

TOWN OF NEW BOSTON, NEW HAMPSHIRE

EARTH REMOVAL REGULATIONS

As Adopted _____, 2011

Table of Contents

SECTION	TITLE	PAGE #
SECTION 1	AUTHORITY	1
SECTION 2	TITLE	1
SECTION 3	PURPOSE & SCOPE	2
SECTION 4	DEFINITIONS	3
SECTION 5	EXCAVATIONS REQUIRING A PERMIT	4
SECTION 6	PROJECTS EXEMPT FROM A PERMIT	5
SECTION 7	ABANDONED EXCAVATIONS	6
SECTION 8	PROHIBITED PROJECTS	7
SECTION 9	INCREMENTAL RECLAMATION	8
SECTION 10	PERFORMANCE GUARANTEE	9
SECTION 11	APPLICATION PROCEDURES	10
SECTION 12	APPLICATION SUBMISSION ITEMS	13
SECTION 13	EXCAVATION PLAN	14
SECTION 14	RECLAMATION PLAN	20
SECTION 15	OTHER INFORMATION	22
SECTION 16	ADMINISTRATION & ENFORCEMENT	23
SECTION 17	WAIVERS	25
SECTION 18	SEPERABILITY	26
SECTION 19	CONFLICTING PROVISIONS	26

SECTION 20	EFFECTIVE DATE	26
APPENDIX 1	DETAILS AND DESCRIPTIONS FOR PROJECTS EXEMPT FROM A PERMIT	27
	• Existing Excavations	27
	• Expansion of Existing Excavations	28
	• Excavations Performed Exclusively for Construction of Class I, II, III, IV and V Highways	30
	• Other Exemptions	31
	○ Incidental to Agricultural or Silvicultural (Forestry) Activities, Normal Landscaping or Minor Topographical Adjustment	32
	○ Exclusively Incidental to the Lawful Construction or Alteration of a Building or Structure, a Parking Lot or Way, Including a Driveway	33
	○ Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E	36
	○ Excavations of less than 5,000 cubic yards	36
	○ Excavations of greater than 5,000 cubic yards but less than 10,000 cubic yards	37
APPENDIX 2	APPLICATION FORMS AND CHECKLISTS	
	• Earth Removal Application Form	
	• Application Checklist and Waiver Request for Earth Materials Removal Review	
	• Earth Removal Permit	
	• Existing Excavation Exemption Application Form	
	• Expansion of Existing Excavation Application Form	
	• Application Form for Exemption for Excavations Performed Exclusively for Construction of Class I, II, III, IV or V Highways	
	• Application Form for Exemption for Excavations Incidental to Agricultural or Silvicultural (Forestry) Activities, Normal Landscaping or Minor Topographical Adjustment	
	• Application Form for Exemption for Excavations Exclusively Incidental to the Lawful Construction or Alteration of a Building or Structure, a Parking Lot or Way, Including a Driveway	
	• Application Checklist and Waiver Request for Excavations Exclusively Incidental to the Lawful	

	Construction or Alteration of a Building or Structure, a Parking Lot or Way, Including a Driveway	
	<ul style="list-style-type: none"> • Application Form for Exemption for Excavation from a Granite Quarry for the Purpose of Producing Dimension Stone 	
	<ul style="list-style-type: none"> • Application Form for Exemption for Excavations of Less Than 5,000 Cubic Yards 	
	<ul style="list-style-type: none"> • Application Form for Exemption for Excavations or Greater Than 5,000 Cubic Yards but Less Than 10,000 Cubic Yards 	

Earth Removal Regulations
New Boston, New Hampshire

Final Draft for Public Hearing 3/7/11

SECTION 1 AUTHORITY

These regulations are hereby adopted by the Town of New Boston Planning Board pursuant to the authority of RSA 155-E:11, which enables said Planning Board, as the Regulator, to adopt such regulations as may be reasonably necessary to carry out the provisions of this chapter.

SECTION 2 TITLE

These regulations shall be known and cited as the "Earth Removal Regulations of the Town of New Boston, New Hampshire."

Final Draft for Public Hearing 3/7/11

SECTION 3 PURPOSE AND SCOPE

The purpose of these regulations is to safeguard public health, safety and welfare by regulating the excavation and removal of earth material on land within the town in a manner that, while providing for reasonable opportunities for such excavation and removal, will, correspondingly, preserve natural resources such as water, forests and wildlife, prevent land and water pollution, promote soil stabilization, protect important features of the environment, prevent improper stormwater runoff and implement reasonable provisions for the protection of water resources, consistent with the Town's Water Resources Management Plan developed under 674:2,III(d).

The scope of these regulations shall be comprehensive and they shall apply to the removal of earth material products from any property in the Town of New Boston. No earth materials shall be removed and no excavation shall be made except in conformance with these regulations.

Final Draft for Public Hearing 3/7/11

SECTION 4 DEFINITIONS

Abutter:	shall have the meaning provided for in RSA 672:3, as said section may, from time to time be amended.
Applicant:	the owner of the property to be excavated or the owner's agent, so designated in writing as part of the excavation application.
Contiguous:	shall have the meaning provided for in RSA 155-E:2,(I)(b), as said section may, from time to time be amended.
Dimension stone:	shall have the meaning provided for in RSA 155-E:1,(IV), as said section may, from time to time be amended.
Earth:	shall have the meaning provided for in RSA 155-E:1,(I), as said section may, from time to time be amended.
Excavation:	shall have the meaning provided for in RSA 155-E:1,(II), as said section may, from time to time be amended.
Excavation Area:	shall have the meaning provided for in RSA 155-E:1,(VI), as said section may, from time to time be amended.
Excavation Site:	shall have the meaning provided for in RSA 155-E:1,(V), as said section may, from time to time be amended.
Incidental:	an activity that is customarily subordinate to the principal use of the property and which arises out of and constitutes a customary minor, concurrent part of the overall effort or activity which would not be required other than as necessary to support the underlying principal activity.
Regulator:	pursuant to RSA 155-E:1, III, (a), the Planning Board is the Regulator following the 2009 Town Meeting vote regarding same.

Final Draft for Public Hearing 3/7/11

SECTION 5 EXCAVATIONS REQUIRING A PERMIT

All excavations of land in the Town of New Boston shall be required to comply with the application process set forth herein and no such excavation shall commence unless and until a permit for the same shall be issued by the Regulator, or the owner has filed an application to present to the Regulator the necessary information to enable the Regulator to determine that the project is one which qualifies as exempt from the permit requirement(s) pursuant to RSA 155-E, or elsewhere in these regulations.

See Sections 11 (Application Procedures), 12 (Application Submission Items), 13 (Excavation Plan), and 14 (Reclamation Plan) for details on Permit Application and Plan preparation. See also Section 16 (Administration and Enforcement) for details on permit issuance, inspections and so on.

Should the owner believe the operation is exempt from needing a permit, see Section 6 (Projects Exempt from a Permit) and Appendix 1 (Details and Descriptions for Projects Exempt from a Permit) for details.

Final Draft for Public Hearing 3/7/11

SECTION 6 PROJECTS EXEMPT FROM A PERMIT

The following projects do not require a permit, and are described in more detail in Appendix 1.

