

EARTH EXCAVATION &
RECLAMATION REGULATIONS

TOWN OF DANVILLE
ROCKINGHAM COUNTY
NEW HAMPSHIRE

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TOWN OF DANVILLE

EXCAVATION AND RECLAMATION REGULATIONS

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TOWN OF DANVILLE

EXCAVATION AND RECLAMATION REGULATIONS

ARTICLE 1

GENERAL PURPOSE AND AUTHORITY

Chapter 155-E of the New Hampshire Revised statutes Annotated requires that, with several exceptions, all mining and excavation operations in the State obtain prior approval and permit from the municipality in which the operation is to occur. The purpose of the Statute and of these Regulations is to minimize safety hazards created by open excavations; to safeguard the public health and welfare; to preserve our natural assets of soil, water, forests and wildlife; to maintain aesthetic features of our environment; to prevent land and water pollution; to protect groundwater resources; and to promote soil stabilization and to return the disturbed area to a suitable use after reclamation.

ARTICLE 2

DEFINITIONS

- 2.1 ABUTTER Means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the Planning Board. For purpose of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For the purpose of notification, the term "abutter" shall also include holders of conservation, preservation, or agricultural preservation restrictions as defined under RSA 477:45.
- 2.2 APPLICANT Means the owner of the excavation site or the owner's designee.
- 2.3 APPLICATION Means a completed application for an excavation permit. An application shall not be considered complete until all of the Excavation Application Checklist items have been completed and accepted to the satisfaction of the Regulator in addition to any other requirements of these Regulations.
- 2.4 AQUIFER Means those areas designated by blue shading or hatching which appear on statewide mapping prepared by the United States Geological Survey entitled: "Availability of Ground Water...", and as referred to in the report prepared by Marin Environmental for the Town of Danville in December 1999 entitled Groundwater Protection Strategy.
- 2.5 COMMERCIAL Means any use of any earth material for sale or resale on or off the site of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported off the excavation area. Excavations which use earth materials in the processing of other material such as, but not limited to, concrete, asphalt and other building materials shall be considered commercial.
- 2.6 CONTIGUOUS Means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in the Town of Danville.

- 2.7 DIMENSION STONE Means rock that is cut, shaped, or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and used for external or interior parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which sections of dimension stone are to be produced. Dimension stone does not include earth as defined in 2.7.
- 2.8 EARTH Means sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally-occurring unconsolidated materials that normally mask the bedrock.
- 2.9 EXCAVATION AREA Means the area within an excavation site where excavation has occurred or is eligible to occur under the provisions of these Regulations which is used, or has been used, for the commercial taking of earth, including all slopes.
- 2.10 EXCAVATION FEE (RSA 155-E:8) Means a fee specified in ARTICLE 16.1, following the public hearing and prior to the issuance of an excavation permit, to defray the cost of processing the application.
- 2.11 EXCAVATION PERMIT (RSA 155-E:8) Means a permit issued by the Board of Selectmen allowing the excavation of material at a specific site, in a manner consistent with RSA 155-E and local regulations for the period designated on the permit itself.
- 2.12 EXCAVATION SITE Means any area of contiguous land in common ownership upon which excavation takes place.
- 2.13 OWNER Means an individual or corporation who claims ownership of the land, containing the excavation site, by virtue of properly executed deed filed at the Registry of Deeds.
- 2.14 APPLICATION FEE (RSA 155-E:11) Means a fee submitted by the applicant to the Board of Selectmen, as one of the prerequisites to reviewing the application, for the purpose of defraying costs associated with application review. The fee is established by the Planning Board.
- 2.15 PIT AGREEMENT Means an agreement between the excavation site owner and the contractor describing the procedure for material excavation (see Section 106.02 of "Standard Specifications for Roads and Bridges" published by the New Hampshire Department of Public Works and Highways).
- 2.16 REFERENCE LINE --see RSA 483-B:4, XVII.
- 2.17 REGULATOR Means the Board of Selectmen of the Town of Danville.
- 2.18 STATIONARY MANUFACTURING AND PROCESSING PLANTS Means structural improvements that are permanently placed and that are integral to the grading, crushing and stockpiling of excavated material.

**ARTICLE 3
PERMIT REQUIRED**

No owner shall permit any excavation of earth on his premises without first obtaining a permit except as follows:

3.1 EXISTING EXCAVATIONS

The owner of an excavation which lawfully existed as of August 24, 1979, from which earth material of sufficient weight or volume to be commercially useful has been removed during the 2-year period before August 24, 1979, may continue such excavation of the excavation site without a permit, subject to the following:

