

Earth Excavation and Reclamation Regulations for the Town of Pembroke

CHAPTER 197- EARTH EXCAVATION AND RECLAMATION REGULATIONS

Adopted July 23, 1991. Amended July 26, 2011 and July 12, 2016

Certificate of Adoption	2
ARTICLE I. General Provisions	3
ARTICLE II. Excavation Projects	6
ARTICLE III. Operational Standards	9
ARTICLE IV. Reclamation Standards	10
ARTICLE V. Exceptions and Waivers	15
ARTICLE VI. Application for Excavation	16
ARTICLE VII. Permit: Hearing, Issuance, Conditions, Expiration and Progress Reports	17
ARTICLE VIII. Fees	18
ARTICLE IX. Performance Guarantee and Liability Insurance	19
ARTICLE X. Administration	20
APPENDIX I. Permit	23

Earth Excavation and Reclamation Regulations for the Town of Pembroke

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 12, 2016 hereby adopts and certifies these Earth Excavation and Reclamation Regulations, dated July 12, 2016.

Alan Topliff, Chair

Brian Seaworth, Vice Chair

Kathy Cruson

Larry Young Sr.

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Selectmen's Representative

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This document was received and recorded by the Town Clerk on _____, 2017.

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 and July 12, 2016 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 for highway excavations pursuant to RSA 155-E:2, I & IV.

§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 these 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.

Abutter: See RSA 672:3.

Earth Excavation and Reclamation Regulations for the Town of Pembroke

Agricultural Excavation: Excavation of earth by the owner of the land to be used on the owners land exclusively for agricultural use, as defined by RSA 21:34-a.

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 Taking of Earth: 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 if the volume of that material is 1,000 cubic yards or more in a calendar year.

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.

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.

Excavation: A land area that is used or has been used for the commercial taking of earth, including all slopes. Excavation also means excavating, which is the extracting of earth from a site that is in a natural

Earth Excavation and Reclamation Regulations for the Town of Pembroke

state, or a site that is reclaimed or naturally reclaimed, by any method, such as dredging, blasting, digging out and removing, or forming a cavity or a hole in any land area.

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 defined by RSA 155-E:2, I.

Expansion: Excavation beyond the limits of the Town in which it is situated and/or the area which in 1979 had been contiguous to and in common ownership with the excavation site as of that date and has been appraised and inventoried for tax purposes as part of the same tract as of the excavation site as of that date; or excavation and disturbance of earth beyond the limits as shown on the plan as approved by the regulator.

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 that is necessary for construction of buildings or structures, agriculture, silvaculture, landscaping, or minor topographical adjustment, provided that all necessary state and local permits have been issued.

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.

Operational Equipment: Any equipment used in the operation and/or reclamation of excavation operations, including but not limited to vehicles, motorized equipment, and any equipment used to process materials, such as crushers, sorters and screeners. The term does not include the use of personal passenger vehicles to access or inspect the site.

Overburden: Earth and other natural materials over and around the construction aggregate that will be displaced by excavation operations.

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

Reclamation: To bring an excavation site back to a condition at least equal to those outlined in Article IV of these Regulations and/or RSA 155-E:5..

Earth Excavation and Reclamation Regulations for the Town of Pembroke

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.

Standards, Express and Minimum: The standards required for operating and reclaiming an excavation as outlined in these Regulations. For operations that are exempt from a permit, only the standards set forth in RSA 155-E: 2, I, III, IV & 4-a as applicable may apply. For operations that require a permit, the standards contained in these Regulations are considered to be the minimum that apply.

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.

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.

ARTICLE II. Excavation Projects

§197.6. Projects Requiring a Permit.

The following projects require a permit to excavate within the Town of Pembroke per RSA 155-E: 2.

- A. Excavations that commenced operations after August 24, 1979 without first obtaining a permit, unless specifically exempted by Article V below.
- 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 appraised and inventoried for property tax purposes as part of the same tract as the excavation site as of that date.
- C. Excavations after August 4, 1989 that involve quarrying or crushing bedrock to occur for the first time on any excavation site.
- 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.
- E. Expired permits or amendments to existing permits.

Earth Excavation and Reclamation Regulations for the Town of Pembroke

§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 and Reclamation Standards per RSA 155-E: 4-a & 5 and as set forth in Articles III and IV of these Regulations. 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 as defined in RSA 155-E, 2, I.
- B. Other Exceptions as defined by RSA 155-E: 2-a. Although exempt from a permit, any project that either exceeds one (1) acre of impacted area and/or results in more than 1,000 cubic yards of material leaving the site may be subject to Site Plan Review by the Planning Board. Such review may also include the posting of financial surety to guarantee compliance with the plan. If there is uncertainty as to the amount of material leaving the site, the applicant will be required to demonstrate compliance to the satisfaction of the Board from an engineer or other qualified person, at the applicant's expense.
- C. Stationary Manufacturing Plants as defined in RSA 155-E: 2, III.
- D. Highway Excavations as defined in RSA 155-E: 2, IV.