Projects Exempt from a Permit

- I. 'Existing Excavations' as set forth herein.
- II. Excavations Performed Exclusively for Construction of Class I, II, III, IV or V Highway
- III. Other Exemptions
 - excavations that are incidental to agricultural or silvicultural (forestry) activities, normal landscaping or minor topographical adjustment; or,
 - excavations that are exclusively incidental to the lawful construction or alteration of a building or structure, a parking lot or way including a driveway, on a portion of the premises where removal occurs; or,
 - 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); **or,**
 - **excavations of less than 5,000 cubic yards, subject to the provisions below; or,**
 - **excavations greater than 5,000 cubic yards but less than 10,000 cubic yards, subject to the provisions below.**

Final Draft for Public Hearing 3/7/11

SECTION 7 ABANDONED EXCAVATIONS

- A. An excavation site shall be considered abandoned when any of the circumstances set forth in RSA 155-E:2,(II), are found by the Regulator to exist. An inquiry into the question of whether a particular excavation site may be abandoned within the meaning of said statutes, may be initiated by the provision to the Regulator of any reasonably well founded information that supports a contention that any of the conditions set forth in RSA 155-E:2,(II), exist.
- B. Upon the receipt of such information, the Regulator may convene a fully noticed hearing, in accordance with the requirements of RSA 155-E:7, concerning the excavation site for the purposes of gathering testimony and information to determine if there are reasonable grounds to declare the site abandoned within the meaning of said statute.
- C. If the Regulator finds that such site is, indeed, abandoned, no further excavation may take place on the property without a permit under these regulations.
- D. Furthermore, in instances in which the Regulator determines that the public health, safety, or welfare requires such reclamation, it may take such action as is available to it under the provisions of RSA 155-E:10, and also, without limitation, the remedy provided for in RSA 155-E,3,(II)(b), to the effect that it may order the owner of any land upon which an abandoned excavation is located to either file a reclamation timetable, to be approved by the Regulator, and bond or other security as described in subparagraph II(a)(1), or to complete reclamation in accordance with said statute within a stated reasonable time.
- E. Also, as noted therein, if the owner fails to complete reclamation within the time prescribed in the order, the Regulator may request the governing body to cause reclamation to be completed at the expense of the municipality. The municipality's costs shall constitute an assessment against the owner, and shall create a lien against the real estate on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.
- F. Provided, however, that if the site of an excavation which ceased commercially useful operation prior to August 24, 1977, but for which the affected area has not been brought into compliance with the reclamation standards of RSA 155-E:5, it may be made subject to the remedy prescribed in RSA 155-E:2,(II)(b), and outlined above, only if the Regulator finds in writing that specified reclamation measures are necessary to eliminate or mitigate an identified hazard to public health or safety.

Final Draft for Public Hearing 3/7/11

SECTION 8 PROHIBITED PROJECTS

The Regulator shall not grant a permit for the following projects:

- A. For excavations within 50 feet of the boundary of a disapproving abutter or within 10 feet of an approving abutter unless approval is requested by said abutter.
- B. Where existing visual barriers would be removed, except to provide access to the excavation.
- C. Where the issuance of the permit would be unduly hazardous or injurious to the public welfare. The Regulator shall give particular consideration to such factors as noise, traffic, dust, fumes, or danger from operation.
- D. Where the excavation would substantially damage a known aquifer, as designated by the United States Geological Survey.
- E. When the excavation cannot receive necessary approvals from state or federal agencies, such as Alteration of Terrain or Wetlands permits.
- F. Where the excavation is not permitted by zoning or other applicable ordinances, provided, however, that reasonable opportunities for excavation exist in town, as described in RSA 155-E:4,III.
- G. Where the project cannot comply with the requirements of RSA 155-E:4-a, 155-E:5 and 155-E:5-a.

Final Draft for Public Hearing 3/7/11

SECTION 9 INCREMENTAL RECLAMATION

Parties subject to Incremental Reclamation pursuant to RSA 155-E:5-a shall submit plans in the manner provided in Section 14 of these regulations.

Final Draft for Public Hearing 3/7/11

SECTION 10 PERFORMANCE GUARANTEE

- A. Prior to the granting of any permit, or to the removal of any topsoil or other overburden material from a new area within an existing excavation site, the Applicant shall submit to the Regulator a bond with sufficient surety as determined by the Regulator. The purposes of the bond are to guarantee reclamation of the area and compliance with the permit. Off-site improvements for potential damage to Town roads or facilities caused by the transportation of earth materials shall be discussed at this stage.
- B. The surety may be in the form of a performance bond, irrevocable letter of credit, cash, certified check, bank check, or any other form approved by the Regulator. The surety must 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. Town Counsel shall review the suitability and enforceability of the performance guarantee if it is in the form of a bond, irrevocable letter of credit or similar. The cost of said review shall be at the Applicant's expense.
- C. The surety shall not be released until the Regulator is satisfied that all conditions of the site reclamation plan have been complied with. This shall be determined at a final site walk by the Regulator and/or its designee.

Final Draft for Public Hearing 3/7/11

SECTION 11 APPLICATION PROCEDURES

According to the Town of New Boston Zoning Ordinance, Section 204, Removal of Earth Products is permitted in all districts in town only with a special exception granted by the Zoning Board of Adjustment. If the Zoning Board of Adjustment grants the special exception, the Applicant shall then submit an application to the Regulator for a permit under these regulations. The Regulator and Zoning Board of Adjustment are encouraged to meet jointly where appropriate so as to expedite the application process.

If the subject property is located within the Town of New Boston's Groundwater Resource Conservation District as identified on the map entitled "Town of New Boston Aquifer Transmissivity Levels", dated June 2009, as prepared by the Southern New Hampshire Planning Commission, and as amended, the Applicant shall follow the procedures described in the Zoning Ordinance, Section 204.7, regarding a Special Exceptions and Conditional Use Permits.

Prior to the Regulator rendering a decision for an excavation permit, a public hearing shall be held, with due notification to all abutters and the public. The application procedure for an excavation permit is as follows:

A. Filing the Application

1. An application shall be filed with the Office of the Planning Board/Planning Department at least 15 days prior to a scheduled public meeting of the Regulator.
2. The Applicant shall also send a copy of the application to the Town of New Boston Conservation Commission.
3. The Regulator shall at the next regular meeting, or within 30 days of delivery of the application to the Office of the Planning Board/ Planning Department, for which notice can be given in accordance with these regulations, determine if the submitted application is complete according to the Earth Removal Regulations, and shall vote upon its acceptance as complete.
4. If the Regulator determines that a submitted application is incomplete, it shall notify the Applicant of the determination in accordance with RSA 676:3, which shall state what additional information is required.
5. The Regulator, upon receipt of an application for earth removal, shall review it promptly and determine whether or not the application, if approved, could reasonably be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the application has a potential regional impact, and notice as provided in these regulations, shall be given to the Regional Planning Commission and the affected municipalities.

B. Board Action on Application

1. Before taking any action on an Earth Removal Application, the Regulator shall hold a public hearing thereon. The same notice of submission of the application, as specified in part C shall be given. If notice of the public hearing has been

included in the notice of submission or any prior notice, additional notice of the public hearing is not required nor shall additional notice be required of an adjourned session of a hearing with proper notice if the date, time and place of the adjourned session was made known at the prior hearing. All costs of notice, whether mailed, posted or published, shall be paid in advance by the Applicant. Failure to pay such costs shall constitute valid grounds for the Regulator to terminate further consideration and to disapprove the application without a public hearing.

