**EARTH:** Means sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing, or any other mining activity or such other naturally occurring unconsolidated materials that normally mask the bedrock.

**EXCAVATION:** Means a land area which is used, or has been used, for

commercial taking of earth, including all slopes.

EXCAVATION SITE: Means any area of contiguous land in common ownership upon which excavation takes place.

NOTICE OF INTENT: Means a written notice to the Board and to the Conservation Commission to inform them of the intent to apply for a permit to excavate for a new excavation, or for expansion of, or continuation of an excavation in operation at the time of adoption of these Regulations.

### III. PERMIT REQUIRED SITUATIONS

No owner shall permit any excavation of earth on his premises without first obtaining a permit.

### IV. APPLICATION FOR PERMIT

Any owner or owner's designee subject to this Chapter shall, prior to excavation, apply to the Board for a permit for excavation and submit a reclamation plan. The applicant shall also submit a copy of the application and reclamation plan to the Conservation Commission. The application shall be signed and dated by the applicant and shall contain at least the following information in addition to other regulation, checklist, and site plan review requirements:

(NOTE: The Board may waive one or more of the items listed under this section.)

A. 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;

B. An Excavation Plan at a scale of no less than one inch equals one hundred feet and showing the area to be excavated and the land falling within 200 feet of the perimeter of the area to be excavated. All plans submitted to the Board shall comply with the provisions in the Erosion and Sediment Control Design Handbook for Developing Areas of New Hampshire (1981) by the USDA Soil Conservation Service, as amended. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. At least six (6) copies of final plans shall be filed with the Board prior to issuance of a permit.

The Excavation Plan shall include:

1. seal or signature of an engineer registered in the State of New Hampshire;
2. existing topography at contour intervals of five (5) or fewer feet, based on mean sea level;
3. the breadth, depth and slope of the proposed excavation, and existing excavation where applicable, and the estimated duration of the excavation;
4. wooded and heavily vegetated areas;

5. all surface drainage patterns including wetlands and standing water;
6. location of all easements, on or below the ground;
7. location and width of all public roads and rights-of-way;
8. a log of borings 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;
9. location and extent of any stone walls, ledge outcroppings, wells, existing buildings, septic systems, utilities and the like;
10. a locus map, at a scale of one inch equals one thousand feet (1":1000'), showing the proposed operation in relation to existing roads;
11. any existing and all proposed excavation areas;
12. any existing and all accessory facilities/activities;
13. existing and proposed access roads, including width and surface materials;
14. existing and proposed parking areas;
15. existing and proposed fencing, buffers or visual barriers, including height and materials;
16. storage areas for topsoil to be used in reclamation;
17. all measures to control erosion, sedimentation, water pollution, air pollution, and hazards to human safety;
18. the location of existing buildings, structures, septic systems and wells within one hundred and fifty (150) feet of the property boundary;
19. the location of all driveways and road intersections within two hundred (200) feet of the property boundary; and
20. copies of any permits required by state or federal regulations.

C. A Reclamation Plan at the same scale as the Excavation Plan, and covering the same area. All plans submitted to the Board shall comply with the provisions in the Erosion and Sediment Control Handbook for Developing Areas of New Hampshire (1981) by the USDA Soil Conservation Service, as amended. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. At

least six (6) copies of final plans shall be filed with the Board prior to issuance of a permit.

The Reclamation Plan shall include:

1. seal and signature of an engineer registered in the State of New Hampshire;
2. all boundaries of the area proposed for reclamation;
3. final topography of the area proposed for reclamation;
4. final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities.
5. schedule of final reclamation activities including seeding mixtures, cover vegetation, fertilizer types, and rates;
6. photographs of the site before excavation (from at least two different vantage points); and
7. subsequent use of the site, if known or anticipated.

#### V. ADDITIONAL PERMIT REQUIREMENTS

##### A. Size and Reclamation Time Limit on New Excavations

No excavation of a new area shall exceed five (5) 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 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 Section XII (Issuance of Permit) of these Regulations. At no time shall more than one permit be allowed on a lot of record.

##### B. Size and Reclamation 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 (5) 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 these Regulations cannot be reclaimed within one (1) year, no additional new excavation into an undisturbed area shall be permitted until the existing excavated 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 Section XII (Issuance of Permit) of these Regulations. At no time shall more than one permit be allowed on a lot of record.