- 3.1.1 Except as specified elsewhere in this ordinance, such an excavation site shall be exempt from the provisions of local zoning, provided that at the time the excavation was first begun, it was in compliance with any local ordinances and regulations that may have been in effect.
- 3.1.2 Such an excavation area may not be expanded, without a permit under these Regulations, beyond the limits of the Town of Danville and the area which, on August 24, 1979, and at all times subsequent thereto has been contiguous to and in common ownership with the excavation site of that date, and appraised and inventoried for property tax purposes as part of the same tract as the excavation site as of that date, as modified by the limitations of RSA 155-E:4-a,I, II, and IIa.
- 3.1.3 When such excavation is not allowed in that location by the Town of Danville Zoning ordinance in effect on August 4, 1989, or when the Zoning Ordinance allows such excavation only by special exception, expansion may be restricted or modified with conditions by order of the Regulator if after notice to the owner and a hearing, the Regulator finds that such expansion will have a substantially different and adverse impact on the neighborhood.
- 3.1.4 Such excavation shall be performed in compliance with the operational and reclamation standards as expressly set forth in RSA 155-E:4, 5 and 5-a.3.1.5 The owners or operators of any existing excavation area for which no permit has been obtained under these Regulations and for which an excavation report, as required by RSA 155-E:2,I(d), was not filed with the Regulator by August 4, 1991 shall be determined to be abandoned per Section 3.2, Subsection 3.2.1 (c) of this Article. The excavation report shall contain the following information:
 - (a) the location of the excavation by tax map and lot number;
 - (b) the date the excavation first began;
 - (c) a description of the limits of permissible expansion as described in Article 3, Section 3.1, Subsection 3.1.2, which are claimed to apply to the excavation;
 - (d) an estimate of the area which has been excavated to date; and

(e) an estimate of the amount of commercially-viable earth materials still available on the parcel.

3.1.5 The exemption from local zoning or site location regulations as stated in Subsection 3.1.1 of this section shall include the quarrying or crushing of bedrock for the production of construction aggregate; provided, however, that no owner shall permit any such quarrying or crushing of bedrock to occur for the first time on any excavation site without first obtaining a permit therefore under these Regulations.

3.2 ABANDONED EXCAVATIONS

The permit and zoning exemption under these Regulations shall not apply to any abandoned excavation, as defined in Subsection 3.2.1, below.

3.2.1 For purposes of this Section, any excavation, except for excavations or excavation sites described in Section 3.3 of this Article 3, whether subject to a permit under these Regulations or not, for which the affected area has not yet been brought into complete compliance with the Reclamation Standards of these Regulations shall be deemed "abandoned" if:

(a) No earth material of sufficient weight or volume to be commercially useful has been removed from that excavation site during any 2-year period, either before, on, or after August 4, 1989; provided, however, that before the end of such 2-year period, the owner or operator may extend the period by submitting to the Regulator a reclamation timetable to be approved by the Regulator, and by posting a bond or other security with the Town Treasurer in a form and in an amount prescribed by the Regulator, sufficient to secure the reclamation of the entire excavation site in accordance with the Reclamation Standards contained in these Regulations; or

(b) The excavation site is in use and is not an excavation or excavation site as described in Section 3.3 of this Article 3, but does not conform with the Incremental Reclamation Standards of these Regulations, or the owner or operator has not posted a bond or other security and submitted a reclamation timetable to be approved by the Regulator as described in Subsection 3.2.1 (a) of this Section 3.2; or

(c) The owner or operator of the excavation has neither secured a permit pursuant to these Regulations nor filed a report of an existing excavation pursuant to Article 3, Section 3.1, Subsection 3.1.5 within the prescribed period.

3.2.2 In addition to the enforcement remedies provided in Article 17, the Regulator 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 Article 3, Section 3.2, Subsection 3.2.1 (a), above, or to complete reclamation in accordance with these Regulations within a stated reasonable time. Such an order shall only be made following a hearing for which notice has been given in accordance with Article 11, if the Regulator finds that the

public health, safety, or welfare requires such reclamation. If the owner fails to complete the reclamation within the time prescribed in the order, the Regulator may cause the reclamation to be completed at the expense of the Town. The Town'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.

3.2.3 The site of an excavation which ceased commercially useful operation prior to August 24, 1977, but for which the affected area has not been brought into compliance with the Reclamation Standards of these Regulations, may be made subject to the remedy prescribed in Subsection 3.2.2 of this Section 3.2 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.

3.3 STATIONARY MANUFACTURING PLANTS

3.3.1 No permit shall be required under these Regulations for excavation from an excavation site which on August 4, 1989 was contiguous to or was contiguous land in common ownership with a stationary manufacturing and processing plant which was in operation as of August 24, 1979, and which used earth obtained from such excavation site. Such excavation shall be performed in compliance with the operational and reclamation standards as expressly set forth in RSA 155-E: 4-a, 5 and 5a. of these Regulations, which express standards shall be the sole standards with which such excavations must comply in order to retain their non-permit status as provided under this paragraph. Loss of such non-permit status shall be preceded by written notice from the Regulator that the excavation is not in compliance and the owner shall have failed to bring such excavation into compliance within thirty (30) days of receipt of such notice. Such excavation may be expanded without a permit under these Regulations to any contiguous lands which were in common ownership with the site of the plant on August 4, 1989, except as limited by RSA 155-E:4-a, I, II and III.

3.3.2 No further permit shall be required under these Regulations for excavation from a site which, on August 4, 1989, was contiguous to or was contiguous land in common ownership with a stationary manufacturing and processing plant for which a local or state permit has been granted since August 24, 1979, and before August 4, 1989, which uses earth obtained from such site. it is further provided that their operation and reclamation shall continue to be regulated by such local or state permits and any renewals or extensions thereof by the permitting authority or authorities.