2. Except as provided in part B,1), no application may be denied or approved without a public hearing on the application. At the hearing, the Applicant, any abutter, holder of conservation, preservation, or agricultural preservation restriction, or any person with a direct interest in the matter may testify in person or in writing. Other persons may testify as permitted by the Regulator at each hearing.
3. Pursuant to RSA 155-E:7 and 676:3, within 20 days of the close of the hearing on the application or any continuation thereof, the Regulator shall issue a final written decision which either approves or disapproves an application for a local permit. In the case of disapproval of any proposed Earth Removal Application submitted, the grounds for such disapproval shall be adequately stated on the records of the Regulator and the Applicant shall be so notified by certified mail. If the Regulator votes to approve or disapprove an application, or deny a motion for rehearing, the minutes of the meeting at which such vote was taken, including the written decision containing the reasons therefor, shall be placed on file in the Regulator's office and shall be made available for public inspection within 5 business days of such vote.
4. Within 72 hours of reaching a decision regarding a development of regional impact, the Regulator shall, by certified mail, furnish the regional planning commission and the affected municipalities with copies of the minutes of the meeting at which the decision was made.

C. Notices Required for Public Hearing

1. The Regulator shall notify the Applicant, abutters, holders of conservation, preservation or agricultural preservation restrictions, and every engineer, architect, and surveyor or soils scientist whose professional seal appears on any plan submitted to the Regulator, by certified mail, of the date upon which the application will be formally submitted to the Regulator. Notice shall be mailed at least 10 days prior to the submission.
2. Notice to the general public shall also be given at the same time by posting in at least 3 public places in the Town, and by publication in a newspaper of general circulation in the Town. The notice shall include a general description of the proposal which is the subject of the application and shall identify the Applicant and the location of the proposal as well as the date, time and place of the meeting.
3. Upon determination that a proposed Earth Removal Application has a potential regional impact, the Regulator shall afford the regional planning commission and

the affected municipalities the status of abutters, as defined in Section 4, for the limited purposes of providing notice and giving testimony. At least fourteen (14) days prior to public hearing, the Regulator shall notify, by certified mail, all affected municipalities through its Regulator, if any, or local governing body and the regional planning commission of the date, time, and place of the hearing and their right to testify concerning the application.

D. Compliance Hearing

1. If the Regulator places a condition precedent (one to be fulfilled before the excavation can begin, such as obtaining an easement, posting a bond, procuring special permits, etc.) on the approval, final approval will become effective on the plan or application without further public hearing providing the conditions are:
 - a. Minor plan changes whether or not imposed by the Regulator as a result of a public hearing, compliance with which is administrative and which does not involve discretionary judgment; or,
 - b. Conditions which are in themselves administrative and which involve no discretionary judgment on the part of the Regulator; or,
 - c. Conditions with regard to the Applicant's possession of permits and approvals granted by other boards or agencies .

Otherwise, all other conditions shall require an additional noticed public hearing at which interested parties and town officials will have an opportunity to review and comment on the developer's compliance with the condition(s) precedent. Notice as provided in these regulations, shall be required except that additional notice shall not be required of an adjourned session of a hearing with proper notice if the date, time and place of the adjourned session were made known at the prior hearing.

2. If the Regulator places a condition subsequent, such as the completion of on-site or off-site improvements before the project is considered to be completed, an additional public hearing shall be held at which interested parties and town officials will have an opportunity to review and comment on the Applicant's compliance with the condition(s) subsequent before any bonds are released.

E. Fees

1. Upon submission of an application, the applicant shall pay the costs of posting, publishing and mailing notice for the public hearing. Failure to pay such costs shall constitute grounds for the Regulator to not accept the application.
2. A permit fee of \$50 shall be paid upon the issuance of a permit.
3. The Regulator may require special investigative studies, environmental assessments, legal review of documents, administrative expenses, and other matters necessary to make an informed decision. The cost of such studies and investigations shall be paid by the Applicant prior to the service or study being provided. Failure to pay such costs shall constitute valid grounds for the Board to terminate further consideration and to disapprove the permit application.

Final Draft for Public Hearing 3/7/11

SECTION 12 APPLICATION SUBMISSION ITEMS

- A. The following shall be required for, and constitute, a completed application:
1. An Earth Removal Application properly filled out and executed by the Applicant.
In the event that the Applicant is not the owner of record, the owner of record must also sign the application form in the space provided. The application shall be filed with the Office of the Planning Board/Planning Department in accordance with Section 11, A.
 2. An abutters list providing the names and mailing addresses of the Applicant; owner (if different from Applicant); all abutters as indicated in town records, the Hillsborough County Registry of Deeds, etc., holders of conservation, preservation or agricultural preservation restrictions, compiled not more than five (5) days before the date of delivery of the application; and, the name and address of every licensed professional whose seal appears on the plan.
 3. A check payable to the Town of New Boston to cover filing fees, mailing, advertising, recording, and other reasonable costs as provided in Section 11, E.
 4. Four (4) paper print copies of the excavation and reclamation plans prepared in accordance with and accompanied by the information required in Sections 13 and 14, to be drawn at a scale of no smaller than one hundred feet to the inch (1"=100').
 5. Eight (8) 11" x 17" copies of the excavation and reclamation plans as described in 4) above.
 6. ~~Driveway Permit(s) issued by the Town or State, if applicable.~~
 7. Three (3) paper print copies of the erosion and sediment control plan, in accordance with the standard specified in Section V-U of the Town of New Boston Subdivision Regulations; or,
A copy of the plan submitted to the NH DES Alteration of Terrain Bureau for an Alteration of Terrain Permit under RSA 485-A:17.
- B. The following items shall be submitted, unless waived, upon request and for cause, before final approval of the application can be granted:
1. Bond and security proposal(s) for reclamation as provided for in Section 10.
 2. Traffic and/or environmental studies, as described in the Town of New Boston Subdivision Regulations.
 3. Any and all other approvals and/or permits from local, state or federal agencies, as required, including, but not limited to, State of New Hampshire Wetlands Bureau Dredge & Fill Permit, and, State of New Hampshire Alteration of Terrain Permit as governed by RSA 485-A:17, submission of such approval to the Regulator to include a set of the plans approved by the State under that permitting process.
 4. **Driveway Permit(s) issued by the Town or State, if applicable.**

The Applicant shall also send a copy of the application, including excavation and reclamation plans to the Town of New Boston Conservation Commission.