#### C. Excavation Sites Considered Non-Conforming

Expansion of any site used for sand and gravel excavation is limited to such activities which are considered a permitted or allowed use in the corresponding zoning district. For those excavation sites determined to be nonconforming uses or activities, no further expansion of the site will be permitted to occur.

#### D. Hours of Operation

The hours of operation shall be determined by the Board during the permit process. The level of operation and the type of neighborhood affected shall be considered by the Board in establishing these hours.

#### E. 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 Board prior to the issuance of an Excavation Permit. The Board may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. The 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.

### VI. OPERATIONAL STANDARDS

A. No excavation covered under RSA 155-E shall be permitted closer than fifty (50) feet of the boundary of a disapproving abutter or within ten (10) feet of an approving abutter unless approval of a lesser distance is requested by the abutter.

B. No excavation covered under RSA 155-E shall be permitted closer than one hundred fifty (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.

C. No excavation shall be permitted below road level within fifty (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.

D. Vegetation shall be maintained or provided within the peripheral areas required by Section VI A, B and C.

E. 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.

F. No actual excavation is to exceed five (5) acres at one time unless specifically authorized by the Board.

G. Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process. Excavations shall comply with the Erosion and Sediment Control Design Handbook for Developing Areas of New Hampshire (1981) by the USDA Soil Conservation Service, as amended.

H. 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.

I. Where the depth of excavation will exceed fifteen (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.

J. No area shall be excavated which will cause the accumulation of free standing water for prolonged periods. Appropriate drainage shall be provided.

K. 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 Board prior to receiving a permit.

L. Topsoil shall be stripped from the excavation area and stockpiled for use in subsequent reclamation of the site.

M. All temporary structures required during excavation operations shall be removed from the site within thirty (30) days after such operations cease.

N. All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.

O. No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with State laws or rules pertaining to such materials.

P. Prior to the removal of topsoil or other material from a new excavation area, the excavator shall file a reclamation bond or other surety, as prescribed by the Board sufficient to cover the cost of site reclamation.

Q. Excavation practices which result in siltation of streams or degradation of any water supplies are not allowed.

#### VII. SITE RECLAMATION STANDARDS

The Board or its designee shall periodically inspect the operations and shall perform a final reclamation inspection in order to ensure the approved plans have been followed. The cost of this inspection will be assumed by

the applicant.

A. All slopes, except exposed ledge, shall be graded to natural repose for the type of soil of which they are composed, but shall not in any case be left steeper than 2:1. Changes of slope shall not be abrupt, but shall blend with the surrounding terrain.

B. All debris, stumps, boulders, etc. shall be lawfully disposed of in a manner acceptable to the Board or its designee.

C. 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 (1) year.

D. 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. The disturbed area(s) shall be seeded with suitable vegetative cover. All vegetation must be established within one (1) year of seeding. With the Board's approval, an applicant may substitute species not requiring topsoil as a base.

E. If deemed necessary by the Board, suitable trees or shrubs will be planted in order to provide screening and natural beauty and to aid in erosion control. Such planted areas shall be protected from erosion during an appropriately established period by mulch and structural erosion control devices.

F. Upon completion of the reclamation operations, the topography of the land shall be left so that water draining from the site leaves the property at the original, natural drainage points and in the natural proportions of flow. For excavation projects which require a permit from the Division of Water Supply and Pollution Control pursuant to RSA 149:8-a the provisions of that statute, and rules adopted under it, shall supersede this paragraph as to areas of excavation sites covered thereby. The excavator shall file a copy of permits issued under RSA 149:8-a with the Planning Board.

G. The responsible party shall not be released from its reclamation bond until the Board certifies compliance with all terms of the Excavation Plan and the Reclamation Plan.

H. Any excavated area of five (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 (1) year period, shall be reclaimed in accordance with Sections V and VII of these Regulations within one (1) year.

I. The elimination of any standing bodies of water created in the excavation project as may constitute a hazard to health and safety as determined by the Board.

#### VIII. PROHIBITED PROJECTS

The Board shall not grant a permit:

A. Where the excavation would violate the operational standards of Section VI of these Regulations.

B. For an excavation within fifty (50) feet of the boundary of a disapproving abutter or within ten (10) feet of the boundary of an approving abutter unless approval of a lesser distance is requested by the abutter.

C. Where the issuance of the permit would be unduly hazardous or injurious to the public welfare as determined by the Board.