3.4 HIGHWAY EXCAVATIONS

No permit shall be required under these Regulations for excavation which is performed exclusively for the lawful construction, reconstruction, or maintenance of a class I, II, III, IV, or V highway by a unit of government having jurisdiction for the highway or by an agent of the unit of government which has a contract for the construction, reconstruction, or maintenance of the highway, subject, however, to the following:

- 3.4.1 A copy of the pit agreement executed by the owner, the agent, and the governmental unit shall be filed with the Regulator prior to the start of excavation. The failure to file such agreement, or the failure of the excavator to comply with the terms of such agreement, shall be deemed a violation of these Regulations, and may be enforced pursuant to Article 17.
- 3.4.2 Such excavation shall not be exempt from the Town of Danville Zoning ordinance, or other applicable ordinances, unless such an exemption is granted pursuant to Subsection 3.4.3 below, or from the operational and reclamation standards as expressly set forth in RSA 155-E:4a, 5 and 5a, which express standards shall be the sole standards with which such excavations must comply in order to retain their non-permit status as provided under this section. Before beginning such excavation, the governmental unit or its agents shall certify to the Regulator that:
- (a) The excavation shall comply with the operational and reclamation standards of; RSA 155-E: 4-a, 5 and 5a.
 - (b) The excavation shall not be within fifty (50) feet of the boundary of a disapproving abutter or within ten (10) feet of the boundary of an approving abutter, unless requested in writing by said approving abutter;
 - (c) The excavation shall not be unduly hazardous or injurious to the public welfare;
 - (d) Existing visual barriers to public highways shall not be removed, except to provide access to the excavation;
 - (e) The excavation shall not substantially damage a known aquifer, so designated by the U.S. Geological Survey; and as referred to in the report prepared by Marin Environmental for the Town of Danville in December 1999 entitled Groundwater Protection Strategy.
 - i The excavation shall not detrimentally affect the quality of the 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. The Regulator may require that the applicant provide data or reports prepared by a professional engineer or groundwater consultant which assess the potential aquifer damage caused by the proposed excavation project.
 - (f) All required permits for the excavation from state or federal agencies have been obtained.

3.4.3 The New Hampshire Department of Transportation (NHDOT) or its agent may apply directly to the NHDOT Appeals Board created under RSA 21-L to be exempted from the provisions of the Town of Danville Zoning Ordinance or other ordinances or regulations, with respect to the excavation or transportation of materials being used exclusively for the lawful construction, reconstruction, or maintenance of a class I, II, or III highway.

(a) The application shall state whether the applicant has requested any exceptions or variances which may be available at the local level, and shall describe the outcome of such requests.

(b) Prior to acting on the application, the NHDOT Appeals Board shall hold a hearing in the Town of Danville. At least ten (10) days prior to such hearing, notice shall be published in a newspaper of general circulation in the Town, and shall be sent by certified mail to the applicant, the Chairman of the Conservation Commission and Planning Board, if the proposed exemption concerns an excavation site, to the abutters of that site as defined in Article 2.2.1.

(c) Following the hearing, the NHDOT Appeals Board shall issue a written decision, copies of which shall be mailed to the applicant and the parties to whom notice was sent. If an exemption is granted, the written decision shall include:

(i) A statement of the precise section of the ordinance or regulation from which the applicant is exempted. The applicant shall not be exempt from any section or provisions not so listed.

(ii) An identification of the public interest being protected by the ordinance or regulation.

(iii) A statement of the state interest involved, and of why, in the opinion of the board, that the state interest overrides the interest protected by the ordinance or regulation.

(iv) Any conditions to be imposed on the applicant, to protect the public health, safety, or welfare.

(d) The decision of the NHDOT Appeals Board may be appealed in the manner provided for zoning decisions in RSA 677:4-14; provided, however, that a decision under this subsection shall be considered a rehearing under RSA 677, and no further motion for rehearing shall be required.

3.5 OTHER EXCEPTIONS

3.5.1 The following additional excavation activities are exempt from the permit requirements of these Regulations:

- (a) Excavation that is exclusively incidental to the lawful construction or alteration of a building or structure or the construction or alteration of a parking lot or way including a driveway on a portion of the premises where the removal occurs; provided, however, that no such excavation shall be commenced without a permit under these Regulations unless all state and local permits required for the construction or alteration of the building, structure, parking lot, or way have been issued.
- (b) Excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment.
- (c) Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E.
- (d) In all cases under this part, the total volume of material must be limited to no more than 3,000 cubic yards.

3.5.2 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 giving written notification to the Regulator of the intent to remove the stockpiled earth.

ARTICLE 4
PERMIT APPLICATION

4.1 Any owner or owner's designee subject to these Regulations shall, prior to excavation of his land, apply to the Regulator for an excavation permit and submit a reclamation plan. A copy of the application shall also be submitted to the Conservation Commission. The application shall be signed and dated by the applicant and shall contain at least the following information in addition to that required by the Excavation Application Checklist and other applicable regulations. The Regulator may waive one or more of the items listed under this Section 4.1.