Final Draft for Public Hearing 3/7/11

SECTION 13 EXCAVATION PLAN

- A. The excavation plan shall address specific actions to be taken on the site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons. The plan shall show or be accompanied by the following items:
1. The excavation plan shall show the names, addresses and deed references of the owner(s) of record, all abutters as specified in Section 11, C, 1), all holders of conservation, preservation and agricultural preservation restrictions; the name and address of the excavator, if different than the owner; and the name, address and signature of the person preparing the plan with applicable seals; tax map and lot number of the site and abutting parcels; date of plan, including revision dates; north point; graphic and written scale; locus map showing the subject property, north point and main traffic arteries.
 2. Applicable zoning district boundaries.
 3. The location of property lines with bearings and distances.
 4. Sketch and description of the location and boundaries of the proposed and any existing excavations; the area in square feet and acres of the total parcel; the breadth, depth and slope of the proposed and existing excavations; any reclaimed areas; and the estimated duration and phasing of the project.
 5. The estimated volume of material to be removed in total, each year and during the permit period.
 6. The location of existing subdivisions, buildings, structures, septic systems and wells, onsite and within 200 feet of the property boundary.
 7. Public streets, driveways, intersections, rights-of-way, and all easements onsite and within 200 feet.
 8. Intended transportation routes to be used to and from the pit; the numbers and types of trucks and equipment to be used; hours of operation; maximum number of daily trips.
 9. A plan for noise control and abatement.
 10. Topography at contour intervals of five feet or less.
 11. The known limits of any aquifer areas.
 12. All surface drainage patterns, including wetlands and standing water, and setback distances in accordance with the Wetlands Conservation and Stream Corridor District of the Zoning Ordinance.
 13. Sketch and description of existing and proposed access roads, including width and surface material.
 14. A plan for dust control.
 15. The elevation of the highest annual average groundwater table within or next to the proposed excavation.
 16. One hundred year flood elevation line, where applicable.
 17. Test pits that extend to either the seasonal high water table, ledge, or a minimum of six feet below the maximum proposed excavation depth, including location and soils data; boring logs may be submitted separately.

Final Draft for Public Hearing 3/7/11

18. Proposed fencing, buffers or other visual barriers, including height and materials.
19. A plan for comprehensive site safety of authorized and unauthorized persons.
20. All measures to control erosion, sedimentation, water pollution, air pollution, and so on.
21. Plans for stormwater management per Section V-U of the Town of New Boston Subdivision Regulations; or,
Copies of the NH DES Alteration of Terrain Permit and the plans submitted as part of the application for said permit.
22. Plans for snow removal and storage.
23. Plans for fuel and chemical handling and storage and equipment maintenance.
24. Methods to prevent materials from the site from being tracked onto public roadways.
25. The location of existing vegetation and plans for the removal and disposal of invasive species found onsite. Invasive species are those found on the New Hampshire Prohibited Invasive Species and Restricted Invasive Species Lists. These lists may be found at the NH Department of Agriculture website at http://www.nh.gov/agric/divisions/plant_industry/documents/list.pdf and http://www.nh.gov/agric/division/plant_industry/documents/watch.pdf
26. The location and extent of any stone walls, and ledge outcroppings.
27. Storage areas for topsoil to be used in reclamation.
28. The proposed location of stump dumps and/or plans for brush and slash disposal.
29. The proposed location(s) of temporary stockpiles of materials from offsite locations and jobsites.
30. Plans for materials processing, e.g. crushing, if requested by the Applicant.
31. A circulation plan of the interior of the lot showing provisions for both auto and pedestrian circulation.
32. An access plan showing means of access to the site and proposed changes to existing public streets including any traffic control devices necessary in conjunction with the excavation plan.
33. Sign off block for Regulator approval. Endorsement statement shall read:
"Excavation Plan approved by the New Boston Planning Board on _____.
Certified by, _____, Chairman, and by _____, Secretary."

B. Additional Information to be used in Excavation Plan Preparation .

Visual Barriers

A vegetative or topographical visual barrier or buffer shall be maintained between surrounding roads, commercial and residential land uses and the excavation site wherever possible, and shall be indicated as such on the excavation plan.

Access Roads and On-site Traffic Circulation

Access roads leading to and from the excavation site shall intersect existing streets and roads at

Earth Removal Regulations
New Boston, New Hampshire

Final Draft for Public Hearing 3/7/11

locations that have been duly approved by State and/or local officials and in a manner that will not endanger the safety of highway users and local residents. The provisions of RSA 236:13 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 pit unless requested to be retained by the Regulator, for reason of access for code compliance or other appropriate functions.

Truck access to the lot and work area shall be so arranged as to minimize traffic hazards on the street and to avoid nuisance to the residents of the area.

Suitable off street parking shall be provided.

Waste Disposal

No disposal of any waste material, including solid and/or hazardous waste, septage, dredge spoils, or organic waste and debris shall be undertaken on the site without appropriate State approval under RSA 149:M,1, or other appropriate State regulations.

Vehicular Barrier

A barrier to prohibit vehicular access when the pit is not in operation shall be required.

Hours of Operation

Start up time for all machinery associated with an Earth Removal Operation shall be no earlier than 6:45 a.m. in cold weather only; in warm weather start up time for machinery shall be no earlier than 7:00 a.m.; activity of any kind, including loading and removal of material from the site shall begin no earlier than 7:00 a.m.; termination of removal of material from the site shall be no later than 5:00 p.m.; processing of materials shall begin no earlier than 7:00 a.m. and must be shut down by 5:00 p.m. These operating hours shall be for Monday through Saturday. No operation shall take place on Sundays and major Federal holidays, as follows: New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving and Christmas; ***provided, however, that access on Sundays and holidays is permitted in the event of a town-wide emergency situation requiring use of material or equipment, for example, flooding situations, ice storms, major blizzards.***

Groundwater Resource Protection

The Applicant shall prove to the Regulator's satisfaction that the excavation:

- 1) shall not detrimentally affect the quality of the groundwater contained in any aquifer by directly contributing to pollution or by increasing the long term susceptibility of the aquifer to potential pollutants; and,
- 2) 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.

Earth Removal Regulations
New Boston, New Hampshire

Final Draft for Public Hearing 3/7/11

See the Town of New Boston Zoning Ordinance, Groundwater Resource Conservation District, Section 204.7, for details of Groundwater Resource Protection, including a Conditional Use Permit process for excavations within the Town of New Boston's Groundwater Resource Conservation District as identified on the map entitled "Town of New Boston Aquifer Transmissivity Levels", dated June 2009, and as amended, as prepared by the Southern New Hampshire Planning Commission.

Maximum Excavation Limit

Final excavation grade shall be not less than four feet to documented seasonal high water table, **provided, however, that pursuant to RSA 155-E:11,II, an exception shall be granted if the application demonstrates to the Regulator's satisfaction that excavation below this height will not adversely affect water quality. The Regulator reserves the right to have an outside review of the information submitted as part of any proposal to excavate within four feet of the documented seasonal high water table, at the Applicant's expense. Written notice of such an exception shall be recorded in the Hillsborough County Registry of Deeds at the Applicant's expense, and one copy shall be filed with the New Hampshire Department of Environmental Services.**

Tree Cutting

The applicable state statutes pertaining to forestry practice and timber harvesting shall apply to the removal of vegetative cover at excavation sites.

Stump and Slash Disposal

Stumps and slash generated during the site preparation shall either be chipped onsite and the resulting chips used onsite for erosion control, or removed from the site unless a site is approved by the State of New Hampshire to allow the stumps and slash to be landfilled.

Stumps and brush shall be allowed to be buried or stored onsite so long as the stumps and tree parts are buried in a manner to preclude the development of sink holes 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, and shall be shown on the plan.