§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. Any excavation that has not been brought into compliance with the reclamation standards of these regulations shall be deemed abandoned according to the provisions of RSA 155-E: 2, II. In making such a determination, the Board will consider all relevant factors regarding inactivity.
- B. 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 a timetable and bonding requirements as determined by the Board, 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.

§197.9. Prohibited Projects

The Board shall not grant a permit for:

- A. Projects that meet any of the criteria of RSA 155-E: 4.

Earth Excavation and Reclamation Regulations for the Town of Pembroke

- B. 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.
 - C. 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.
 - D. 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.
- (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.

§197.10. 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 Zoning Board, if after notice to the owner and a public hearing, the ZBA finds that the expansion will have a substantially different and adverse impact on the neighborhood. Any potential impacts will be determined by the ZBA during a duly noticed public hearing. 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.

Earth Excavation and Reclamation Regulations for the Town of Pembroke

ARTICLE III. Operational Standards

§197.11. 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 express standards cited above shall apply, as well as the following, which are considered to be minimum standards.

A. Proximity to Abutting Properties.

- (1) No excavation shall be permitted within 100 feet 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.

B. Appropriate drainage systems shall be provided and maintained to prevent the accumulation of free standing water for prolonged periods.

- (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) Storm water flow from the site must not exceed pre-excavation conditions or be concentrated such that downstream erosion may occur.

C. Depth of excavation.

- (1) 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.
- (2) The Board may grant a waiver for excavations which propose to dig within the eight (8) feet above seasonal high water table, provided the following conditions are met:
 - a) 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;
 - b) The applicant provides a plan which depicts the proposed depth of excavation and its relation to the seasonal high water table;

Earth Excavation and Reclamation Regulations for the Town of Pembroke

- c) 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, as may be required by the Planning Board; and
 - d) Where an application 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 Planning Board.
- (3) Written notice of such waiver shall be recorded in the registry of deeds, and one copy filed with the department of environmental services.

ARTICLE IV. Reclamation Standards

§197.12. Minimum and Express Reclamation Standards When No Permit Required.

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

§197.13. Minimum and Express Reclamation Standards When Permit Required.

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 the express reclamation standards of RSA 155-E: 5, as well as the following, which are considered to be minimum standards. 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.

- A. Areas visible from a public way, or by a residential abutter, from which trees have been removed, shall be replanted with tree seedlings according to §197.15, V. or some other technique acceptable to the Board.
- B. 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.
- C. With no exception shall any slope be steeper than 2:1. A 3:1 slope is preferred to facilitate seeding.
- D. 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.
- E. 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 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.

Earth Excavation and Reclamation Regulations for the Town of Pembroke

§197.14. 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 §197-34.D, entitled "Suspension of Permit."

§197.15. Performance Standards for Operation and Reclamation.

For all excavations requiring a permit, the applicant shall maintain the site according to the following standards unless a waiver to one or more of these standards is requested in writing, pursuant to section §197.17. All supplemental studies, Plans, and other materials shall be conducted, designed, and performed in accordance with best management practices, where applicable.

- A. 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. 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.
- B. 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.
- C. 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.
- D. 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).

Earth Excavation and Reclamation Regulations for the Town of Pembroke

- E. Hours of Operation shall be in accordance with Chapter 171, Ordinance Regulating Noise Nuisance, Town of Pembroke.
- F. 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.
- G. 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.
- H. Noise Control. The approval of the excavation application and of the site for operation are subject to the provisions of Chapter 171, Ordinance Regulating Noise Nuisance, Town of Pembroke.
- I. 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 IX 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. The applicant shall provide a road restoration plan.
- J. 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 Designee of the Planning Board determine that traffic is not being adequately maintained, said determination shall be considered a violation of the Excavation Permit.
- K. 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

Earth Excavation and Reclamation Regulations for the Town of Pembroke

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.

L. 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.

M. 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.

N. 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.

O. 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.

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

Q. 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.

Earth Excavation and Reclamation Regulations for the Town of Pembroke

- R. 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.
- S. 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.
- T. 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.
- U. Re-vegetation. The re-vegetation of a site shall be in accordance with the methods outlined in *"Vegetating New Hampshire Sand and Gravel Pits"*; USDA/NRCS; Technical Note Rev. April 2000.
- V. Tree Seedling Specification. Non-homogenous plantings. Any trees that are to be planted shall be in accordance with the following:
 - (1) Plantings shall be native plantings capable of surviving in droughty conditions. A minimum of eight indigenous varieties or species per acre shall be planted.
 - (2) Tree seedlings shall be two (2) year old plants or plants furnished under standard nursery order.
 - (3) Seedlings without center buds and seedlings without pruned roots will not be accepted.
 - (4) Seedlings shall be set out in accordance with accepted horticultural practices at eight (8) foot spacing in both directions.