4.1.1 The name and address of the owner of the land to be excavated;

4.1.2 The name and address of the person who will actually do the excavating;

4.1.3 The names and addresses of all abutters to the premises which will be excavated;

4.1.4 A suitable photograph(s) adequately depicting the existing site;

4.1.5 An Excavation Plan at a scale of no less than one inch (1") equals fifty feet (50') and showing the area to be excavated, appropriate buffers, and any dwelling units, septic systems, wells, streams and standing bodies of water within one-hundred fifty feet (150') of the perimeter of the area to be excavated. All plans submitted to the Regulator shall comply with the Erosion and Sedimentation Control provisions of the Town of Danville Subdivision Regulations. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. At least four (4) copies of the final plans shall be filed with the Regulator prior to the issuance of a permit.

The Excavation Plan shall include:

- (a) The tax map and lot number of the parcel to be excavated;
- (b) Seal and signature of an engineer or land surveyor registered in the State of New Hampshire;
- (c) Existing topography at contour intervals of two feet, based on a permanent assumed benchmark;
- (d) Proposed topography at two foot contour intervals at the completion of excavation and restoration;
- (e) The number of acres involved in the project;
- (f) The volume of material to be removed;

- (g) The breadth, depth and slope of the proposed excavation (and existing excavation where applicable);
- (h) The estimated time of duration and description of phasing of the project;
- (i) Existing vegetation;
- (j) All surface drainage patterns including wetlands and standing water, lakes, streams, and the like; on-site and within two-hundred fifty feet (250') of the perimeter of the area to be excavated. Wetlands shall be delineated on the plan by a Certified Wetland Scientist whose signature shall also appear on the plan.
- (k) Location of all easements, on and below the ground;
- (l) Names, locations, and widths of all public roads and rights-of-way;
- (m) A log of borings or test pits that extend to either the seasonal high water table, ledge, or a minimum of four (4) feet below the maximum proposed excavation depth, including location and soils data. A certified soils scientist, recognized as such by the Regulator, shall provide a written report as to any indications of the presence of a seasonal high groundwater mark within four (4) feet below the desired depth of excavation.
- (n) The location and extent of any stone walls, ledge outcroppings, wells, existing buildings, septic systems, utilities, significant natural and man-made features, and the like;
- (o) A locus map, at a scale of one inch equals one thousand feet (1": 1,000'), showing the proposed operation in relation to existing roads;
- (p) Any existing and all proposed excavation areas;
- (q) Any existing and all proposed accessory facilities/activities;
- (r) Existing and proposed access roads, including widths and surface materials;
- (s) Existing and proposed fencing, buffers or visual barriers, including heights and materials;
- (t) Storage areas for topsoil to be used in reclamation;
- (u) All measures to control erosion, sedimentation, water and air pollution, and hazards to human safety;

- (v) The locations of existing buildings, structures, septic systems and wells on abutting properties within one hundred and fifty (150) feet of the property boundary;
- (w) The locations of all driveways and road intersections within two hundred (200) feet of the property;
- (x) Aquifer locations and limits as identified by the U.S. Geological Survey; and as referred to in the report prepared by Marin Environmental for the Town of Danville in December 1999 entitled Groundwater Protection Strategy.
- (y) Zoning districts.
- (z) Prime consideration shall be given to protecting any stream or other body of water within the proposed excavation with the intention of protecting wildlife corridors.
- (aa) The plan shall be drawn at a scale of no more than 1" = 50-feet. Sectional drawings may be required by the Regulator.
- (bb) Blasting provisions and procedures, if necessary.
- (cc) The names of abutting land owners.
- (dd) Photographs of the existing site.
- (ee) Distances between disturbed areas and the closest property lines.
- (ff) Location of three (3) ground water monitoring wells.

4.1.6 A Reclamation Plan including a timetable therefore, at the same scale as the Excavation Plan, and covering the same area. All plans submitted to the Regulator shall comply with the Erosion and Sedimentation Control provisions of the Town of Danville Subdivision Regulations. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. At least four (4) copies of final plans shall be filed with the Regulator prior to the issuance of a permit.

The Reclamation Plan shall include:

- (a) The seal and signature of an engineer or land surveyor registered in the State of New Hampshire;
- (b) All boundaries of the area proposed for reclamation;
- (c) The final topography of the area proposed for reclamation;

- (d) Final surface drainage patterns, including the locations and physical characteristics of all drainage facilities;
- (e) A schedule of vegetative and temporary reclamation activities including seeding mixtures, mulching materials, fertilizer types, lime, and application rates;
- (f) Soil conditioning specifications, i.e. liming and fertilizing required based on soils analysis performed by the University of New Hampshire or other equivalent organization;
- (g) The plant materials to be used in the restoration, and their quantities and sizes; The subsequent reuse of the site, if known;
- (i) Cross-sectional views showing existing, excavated, and restored topographic configuration;
- (j) An erosion and sedimentation control plan, regardless of the size of the excavation area;
- (k) Phasing of site restoration showing designated areas and completion dates.
- (l) Such other information as the Regulator may reasonably require.

4.1.7 Copies of related permit approvals and other documents pertinent to the excavation proposal required by state or federal regulations.

4.1.8 Hauling information, including routes to be utilized, the type and weight of motor vehicles involved, and the frequency and schedule of operations of such vehicles shall be provided to the 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 conduct a traffic study at the applicant's expense to ensure that public safety, neighborhood compatibility and road capacity and condition have been properly considered and addressed in the hauling plan.