Stockpiling Offsite Materials (Temporary)

Approved Earth Removal Operations are permitted to temporarily store/stage/stockpile excess materials from offsite locations and jobsites only as an accessory activity to the Earth Removal Operation provided that sufficient erosion control measures are employed around any such stockpiles/storage areas. Hours of operation for this activity shall be the same as the hours of operation for the Earth Removal Operation itself. Except as may be permitted elsewhere in these Regulations, no waste disposal or storage of hazardous materials may take place.

Final Draft for Public Hearing 3/7/11

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 the refueling area and facilities.

Hauling Plan

Hauling information, including routes to be utilized to and from the pit, the type of motor vehicles involved, and the frequency and schedule of operations of such vehicles shall be provided to the Regulator prior to the issuance of an excavation permit. The Regulator may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. The Regulator reserves the right to require submission of a traffic study, environmental impact study and a noise impact study to ensure that public safety, neighborhood compatibility, environmental issues, and road capacity and condition have been properly considered and addressed in the permit application and hauling plan.

All vehicles transporting excavated material shall use adequate covering and other measures to prevent dust and spillage when loaded.

Topsoil

Topsoil shall be stripped from the excavation area and stockpiled for use in subsequent reclamation of the site. It shall be protected from erosion by seeding, covering or some other acceptable method. No topsoil shall be removed from the site without specific approval from the Regulator.

No material shall be stockpiled or located outside the permit area.

Dust Control

The excavator shall provide such dust control procedures as to eliminate any annoyance or inconvenience to the inhabitants of the area.

Material Processing

The Regulator recognizes that as part of an earth removal operation there may be occasions that material processing, such as, crushing and screening, is needed as a temporary and incidental accessory activity. Such activities may only take place if approved by the Regulator upon request of the Applicant during the application process. Such approval is not intended to approve, nor shall it constitute approval of, an ongoing permanent commercial/industrial

Earth Removal Regulations
New Boston, New Hampshire

Final Draft for Public Hearing 3/7/11

crushing or processing operation. The Regulator reserves the right to set limitations on the processing of materials, including, but not limited to, hours of operation.

Stopping of Removal/Excavation Operations

If removal/excavation operations stop for more than one year with no notice thereof provided to the Regulator and said stoppage is not in accordance with the approved excavation plan or due to bad weather, the excavation permit may be revoked and the performance bond forfeited with its proceeds used for reclaiming the land in accordance with the approved reclamation plan.

Final Draft for Public Hearing 3/7/11

SECTION 14 RECLAMATION PLAN.

- A. 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. The plan shall show or be accompanied by the following items:
1. Name, address and signature of the person preparing the plan, with applicable professional seals; date of plan, including revision dates; graphic and written scale; and, north point.
 2. All boundaries of the area proposed for reclamation and any other land containing features that logically would be implicated in the reclamation .
 3. Final topography of the area proposed for reclamation, at contour intervals of five feet or less.
 4. Final surface drainage pattern, including the location and design of all artificial and/or modified drainage facilities.
 5. Timetable as to fully-depleted sites within the excavation area.
 6. Schedule of final reclamation activities including seeding mixtures, cover vegetation, fertilizer types, and application rates.
 7. The subsequent reuse of the site, if known or anticipated.
 8. A Stormwater Management and Erosion and Sediment Control plan prepared in accordance with Section V-U of the Town of New Boston Subdivision Regulations, regardless of the size of the excavation area; or, Copies of the NH DES Alteration of Terrain Permit and the plans submitted as part of the application for said permit.
 9. Cross sectional views showing existing, excavated and reclaimed topographical configuration.
 10. Location of vegetation. All plantings shall be native species and no invasive species shall be permitted. Invasive species are those found on the NH Prohibited Invasive Species and Restricted Species Lists.

B. Additional Information to be used in Reclamation Plan Preparation

Site Reclamation Timetable on New Excavation

No excavation of a new area shall exceed 5 acres in size at any one time. Any permitted excavation shall be reclaimed according to the approved application within one year after the permit expiration date. If reclamation is not completed within one year after the permit expiration date the Regulator may declare all or part of the bond forfeited, and use these monies to reclaim the site.

Final Draft for Public Hearing 3/7/11

Reclamation Standards

Ground levels and grades shall be established as shown on the approved reclamation plan as soon as practical during site excavation, but not later than one year after excavation has been completed.

Stockpiled topsoil shall be spread over the disturbed area to a depth sufficient to allow establishment and maintenance of vegetation. Areas posing the most critical problems for re-vegetation shall be given first priority should available topsoil be limited. The disturbed areas should be limed and fertilized, if necessary, and seeded with a grass or grass-legume mixture.

If deemed necessary by the Regulator, suitable native trees or shrubs shall be planted in order to provide screening and natural beauty and to aid in erosion control. Such planted areas shall be protected from erosion during an appropriate establishment period by mulch and structural erosion control devices. Invasive species are not permitted. Invasive species are those found on the New Hampshire Prohibited Invasive Species and Restricted Invasive Species Lists.

Nothing in this section should be deemed to prohibit the use of innovative techniques for reclamation - the use of warm season seed mixes, etc. Such techniques shall be approved as part of the reclamation plan.

Final Draft for Public Hearing 3/7/11

SECTION 15 OTHER INFORMATION

The Regulator reserves the right, per RSA 155-E:3, VII, to request any other information it deems necessary to make an informed decision, or to have plans reviewed by an outside agency. According to the authority vested in the Regulator by RSA 676:4,I,(g), any reasonable expenses incurred for such information or reviews shall be charged to the Applicant. Failure to pay such costs constitutes valid grounds for the Regulator to deny the application.

SECTION 16 ADMINISTRATION AND ENFORCEMENT

A. Regulation and Permit Administration.

Following the initial approval of the earth material removal permit by the Regulator, the Earth Removal Operation Applicant shall be required, on an annual basis, to be inspected to determine whether continued compliance with the conditions of approval and any other applicable standards is being maintained.

B. Permits

1. Permits shall be issued only to the owner or his agent and shall not be transferable without the prior written consent of the Regulator. A copy of the permit shall be prominently displayed at the site or the principal access to the site.
2. A permit shall be valid until such time as the Regulator determines the Earth Removal Operation is no longer in compliance with these regulations; or, until such time as the operation shall be deemed to be abandoned as defined in these Regulations; or, until such time as the owner informs the Regulator that they will no longer be running the Earth Removal Operation; or, until such time as the operation is depleted; or, until the completion date as determined by the Regulator in the regulatory process, in accordance with RSA 155-E:8, whichever first occurs.
3. Failure to file for a permit shall be considered a violation and operators who fail to file will be issued a cease and desist order.
4. The Regulator may include in the permit any such reasonable conditions as are consistent with the purpose of these regulations.

C. Amendments and Renewals

Permit holders wishing to alter the size or location of the excavation, the rate of removal or the plan for reclamation shall apply for a renewal or amendment, following the same procedures as those required for the original excavation permits.

D. Inspections

The Regulator or its designee may make periodic inspections, minimally on an annual basis, of all excavation sites, both permitted and exempt, to determine if the operations are in conformance with these regulations and the approved plans.

E. Suspensions and Revocations

The Regulator may suspend or revoke a permit if the Regulator determines that any provision of the permit has been violated, a material misstatement was made in the application upon which a permit was granted, or any unsafe or hazardous conditions are determined by a site inspection to exist. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with these regulations.