D. Where existing visual barriers would be removed, except to provide access to the excavation.

E. Where the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey.

F. For excavation within one hundred fifty (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.

G. When 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, unless all necessary permits have been obtained.

H. Where the project cannot comply with the reclamation provisions of Section V and VII.

I. Where the excavation will cause an unreasonable diminution in area property value or unreasonably change the character of the neighborhood.

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

K. Where the excavation will create any unreasonable nuisance or create health or safety hazards.

## IX. WAIVERS

The Board, upon application and following a hearing, may grant a waiver in writing, to the standards contained in Sections V, VI, VII, and VIII for good cause shown. The written decision shall state specifically what standards, if any, are being relaxed and include reasonable alternative conditions. The Board's decision on any request for such a waiver may be appealed in accordance with Section XIV of these Regulations.

## X. APPLICATION FOR AMENDMENT

When the scope of a project for which an excavation permit has been issued is proposed to be altered so as to affect either the size or location of the excavation, the rate of removal or the plan for reclamation, the owner shall submit an application for amendment of his excavation

permit. The amended application shall be subject to approval in the same manner as provided for an excavation permit. 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.

#### XI. HEARING

Prior to the Board approving an application for an excavation permit or an application for an amended excavation permit, a public hearing shall be held within thirty (30) days 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 fourteen (14) days notice of the time and place of such hearing shall be published in a paper of general circulation in the town and legal notice thereof shall also be posted in at least three (3) public places in the town; the fourteen (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 twenty (20) days of said hearing or any continuation thereof, the Planning Board shall tender a decision approving or disapproving the application, giving reasons for disapproval.

#### XII. ISSUANCE OF PERMIT

If the Board, after public hearing, approves the application for a permit and determines it is not prohibited by Section VIII it shall grant the excavation permit upon receipt of an excavation application fee of fifty dollars (\$50), and the posting of a bond or other surety with the municipal treasurer in the amount determined by the Board to be sufficient to guarantee compliance with the permit. The performance bond or other surety shall be for a period of three (3) 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 Board. A permit shall specify the date upon which it expires. The Board may include in a permit such reasonable conditions as are consistent with the purpose of this Regulation including the provision of visual barriers to the excavation. (In addition, a permit fee in an amount determined by the Board for application plan review and annual compliance review, by the 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 designated engineer or other agents of the Board to periodically conduct field reviews at the excavation site to ensure compliance with the approved excavation and reclamation plans.)

#### XIII. 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.

#### XIV. APPEAL

If the 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 Board for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable and said appeal shall be filed within ten (10) days of the date of decision appealed from. The Board shall either grant or deny the request for rehearing within ten (10) days, and if the request is granted, a rehearing shall be scheduled within thirty (30) days. Any person affected by the Board's decision on a motion for rehearing may appeal in accordance with the procedures specified in RSA 677:4-15.

#### XV. ENFORCEMENT

A. The Board or its duly authorized agent may suspend or revoke the permit of any person who has violated any provision of his permit or this Regulation or made a material misstatement in the application upon which his permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with Section XIV of these Regulations. Failure to file for a permit as required by these Regulations shall be considered a violation subject to the enforcement provisions of these regulations.

B. Fines, penalties and remedies for violations of these Regulations shall be the same as for violations of RSA 676:15 and RSA 676:17.

C. To ascertain if there is compliance with these Regulations, a permit issued hereunder or an order issued hereunder, the 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 these Regulations.

#### XVI. ABANDONED EXCAVATIONS

1. Any excavation for which the affected area has not been brought into complete compliance with the reclamation standards of Sections V and VII of these Regulations shall be deemed abandoned if excavation occurred on the site after August 24, 1979 and

(1) no earth material has been removed from the excavation site during any three (3) year period. [Note: The owner or operator may extend the period by submitting a time table for reclamation to the Board and posting a bond or other surety in a form and amount prescribed by the Board sufficient to cover the costs of reclamation.] or

(2) the excavation is still in use but the owner or operator has not brought the affected area into compliance with the incremental reclamation requirements of Section VII of these Regulations within three (3) years of the effective date of these Regulations or posted a bond or other surety sufficient to cover the costs of reclamation or

(3) The owner or operator of the excavation has neither secured a permit pursuant to these regulations nor filed a report of an existing excavation within the prescribed time period.