4.1.9 Statements of specific actions to be taken by the applicant on the excavation site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons.

4.1.10 All application fees.

4.1.11 Such other information as the Regulator may reasonably require.

4.2 ADDITIONAL PERMIT REQUIREMENTS:

4.2.1 No excavation of a new area shall exceed five (5) acres in size at any one time. Any permitted excavation shall be reclaimed according to the approved application

within one (1) year after the permit expiration date. If reclamation is not completed within one (1) year after the permit expiration date, the Town may declare part or all of the bond forfeited, and use these monies to reclaim the site.

- 4.2.2 The applicant shall be responsible for a proportionate share of refurbishing any existing Town road(s) which access the excavation site, and for the repair of Town-maintained roads which are damaged as a result of hauling earth from the site. The Regulator may require these costs to be bonded prior to the granting of a permit to excavate.
- 4.2.3 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 local, state or federal authority(s).
- 4.2.4 Access roads to and from the site shall intersect existing streets and roads at locations that have been duly approved by State or local officials and in a manner that will not endanger the safety of highway users and local residents. The provisions of RSA 249:17 & 18 (“Highway Access”) shall be adhered to by the applicant and shall be shown on the excavation plans.
- 4.2.5 Permit approval shall be conditioned on compliance by the applicant with street and highway regulations promulgated by Federal, State and local units. Permit application shall include the type of truck and a statement by the applicant that he/she understands the load restrictions on the road(s) intended for hauling.
- 4.2.6 Prior to the withdrawal of material at a new excavation sit, topsoil material shall be stripped and stored for site restoration use when the excavation project is completed. This should be undertaken in a phased manner to minimize erosion potential. Topsoil shall be re-vegetated during the period of storage.
- 4.2.7 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.
- 4.2.8 A vegetative or topographical buffer shall be maintained between surrounding streets, highways, commercial and residential land uses and the excavation site. The Regulator shall direct the applicant as to specific requirements for the proposed excavation site and, to the extent possible, existing barriers should be retained as the excavation project is conducted.

ARTICLE 5
PROHIBITED PROJECTS

5.1 The Regulator shall not grant a permit:

- 5.1.1 Where the excavation would violate the operational Standards of Article 6 of these Regulations and/or RSA 155-E:4-a;
- 5.1.2 For any excavation to occur within (the distance to be measured horizontally):
 - (a) One hundred (100) feet of the boundary or five hundred (500) feet of the residence of any disapproving abutter; or
 - (b) Within twenty-five (25) feet of the boundary or one hundred and fifty (150) feet of the residence of any approving abutter unless written approval is requested by said abutter. In all such cases there shall be a slope no less than 3:1 toward the abutter's property line. (This provision would not apply to any excavation in operation prior to March 15, 1986.);
- 5.1.3 When the issuance of the permit would be unduly hazardous or injurious to the public welfare, or would unduly danger the safety of highway users or local residents;
- 5.1.4 When the excavation would damage a known aquifer, so designated by the United States Geological Survey; and as referred to in the report prepared by Marin Environmental for the Town of Danville in December 1999 entitled Groundwater Protection Strategy.
- 5.1.5 When the excavation requires land use permits from state or federal agencies; but the Regulator may approve the application when all necessary land use permits have been obtained;
- 5.1.6 Where the, project cannot comply with the Reclamation Standards contained in these Regulations and/or RSA 155-E:5 and 5-a.
- 5.1.7 Where existing visual barriers to public highways would be removed, except to provide access to the excavation.
- 5.1.8 In the Zones where a Special Exception is required, the applicant shall comply with the following criteria and acquire approval from the Zoning Board of Adjustment.
 - (a) The excavation will not cause a diminution in area property value or unreasonable change the character of the neighborhood.
 - (b) The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof.

- (c) The excavation will not create any unreasonable nuisance or create health or safety hazards.
- (d) The excavation complies with such other special exception criteria of the Town of Danville regulations or ordinances.

5.1.9 Within the Historic District

5.1.10 Within 1200 feet of a heron rookery or other wildlife sensitive habitats as determined by the Regulator.

ARTICLE 6
OPERATIONAL STANDARDS

It shall be a violation of these regulations for any person to excavate, or for any owner to permit excavation on his excavation site, when such excavation is subject to a permit under these Regulations, without complying with the following minimum express standards:

- 6.1 No excavation shall be permitted below road level within fifty (50) feet of the right-of-way of any public highway as defined in RSA 229:1 unless such excavation is for the purpose of said highway.
- 6.2 No excavation shall be permitted within one hundred (100) feet of the boundary or within five hundred (500) of the dwelling of a disapproving abutter.
- 6.3 No excavation shall be permitted within fifty (50) feet of an approved road, one hundred and fifty (150) feet of a dwelling of an approving abutter, or a dwelling for which a building permit has been issued at the time the excavation is commenced. If written concurrence is received from an abutter, then the boundary setback shall be no less than twenty-five (25) feet.
- 6.4 No excavation shall be permitted within one hundred fifty (150) feet of any great pond, navigable river, or any other standing body of water ten (10) acres or more in area or within seventy-five (75) feet of any other stream, river, or brook which normally flows throughout the year, or any naturally occurring standing body of water less than ten (10) acres or any wetland greater than five (5) acres in area as defined by the NHDES Wetlands Board.
- 6.5 Vegetation shall be maintained or provided on the excavation site within the buffer areas required by Sections 6.1 through 6.4 of this Article.
- 6.6 Natural vegetation adjacent to neighboring properties on which excavation is not intended shall be maintained for the purposes of erosion control, screening, noise reduction, and property valuation. A vegetative buffer or topographical berm of a minimum of fifty feet (50') shall be maintained between surrounding streets, highways commercial and residential land uses and the excavation site. The Regulator shall direct the applicant as to specific requirements for the proposed excavation site and may in its discretion waive or alter the fifty (50') foot requirement in unusual situations or in the case of an approving abutter, but in no case shall the buffer ever be less than twenty-five feet (25'). In situations where the natural vegetation has been remove prior to or during the application submittal process, the Regulator may require that a vegetative buffer be planted/restored.
- 6.7 Where existing, a natural woodland buffer shall be maintained within one hundred fifty feet (150') of the reference line (as defined by RSA 483-B:4). The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

- 6.8 Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process. Excavations shall comply with the Erosion and Sedimentation Control provisions in the Town of Danville Subdivision Regulations.
- 6.9 Excavation practices which result in any siltation of surface waters, wetlands or any degradation of water quality of any public or private water supplies are strictly prohibited.
- 6.10 Drainage shall be maintained so as to prevent the accumulation of free-standing water for prolonged periods.
- 6.11 No fuels, lubricants, or other toxic or polluting materials or chemicals shall be stored on-site unless in compliance with state and federal laws and regulations pertaining to such materials.
- 6.12 Where the depth of the excavation will exceed fifteen (15) feet and temporary slopes will exceed a grade of 1.5:1, a fence or other suitable barricade shall be erected to warn of danger or to limit access to the site.
- 6.13 Prior to the removal of topsoil or other overburden material from any land area that has not yet been excavated, the excavator shall file a reclamation bond or other security as prescribed by the Regulator, sufficient to secure the reclamation of the land area to be excavated.
- 6.14 All temporary structures required during excavation operations shall be removed from the site within ninety (90) days after such operations cease.
- 6.15 Start-up and shut-down times for all machinery associated with an excavation operation shall be determined by the Regulator. Such times shall be reasonable with respect to the type of operation proposed and the character of the neighborhood in which it is located.
- 6.16 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.
- 6.17 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).
- 6.18 All excavation operators shall report the amount of material removed to the Town Engineer/Building Inspector. These reports shall be submitted biannually at the end of July and December. The Town Engineer/Building Inspector shall conduct on-site inspections is necessary.

- 6.19 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.
- 6.20 Trucks operating on any roads within the Town of Danville, exclusive of State Highways, will be limited to NHDOT statutory weights. Gravel excavation, loading and hauling will be limited to 7:00 a.m. to 5:00 p.m. on Town roads, Monday through Friday only.
- 6.21 No hauling over Town roads will be allowed in March or April of any given year unless a bond for road repair is posted with the Selectmen of the Town at the time of issuance of the permit. The amount and form of the bond will be determined by the Selectmen.

**ARTICLE 7
RECLAMATION STANDARDS**

Within twelve (12) months after the expiration date in a permit issued under these Regulations, or of the completion of any excavation, whichever first occurs, the owner of the excavated land shall have completed the reclamation of the areas affected by the excavation to meet each of the following minimum standards:

- 7.1 Except for exposed rock ledge, all areas which have been affected by the excavation or otherwise stripped of vegetation shall be spread with topsoil or strippings, if any, but in any case covered by a minimum of four inches (4") of soil capable of sustaining vegetation, and shall be planted with seedlings or grass suitable to prevent erosion. Areas visible from a public way, from which trees have been removed, shall be replanted with tree seedlings, set out in accordance with acceptable horticultural practices.
- 7.2 Earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of.
- 7.3 All slopes, except for exposed ledge, shall be graded to natural repose for the type of soil of which they are composed so as to control erosion or at a ratio of horizontal to vertical proposed by the owner and approved by the Regulator. Changes of slope shall not be abrupt, but shall blend with the surrounding terrain.
- 7.4 The elimination of any standing bodies of water created in the excavation project as may constitute a hazard to health and safety, unless the Regulator shall specify different restoration.
- 7.5 The topography of the land shall be left so that water draining from the site leaves the property at the original, natural drainage points and in the natural proportions of flow. For excavation projects which require a permit from the Water Supply and Pollution Control Division pursuant to RSA 485-A:17, the provisions of that statute, and the rules adopted under it, shall supersede this Section 7.5 as to areas of excavation sites covered thereby. The excavator shall file a copy of the permits issued under RSA 485-A:17 with the Regulator.

**ARTICLE 8
INCREMENTAL RECLAMATION**

Except for excavation sites of existing excavations, operating stationary manufacturing plants or highway excavations, any excavated area of five (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 the provisions of Article 7 of these Regulations, within twelve (12) months following such depletion or 2-year non-use, regardless of whether other excavation is occurring on adjacent land in contiguous ownership. Each operator, other than the operator of stationary manufacturing plants which are exempt from permit requirements pursuant to Article 3, Section 3.3, shall prepare and submit for the Regulator's record a reclamation plan for the affected land, including a timetable for reclamation of the depleted areas within the reclamation site.