F. Appeals

Final Draft for Public Hearing 3/7/11

Any person affected by the Regulator's decision to approve or disapprove an application or any amendment thereto or any suspension or revocation of a permit, may appeal to the Regulator for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall be filed within ten (10) days of such decision and shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable. The Regulator 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 Regulator's decision on a motion for rehearing may appeal in accordance with RSA 677:4-15.

G. Penalties

Fines, penalties and remedies for violations of this regulation shall be the same as outlined in RSA 676:15 and 17. Whoever violates any provision of this regulation, a permit or a valid order issued hereunder shall be guilty of a misdemeanor.

Final Draft for Public Hearing 3/7/11

SECTION 17 WAIVERS

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 Regulator may, upon application and following a duly-noticed hearing, grant any waivers in writing to the standards contained herein only when the Regulator finds, by majority vote, that

- 1) strict conformity to the Earth Removal Regulations would pose an unnecessary hardship to the Applicant and a waiver would not be contrary to the spirit and intent of the regulations, or,
- 2) specific circumstances relative to the application, or conditions of the land in the subject property, indicate that the waiver will properly carry out the spirit and intent of the regulations.

A waiver of any specific requirement shall not be construed as a waiver in full or in part of any other requirement, nor shall such waiver constitute a waiver of requirements on any other site plan proposal. The basis for any waiver granted by the Regulator shall be recorded in the minutes.

Final Draft for Public Hearing 3/7/11

SECTION 18 SEPERABILITY

The invalidity of any provision, sentence, paragraph, etc., of this regulation shall not affect the validity of any other provision, sentence, paragraph, etc.

SECTION 19 CONFLICTING PROVISIONS

- A. Where the provisions of this regulation are in conflict with other ordinances, regulations or laws, the more stringent shall apply.
- B. Nothing in this regulation shall be deemed to supercede or pre-empt applicable environmental standards or permit requirements contained in State laws, and no exemption under this regulation shall be construed as an exemption from any State statute.

SECTION 20 EFFECTIVE DATE

These regulations shall take effect upon adoption by the Planning Board and as amended.

Final Draft for Public Hearing 3/7/11

APPENDIX 1 DETAILS AND DESCRIPTIONS FOR PROJECTS EXEMPT FROM A PERMIT

The following projects do not require a permit. They are, however, subject to RSA 155-E:4, 155-E:5, and 155-E:5-a, and such sections of these regulations as are specified herein.

The sections below expand upon the statutory definitions of Projects Exempt from a Permit to provide the Regulator a framework within which to review projects that it is asserted do not require a permit.

In addition to the requirements listed below, the Regulator may require the owner/operator to come before the Regulator, at a fully noticed public hearing, and submit such information as may be necessary to demonstrate compliance with these standards and/or other appropriate information to demonstrate compliance to any particular, claimed statutory *or Town* exemption.

Projects Exempt from a Permit

I. 'Existing Excavations' as set forth herein.

A. Excavations qualifying for 'existing excavation' exemption:

An 'existing excavation' is one which meets **all** of the following conditions:

1. The owner of such excavation must demonstrate that such excavation lawfully existed as of August 24, 1979; and,
2. The owner of such excavation must demonstrate that earth material of sufficient weight or volume to be commercially useful was removed during the two-year period before August 24, 1979; and,
3. The owner of such excavation must demonstrate that either said owner, the predecessor in title to such owner, or the authorized operator of such excavation previously filed a report with the local Regulator no later than two years following August 4, 1989, which report must have included:
 - a. The location of the excavation and the date the excavation first began;
 - b. A description of the limits of permissible expansion, as described in paragraph C below, which are claimed to apply to the excavation;
 - c. An estimate of the area which had been excavated at the time of the report; and,
 - d. An estimate of the amount of commercially viable earth materials still available on the parcel at that time.

'Existing excavation' shall also include the quarrying or crushing of bedrock for the production of construction aggregate; provided, however, that no owner shall, after August 4,

Final Draft for Public Hearing 3/7/11

1989, permit any such quarrying or crushing of bedrock to occur for the first time on any excavation site without first obtaining a permit therefor under these regulations.

B. Application to demonstrate entitlement to 'existing excavation' exemption:

An owner who considers their excavation exempt from the permit requirement due to the 'existing excavation' exemption shall, nevertheless file an "Existing Excavation Exemption Application" with the Regulator before commencing such operation, and shall present such evidence as the Regulator reasonably requires to ascertain that the characteristics of the proposed project are such that they do, indeed, demonstrate entitlement to the claimed exemption.

The "Existing Excavation Exemption Application" shall be considered by the Regulator at a duly called and fully noticed public hearing, such notice being consistent with RSA 155-E:7, as the same may be amended, from time to time. No excavation or removal of earth materials from such site shall be undertaken unless and until the Regulator, pursuant to this section, has made a finding that the Applicant has demonstrated that the claimed exemption is, indeed, applicable to the site.

C. Expansion of 'existing excavation':

1. Limits of 'permissible expansion'

An 'existing excavation', as set forth above, may NOT be expanded, without obtaining a permit from the Regulator:

- a. beyond the limits of the town in which it is situated; and,
- b. beyond the area which, on August 24, 1979, and at all times subsequent thereto has been contiguous to and in common ownership with the excavation site as of that date; and,
- c. beyond the area that has been appraised and inventoried for property tax purposes as part of the same tract as the excavation site of that date, as modified by the limitations of RSA 155-E:4-a, I, II, and II-a.

In this regard, the term 'contiguous' means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town.

2. Application for Expansion when Local Zoning Prohibition or Control Exist

Further, in circumstances in which such excavation is not allowed in that location by local zoning or similar ordinances in effect on August 4, 1989, or when such ordinances allow such excavation only by special exception, such expansion may NOT occur until an application for such expansion has been made to the Regulator, who may restrict or modify such expansion with conditions by order of the Regulator if, after

Final Draft for Public Hearing 3/7/11

notice to the owner and a hearing, the Regulator finds that such expansion will have a substantially different and adverse impact on the neighborhood.

3. Scope of Hearing on Application for Expansion when Local Zoning Prohibition or Control Exist

An Applicant seeking to expand an 'existing excavation' in those areas of New Boston in which such an underlying use is either prohibited by local zoning or other local ordinances in effect on August 4, 1989, or when such ordinances allow such excavation only by special exception, shall have the burden of demonstrating to the Regulator, at a noticed public hearing, that such expansion will NOT have a substantially different and adverse impact on the neighborhood. The Regulator, shall make such a finding only if the Applicant demonstrates that:

- a. The excavation will not cause an unreasonable diminution in property values or unreasonably change the character of the neighborhood; and,
- b. The excavation will not unreasonably accelerate the deterioration of the highways or create safety hazards in the use of said highways; and,
- c. The excavation will not create any unreasonable nuisance or create public health or safety hazards.

4. Hearing on 'Expansion' separate and distinct

The hearing provided for in this section relating to an application for an expansion shall be separate and distinct from any hearing that may be held on the question of whether an 'existing excavation' is entitled to an exemption, but nothing herein shall preclude the Regulator, for the sake of convenience, from conducting such hearing(s) at the same time, date and place.