ARTICLE V. Exceptions and Waivers

§197.16. Exceptions to Operational and Reclamation Standards

The Planning Board may upon application and following a hearing held in accordance with RSA 155-E:7, may grant an exception in writing to the standards contained in RSA 155-E:4-a. Minimum and Express Operational Standards; 155-E:5 Minimum and Express Reclamation Standards; and 155-E:5-a. Incremental Reclamation; for good cause shown. The written decision shall state specifically what standards, if any, are being relaxed and include reasonable alternative conditions or standards. The regulator's decision on any request for such exception may be appealed in accordance with RSA 155-E:9.

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.

Earth Excavation and Reclamation Regulations for the Town of Pembroke

- (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. All costs associated with noticing are the responsibility of the applicant.
- C. If the exception request is granted then the Board shall issue a written decision indicating what standards are being relaxed and may 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 relief from those requirements of these Earth Excavation Regulations are provided in §197.17, Waivers.
- E. Any exceptions granted by the Board shall be filed with the Registry of Deeds and the amount of the filing fee shall be removed from the Legal Escrow account.

§197.17. 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 petition for any such waiver shall be submitted in writing by the applicant at the time when the application is filed for the consideration of the Planning Board. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the petitioner.

- A. Waivers 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 V 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:

Earth Excavation and Reclamation Regulations for the Town of Pembroke

- (1) Strict conformity with the regulations would pose extraordinary hardship or practical difficulty to the applicant or the applicant can demonstrate that an alternative proposal better serves the purpose and intent of these Regulations.
 - (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.
- C. In approving waivers, the Planning Board may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of these regulations.
- D. Any waivers granted by the Board shall be filed with the Registry of Deeds and the amount of the filing fee shall be removed from the Legal Escrow account.

ARTICLE VI. Application for Excavation

§197.18. Application Requirements.

- A. The applicant for an earth excavation permit shall submit to the Board a completed application form, which specifies the plan submission items and all other supporting documentation.
- B. A registered NH land surveyor and/or registered NH engineer shall prepare the Excavation Plan and Reclamation Plan at a scale of 1" = 100', or as required by the NHDES Alteration of Terrain Permit.
- C. The application shall be filed with the Planning Department according to the Planning Board Meeting Schedule and one copy shall be sent to the Conservation Commission. The plans shall be reviewed by the Town Planner, Code Enforcement Officer, Town Engineer, and any other consultants as needed at the expense of the applicant.
- D. The excavation plans shall comply with the requirements of Articles III & IV of these Regulations and include all of the submission items in the checklist included in the Application, unless waivers are requested in writing at the time of application. If the project is subject to Pembroke Site Plan Review Regulations and/or a NH DES Alteration of Terrain permit, that information shall also be submitted.

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

§197.19. 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 or these regulations and approves the application, the permit may be granted following the posting of a fee and bond or other security pursuant to RSA 155-E:8.

Earth Excavation and Reclamation Regulations for the Town of Pembroke

§197.20. 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.

§197.21. 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, or made orally in statements to the Board, as may be later 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.

§197.22. 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.

§197.23. Progress Reports.

All exempt 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 order 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.

ARTICLE VIII. Fees

§197.24. 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.

Earth Excavation and Reclamation Regulations for the Town of Pembroke

§197.25. 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 §197.32, 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 for filing 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.

§197.26. 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.

ARTICLE IX. Performance Guarantee and Liability Insurance

§197.27. 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 §197.28.C. The following are acceptable forms of surety:

Earth Excavation and Reclamation Regulations for the Town of Pembroke

- (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. At the discretion of the Planning Board, Town Counsel may review the suitability and enforceability of the Performance Guarantee.

§197.28. 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.

ARTICLE X. Administration

§197.29. 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

Earth Excavation and Reclamation Regulations for the Town of Pembroke

suspension or revocation shall be subject to a motion for a rehearing and appeal in accordance with RSA 155-E: 9.

§197.30. 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 §197.32 of this chapter.

§197.31. 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 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.

Earth Excavation and Reclamation Regulations for the Town of Pembroke

- (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.

§197.32. Appeals

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

§197.33. 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.
- D. Suspension of Permit. The terms of these Regulations and Chapter 155-E 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.

Earth Excavation and Reclamation Regulations for the Town of Pembroke

APPENDIX I

PERMIT
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 his 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.