Existing excavations and highway excavations are subject to incremental reclamation standards under RSA 155-E:5a.

**ARTICLE 9
EXCEPTIONS**

The Regulator, upon application and following a hearing held in accordance with the provisions of Article 11 of these Regulations, may grant an exception in writing to the standards contained in Article 6, 7, and 8 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 Article 15.

The Regulator shall not approve any exceptions unless a majority of those present and voting shall find:

- (a) The granting of the exception (s) will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest;
- (b) The exception (s) will not, in any manner, vary the provision of the Danville Zoning Ordinance;
- (c) Such exception (s) will substantially secure the objectives, standards and requirements of these regulations; and
- (d) A particular and identifiable hardship exists or a specified circumstance warrants the granting of an exception. Factors to be considered in determining the existence of a hardship or special circumstance shall include but not limited to:
 - Topography
 - Existing site features
 - Geographic location of the property
 - Size, magnitude of project being evaluated

- Alternative proposals which are determined by the Board to provide greater overall benefit to the residents of Danville.

ARTICLE 10 APPLICATION FOR AMENDMENT

When the scope of a project for which an excavation permit has been issued is proposed to be altered, or cannot be maintained, so as to affect either the size or location of the excavation, the rate of removal or the plan for reclamation, the owner shall submit an application for amendment of his excavation permit which application shall be subject to approval in the same manner as provided for an excavation permit.

ARTICLE 11 HEARING

11.1 Prior to the Regulator approving or disapproving an application for an excavation permit or for an amended excavation permit:

11.1.1 A public hearing shall be held within thirty (30) days of receipt of a completed application.

11.1.2 A notice of the hearing shall be sent to all abutters by certified mail and shall specify:

(a) the grounds for the hearing; as well as

(b) the date, time and place of the hearing.

11.1.3 A legal notice shall be published in at least one (1) newspaper that has general circulation in the Town at least fourteen (14) days in advance of the hearing. The fourteen days shall not include the day of publication or the day of the hearing, but shall include any Saturday, Sunday or legal holiday within said period.

11.1.4 A notice of the hearing shall be sent by mail to the members of the Danville Board of Selectmen and the Danville Conservation Commission.

11.1.5 A legal notice shall be posted in at least three (3) public places in Town.

11.2 The current costs of mailing certified letters to all abutters and the publication of a legal notice in at least one (1) newspaper shall be paid by the applicant at the time of filing.

11.3 Within twenty (20) days of said hearing, or any continuation thereof, the Regulator shall render a written decision approving or disapproving the application. If disapproved, the Regulator shall state the reasons for disapproval in writing.

**ARTICLE 12
ISSUANCE OF PERMIT**

- 12.1 If, after the public hearing, the Regulator determines that the project for which the application was submitted is not prohibited by the provisions of Article 5 of these Regulations and RSA 155-E:4, and if the Regulator approves the application, the Regulator shall grant a permit to the applicant, provided that prior to issuing the permit, the Regulator shall require:
- 12.1.1 The posting of sufficient surety, with such surety as the Regulator shall reasonably determine, with the Town Treasurer in an amount as reasonably set by the Regulator based on the working size of the project (not including stockpile areas or areas already restored where excavation work is completed), but not less than five thousand (\$5,000) dollars, to guarantee compliance with the terms of the permit. The bond shall not expire until eighteen (18) months following the end of the permit or any extension thereof.
 - 12.1.2 That any and all local, state or federal permits must have been obtained, as required, and copies of said permits provided to the Regulator.
 - 12.1.3 The payment of the excavation permit fee as specified in Article 16.
- 12.2 A copy of the permit shall be prominently posted at the excavation site or the principal access thereto.
- 12.3 The permit shall not be assignable or transferable without the prior written consent of the Regulator.
- 12.4 The permit shall expire one (1) year from the date of issuance of the permit. Projects anticipated to occur for more than one (1) year shall be required to apply for permit renewal on an annual basis as specified in ARTICLE 13 of these regulations.
- 12.5 The Regulator may include in the permit such reasonable conditions as are consistent with the purpose of these Regulations and may include requirements for a permit for excavation which are more stringent than the standards set forth in RSA 155-E, including the provision of visual barriers to the excavation.

**ARTICLE 13
RENEWAL OF PERMIT**

- 13.1 The Regulator may renew any existing permit, for up to one year, following:
- 13.1.1 The filing of a completed application for permit renewal with the Regulator no later than three (3) months prior to the expiration date.
 - 13.1.2 Inspection of the excavation site by the Regulator no later than two (2) months prior to the expiration date to check the operation and to order any necessary work to be

completed by the expiration date in order to be in compliance with the terms of the permit and this Ordinance; and

- 13.1.3 A determination by the Regulator that the work being performed on the site is consistent with that as shown on the approved excavation and/or reclamation plan(s) which served as the basis for the permit for which the renewal is being requested.
- 13.2 Should the Regulator deem that a renewal of the permit would be detrimental to the public safety, health or welfare, injurious to other property, or not in compliance with the then current local, state, and federal regulations, the Regulator shall notify the applicant in writing, by the expiration date, stating the reason(s) for denial, and shall refund the renewal fee.