5. Appeals of decision on 'Expansion'

An appeal from any decision of the Regulator under this section may be taken in the manner specified in RSA 155-E:9, as the same may be amended, from time to time.

D. Compliance with Statutory Minimum Standards

Any 'existing excavation', as well as any expansion thereof, shall be performed in compliance with the express operational standards of RSA 155-E:4-a and the express reclamation standards of RSA 155-E:5 and 155-E:5-a, as the same may be amended, from time to time. Any violation of those standards shall be enforceable pursuant to RSA 155-E:10. Compliance with these standards and the other requirements herein, is mandatory in order to retain the exempted status.

Final Draft for Public Hearing 3/7/11

Compliance shall be confirmed by periodic inspections by the Regulator or its designee as detailed in Section 16 (Administration and Enforcement) of these regulations. Loss of exempt status can occur only after the Regulator 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, upon a finding by the Regulator to that effect.

II. Excavations Performed Exclusively for Construction of Class I, II, III, IV or V Highway

An excavation performed exclusively for the lawful construction, reconstruction or maintenance of a Class I, II, III, IV or V highway shall be exempt from the permit requirement herein, provided the following conditions have been complied with:

A. Application to Demonstrate Entitlement to Exemption:

1. Hearing Request

An owner, who considers their excavation exempt from the permit requirements herein due to the "Class I, II, III, IV or V highway construction, reconstruction or maintenance" exemption, shall, prior to the commencement of any such operation, request in writing on an application provided for this purpose by the Regulator, a hearing before the Regulator to demonstrate entitlement to this exemption. Upon the receipt of such request, the Regulator shall schedule a fully noticed public hearing, such notice being consistent with RSA 155-E:7, as the same may be amended, from time to time. No excavation or removal of earth materials from such site shall be undertaken unless and until the Regulator, pursuant to this section, has made a finding that the Applicant has demonstrated that the claimed exemption is, indeed, applicable to such site.

2. Requirements

The owner shall have the burden of demonstrating to the Regulator at said hearing, that the following conditions have been met:

- a. The owner has entered into a written agreement with a governmental unit, the terms of which provide that the materials from the excavation shall be used exclusively for the lawful construction, reconstruction or maintenance of a Class I, II, III, IV, or V highway. A copy of the agreement shall be provided to the Regulator. Said agreement shall identify the highway to which the agreement pertains as well as the contemplated duration of the agreement. Furthermore, the agreement shall identify and limit the exemption granted under this Section to only that much of the excavation that is necessary for the public project.
- b. The owner has executed a document confirming that the owner understands that any operation conducted under this exemption is,

Final Draft for Public Hearing 3/7/11

nevertheless, required to be done in a manner that will NOT result in a violation of the prohibited activity enumerated in Section 8, above, (Prohibited Projects), agreeing to conduct such operation in compliance with the following, and such operation shall comply with the following irrespective of whether such document has been executed:

- i. RSA 155-E:4-a, pertaining to Minimum and Express Operational Standards; and,
- ii. RSA 155-E:5, pertaining to Minimum and Express Reclamation Standards; and,
- iii. RSA 155-E:5-a, pertaining to Incremental Reclamation Standards.

III. Other Exemptions

A. Application to Demonstrate Entitlement to Exemption:

The following ~~three~~ five types of excavations shall be exempt from the permit requirement herein, provided the conditions specified below for each of said types of projects have been complied with:

- excavations that are incidental to agricultural or silvicultural (forestry) activities, normal landscaping or minor topographical adjustment; or,
- excavations that are exclusively incidental to the lawful construction or alteration of a building or structure, a parking lot or way including a driveway, on a portion of the premises where removal occurs; or,
- 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); or,
- excavations of less than 5,000 cubic yards, subject to the provisions below; or,
- excavations greater than 5,000 cubic yards but less than 10,000 cubic yards, subject to the provisions below.

B. Conditions Applicable to "Other Exempt Excavations":

1. Hearing Request

An owner who considers their excavation exempt from the permit requirement herein due to any of the ~~three~~ five circumstances identified in paragraph A, above, shall, prior to the commencement of any such operation, request, in writing on an application provided for this purpose by the Regulator, a hearing before the Regulator to demonstrate entitlement to this exemption. The Applicant shall provide with the application, the information identified below with regard to the particular exemption claimed. Upon the receipt of such request, the Regulator shall schedule a fully noticed public hearing, such notice being consistent with that required by RSA 155-E:7, as the same may be amended,

Final Draft for Public Hearing 3/7/11

from time to time. No excavation or removal of earth material from such site shall be undertaken unless and until the Regulator, pursuant to this section, has made a finding that the Applicant has demonstrated that the claimed exemption is, indeed, applicable to such site.

2. Requirements

The owner shall have the burden of demonstrating to the Regulator at said hearing, that the following conditions have been met:

a. Incidental to Agricultural or Silvicultural (Forestry) Activities, Normal Landscaping or Minor Topographical Adjustment

In the case of a claim that the proposed excavation is incidental to agricultural or silvicultural (forestry) activities, normal landscaping or minor topographical adjustment, the owner shall demonstrate to the Regulator that the agricultural or silvicultural (forestry) activities, normal landscaping or minor topographical adjustment, to which the proposed excavation is claimed to be incidental, is, indeed, the principal activity on the property. In this regard, the information provided to the Regulator shall include, by way of example and not by way of limitation, the information listed in the section below. No excavation pursuant to this exemption may be started, however, until any required federal, state or local permits have been issued for all the activities to which the proposed excavation is intended to be exclusively incidental.

- (i) the nature and volume of agricultural or silvicultural (forestry) activities, and normal landscaping that are normally conducted on the site or, (if applicable), the extent and purpose of any contemplated minor topographical adjustment to which the excavation is intended to be incidental;
- (ii) the contemplated amount of material that is intended to be removed;
- (iii) the extent to which and manner in which the agricultural or silvicultural (forestry) activities, normal landscaping or minor topographical adjustment will be increased or enhanced by the removal of the earth material;
- (iv) the contemplated duration of the removal operation;
- (v) the intended recipient(s) of the earth products;
- (vi) the manner in which they will be transported, including the roadways that are contemplated to be used;
- (vii) other information requested by the Regulator that is reasonably calculated to assist the Regulator in making a determination that the proposed excavation is, indeed, 'incidental' to the primary purpose of the site, as that term is defined herein.

Final Draft for Public Hearing 3/7/11

b. Exclusively Incidental to the Lawful Construction or Alteration of a Building or Structure, a Parking Lot or Way, Including a Driveway

In the case of a claim that the proposed excavation is exclusively incidental to the lawful construction or alteration of a building or structure, a parking lot or way including a driveway, on a portion of the premises where removal occurs the owner shall demonstrate to the Regulator that the proposed excavation is, indeed, exclusively incidental to the principal activity on the property and that said principal activity is, indeed, lawful. In this regard, the information provided to the Regulator shall include, by way of example and not by way of limitation, the information listed in the section below. No excavation pursuant to this exemption may be started, however, until any required federal, state or local permits have been issued for all the activities to which the proposed excavation is intended to be exclusively incidental.