ARTICLE 14 BONDING

The Regulator shall establish the amount of sufficient surety prior to the issuance of the excavation permit. The surety amount shall be reasonably sufficient to guarantee compliance with the restoration in accordance with the provisions of ARTICLE 7. The surety requirements shall be based on the acreage of the project or approved phases and the estimated per acre restoration costs, plus bonding for the deterioration to Town road (s) (see ARTICLES 4.1.8 & 6.21). The bond will be returned to the applicant when the restoration work has been completed and a final satisfactory site inspection has been conducted by the Regulator or its designee. The applicant shall pay for any surety reviews by the Town's designated engineer and/or Town Counsel, or any other professional service necessary to review the proposed excavation/reclamation plan. Surety for blasting will be necessary if blasting is required.

ARTICLE 15 APPEAL

- 15.1 If the Regulator disapproves or approves an application for an excavation permit or an application for an amended permit, any interested person affected by such decision may appeal to the Regulator for a rehearing on such decision or any matter determined thereby.
- 15.2 The motion for rehearing shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable and said appeal shall be filed within ten (10) days of the date of the decision appealed from.
- 15.3 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.
- 15.4 Any person affected by the Regulator's decision on a motion for rehearing to the Regulator may appeal in conformity with the procedures specified in RSA 677:4-15.

**ARTICLE 16
FEES**

- 16.1 In accordance with the provisions of RSA 155-E:8, an excavation fee in the amount of one hundred fifty dollars (\$150) shall be payable to the Town of Danville prior to the issuance of a permit or a renewal permit.
- 16.2 The Regulator may assess reasonable additional fees necessary to perform application plan review and the annual compliance review.
- 16.3 The excavator shall be responsible for all costs incurred by the Town's designated engineer or other agents of the Regulator to periodically conduct required studies or field surveys at the excavation site to ensure compliance with the approved excavation and reclamation plans.
- 16.4 See "Town of Danville Fee Schedule".

**ARTICLE 17
ENFORCEMENT**

- 17.1 The Regulator may suspend or revoke the permit of any person who has violated any provision of his permit or these Regulations 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 Article 15.
- 17.2 The Regulator shall issue cease and desist orders against any operator if he is found in violation of any of the terms of this Ordinance. Such orders shall remain in effect until the violation is corrected.
- 17.3 Any cease and desist order issued by the Regulator shall take effect, for the purpose of this Ordinance, on the date it is issued, and shall be served by either certified mail or by a law enforcement officer.
- 17.4 Fines, penalties, and remedies for violations of these Regulations shall be as stated in RSA 676:15 and 676:17.
- 17.5 To ascertain if there is compliance with these Regulations, a permit issued hereunder or an order issued hereunder, the Regulator or its duly authorized agent may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since August 24, 1979.

**ARTICLE 18
CONFLICTING PROVISIONS**

- 18.1 Where the provisions of these Regulations are in conflict with other ordinances, regulations, or laws, the more stringent shall apply.

18.2 Nothing in these Regulations shall be deemed to supersede or preempt applicable environmental standards or permit requirements contained in state laws, and no exemption under these Regulations shall be construed as an exemption from any state statute except as provided in RSA 155-E:11,I.

ARTICLE 19 WAIVER

The Regulator, upon application and following a hearing, may grant a waiver, in writing, to the standards contained in these Regulations for good cause shown except as prohibited by RSA 155-E. The written decision shall state specifically what standards, if any, are being relaxed and include reasonable alternatives.

The Regulator shall take into consideration the prospective character of the development and of abutting properties.

A. Procedure

1. Applicant desiring the waiver of any provisions of the foregoing regulations shall include a request therefore with a statement of reason(s) for such request with the Formal Application for approval of the plan.
2. Request for such a waiver shall require a public hearing. This hearing may be held as part of the standard Plan Review hearing or may be held separately. If held separately, the public hearing must be held within thirty (30) days with the same notice requirements as the application shall have. Costs for such a public hearing shall be paid by the applicant at the time of the filing and notification fee payment.

B. General

1. Where the Regulator finds that hardships, practical difficulties, health and safety issues, or unnecessary expense would result from strict compliance with the foregoing regulations or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations.
2. The purpose of granting waivers under provisions of these regulations shall be to ensure that an applicant is not unduly burdened, as opposed to merely inconvenienced, by said regulations. The Regulator shall not approve any waiver(s) unless a majority of those present and voting shall find:
 - (a) The granting of the waiver(s) will not be detrimental to the public safety, health or welfare or injuries to other property and will promote the public interest;
 - (b) The waiver will not, in any manner, vary the provision of the Danville Zoning Ordinance;

- (c) Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations; and
- (d) A particular and identifiable hardship exists or a specific circumstances warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship or special circumstances shall include, but not be limited to:
 - Topography
 - Existing site features
 - Geographic location of the property
 - Size/magnitude of project being evaluated
 - Alternative proposals which are determined by the Regulator to provide greater overall benefit to the residents of Danville.