- (i) the nature and volume of lawful construction or alteration of a building or structure, a parking lot or way including a driveway, that are proposed to be constructed on the site;
- (ii) the contemplated amount of material that is intended to be removed;
- (iii) the extent to which and manner in which the proposed excavation is related to or required in order to facilitate the lawful construction or alteration of a building or structure, a parking lot or way including a driveway, that is contemplated on the property;
- (iv) the contemplated duration of the removal process;
- (v) the following specific information regarding the proposed excavation operation:
 - 1. The name and address of the owner of the land to be excavated;
 - 2. The name and address of the person who will actually do the excavating;
 - 3. The names and addresses of all abutters to the premises, which will be excavated;
 - 4. A plan at a scale of no less than one inch equals one hundred feet (1" = 100'), which would comply with Erosion and Sedimentation Control provisions of the Town of New Boston Subdivision Regulations and would be of a quality that is easily understood and of an accuracy that compliance can easily be checked or, if permitted by the Regulator, in lieu thereof, a copy of the existing subdivision plan or other similar document that contains with reasonable accuracy, the following information:
 - a) The tax map and lot number of the parcel(s) to be excavated with the estimated volume of material to be removed;

- b) The tax map and lot number(s) of the parcel(s) where the material is to be utilized, with the estimated volume of material needed for each parcel. Give a brief description of how it will be used on this site.
- c) The number of acres in the entire tract and the number of acres actually being excavated;
- d) The location of the lawful construction or alteration of a building or structure, a parking lot or way including a driveway, that are proposed to be constructed on the site and to which the excavation will be incidental;
- e) The estimated duration and description of phasing of the project, if applicable;
- f) Equipment that will be employed for material removal; give number and types of vehicles, frequency and schedule of material removal operation. The Regulator may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions;
- g) The breadth, depth and slope of the proposed excavation (and existing excavation where applicable);
- h) All existing surface drainage patterns including wetlands, standing water, lakes, streams, intermittent streams, major seasonally wet areas, and the like;
- i) An erosion and sedimentation control plan, regardless of the size of the excavation area;
- j) The existing vegetation, existing and proposed fencing, buffers or visual barriers, including heights and materials;
- k) The existing topography at contour intervals of five feet, based on a permanent assumed benchmark, (if that information is currently available), if not, then your best estimate and depiction;
- l) The proposed topography at contour intervals of five feet at the completion of excavation and restoration, (if that information is currently available), if not, then your best estimate and depiction;
- m) Any existing and all proposed excavation areas intended to be excavated under the claimed exemption, with acreage included;
- n) Names, locations, and widths of all public roads and rights-of-way that are intended to be used in the excavation under the claimed exemption;
- o) Existing and proposed access roads, if any, including widths and surface materials that are intended to be

- used in the excavation under the claimed exemption, and methods to prevent site materials from being tracked onto public roadways;
- p) Specific actions to be taken by the Applicant on-site relative to fuel oil and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons;
 - q) Hauling information, including routes to be utilized, the number of axles and weight of motor vehicles involved, and the frequency and schedule of operations of such vehicles;
 - r) Storage areas, for the stockpile of materials to be used on-site, as well as for topsoil to be used in reclamation. Volumes of these materials to be indicated.
 - s) Any existing and all proposed accessory facilities/activities;
 - t) The locations of existing buildings, structures, septic systems and wells on abutting properties within one hundred and fifty (150) feet of the property boundary and all proposed similar facilities within the subject property.
 - u) A plan and timetable for reclamation, containing at the least;
 - A schedule of vegetative and temporary reclamation activities including seeding mixtures, mulching materials, fertilizer types, lime, and application rates;
 - The plant materials to be used in the restoration; spacing, their quantities and sizes with consideration being given to reproducing the pre-existing vegetation.
 - All plantings shall be native species and no invasive species shall be permitted. Invasive species are those found on the NH Prohibited Invasive Species and Restricted Species Lists.
 - v) Copies of or reference to the permit approvals and other documents pertinent to the underlying activity to which this excavation is claimed to be incidental.
 - w) In the case that the excavation is to be carried on within an approved subdivision and is claimed to be incidental to the site work development of said subdivision, the Applicant shall identify individual subdivision lots that may be the intended destination for these materials so that any decision the Regulator may make can be

applicable in the future to those lots so as to minimize the need for future applications.

The Regulator reserves the right to waive any of the foregoing deemed unnecessary in view of the scope of the proposal as well as the right to request such other information or special investigative studies as the Regulator may reasonably deem necessary based on the contemplated scope of the project as disclosed at the hearing described in Appendix 1,III,B,1. Once the hearing is concluded, the Regulator shall determine whether the exemption under this section shall apply. If so, and if the scope of the project warrants, the Regulator may impose reasonable conditions on the conduct of the operation to insure that the operation shall continue to be exclusively incidental to the underlying activity to which the excavation is claimed to be incidental and also to protect the public health, safety and welfare to the extent that such operation may impact the same.

- c. Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E

In the case of a claim that the proposed excavation is exempt due to the fact that it is an excavation from a granite quarry for the purpose of producing dimension stone which requires a permit under RSA 12-E, the owner shall demonstrate to the Regulator that the proposed excavation is, indeed, one to which this exemption applies, by providing to the Regulator, the following:

- i. a copy of the bond required pursuant to RSA 12-E:6, showing that it is in effect;
- ii. a copy of any mining plan provided to the State in accordance with RSA 12-E:4 showing any conditions which may have been imposed when the permit was issued;
- iii. a copy of any permit, with related conditions, issued pursuant to RSA 12-E:6, showing that the same is in effect.

In the case of this claimed exemption ~~only~~, the Regulator, upon receipt of the foregoing, if it considers that the same is sufficient to justify that the exception in this section applies, may dispense with the formal public hearing required above and issue a finding to the effect that the exemption is applicable and that no further permit or oversight by the Regulator is required.

d. Excavations of less than 5,000 cubic yards

In the case of a claim that the proposed excavation is exempt due to the fact that less than 5,000 cubic yards of material will be removed over the life of the project, the owner shall certify as part of the application the area from where the material will be removed and the amount of material that will be removed. No public hearing shall be

Final Draft for Public Hearing 3/7/11

required for an application under this exemption and the Regulator may issue a finding to the effect that the exemption is applicable and that no further permit or oversight by the Regulator is required. Should it be later determined that the applicant has violated this exemption a full review and hearing shall be required. No excavation pursuant to this exemption may be started until any required federal, state or local permits have been issued for all the activities to which the proposed excavation is intended to be exclusively incidental.

e. Excavations of greater than 5,000 cubic yards but less than 10,000 cubic yards

In the case of a claim that the proposed excavation is exempt due to the fact that greater than 5,000 cubic yards but less than 10,000 cubic yards of material will be removed over the life of the project, the owner shall demonstrate in the application for this exemption the area from where the material will be removed and the amount of material that will be removed. The Regulator in its judgement may request that the applicant come before the Regulator for a hearing to confirm the details of the proposed excavation and ensure that the proposed excavation remains within the scope of this exemption. No excavation pursuant to this exemption may be started until any required federal, state or local permits have been issued for all the activities to which the proposed excavation is intended to be exclusively incidental.

C. Conditions Applicable to Other Exempt Excavations:

A person owning land abutting a site which was taken by eminent domain or by any other governmental taking upon which construction is taking place may stockpile earth taken from the construction site and may remove the earth at a later date after written notification to the appropriate local official, and no further permit shall be required.