

EARTH EXCAVATION & RECLAMATION REGULATIONS

TOWN OF FREMONT ROCKINGHAM COUNTY NEW HAMPSHIRE

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TOWN OF FREMONT
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TOWN OF FREMONT

EXCAVATION AND RECLAMATION REGULATIONS

ARTICLE 1

GENERAL PURPOSE AND AUTHORITY

1.1 AUTHORITY

Under the Authority vested in the Fremont Planning Board by the voters of the Town of Fremont, New Hampshire and in accordance with RSA 155-E the Fremont Planning Board adopts the provisions of RSA 155-E and the following additional Excavation Regulations.

1.2 PURPOSE

- 1.2.1 To cope with the recognized safety hazards which open excavations create; to safeguard the public health and welfare; to preserve natural assets of soil, water, forests and wildlife; to maintain aesthetic features of the environment; to prevent land and water pollution; and to promote soil stabilization.
- 1.2.2 To protect the general economy, health, safety, welfare, convenience and prosperity of the inhabitants of the Town.
- 1.2.3 To consider and provide for orderly development on the basis of being an integral part of the community, assuring that such development will mesh effectively with the overall community goals and plans.
- 1.2.4 To provide for the continuance of the social and economic character of the Town.
- 1.2.5 To assist in defining the minimum standards for design and implementation of land use.
- 1.2.6 To conserve the natural beauties and attributes of the topography of the Town and to insure appropriate development with regard to those natural features.
- 1.2.7 To provide for the protection of available aquifers and to insure the protection and conservation of wetlands.
- 1.2.8 To provide against use of land as would involve danger or injury to health, safety, or the property of the inhabitants of the Town.

ARTICLE 2

DEFINITIONS

Many of the word meanings used throughout the Fremont regulations will be consistent with definitions used (as defined) within those New Hampshire RSAs which provide for the powers and authority of the Planning Board. Unless the context otherwise requires, the following definitions shall be used in the interpretation and understanding of these regulations as generated under the jurisdiction of the Fremont Planning Board.

Where terms are not expressly defined throughout, such terms shall have ordinarily accepted meanings such as the context implies. The word shall is mandatory and not optional.

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 local land use board. For purposes 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 purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A: 1, II, the term ""abutter"" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board or as amended by RSA 672:3.

APPLICANT: Applicant shall mean the owner of record of the land which is under consideration by a local land use board, including any subsequent owner of record, or the duly authorized, in writing, agent of any such owner.

APPLICATION: Means a completed application under consideration by a local land use board. An application shall not be considered complete until all of the Application Checklist items have been completed and accepted to the satisfaction of the Board in addition to any other requirements of these Regulations.

AQUIFER: See Article XI of the Fremont Zoning Ordinance.

CERTIFIED SOIL SCIENTIST: A person qualified in soil classification and mapping whom is certified by the State of New Hampshire.

DWELLING UNIT: A single unit providing complete independent living facilities for one or more persons, including permanent provisions from living, sleeping, eating, cooking and sanitation. (From IRC 2006).

EASEMENT: An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose.

ENGINEER OR SURVEYOR: These terms shall denote the duly designated, legally recognized, New Hampshire licensed engineer or surveyor employed by the applicant as may be pertinent to the actual services to be performed in accordance with the provisions set forth in RSA 310-A, as amended.

FRONTAGE: Means that portion of a lot bordering on a highway, street or right-of-way or as amended by RSA 674:24

LOT: Means a parcel of land at least sufficient in size to meet the minimum requirements for use, coverage and area and to provide required yards and other open spaces. An undersized lot is permissible if it passes state standards for soil conditions and substantially meets the requirements here and if in existence on the date of adoption of this ordinance or as amended by RSA 674:24.

LOT LINE ADJUSTMENT: A lot line adjustment is the adjusting of a common property line(s) or boundaries between adjacent lots, tracts, or parcels for the purpose of accommodating a transfer of land, rectifying a disputed property line location, or freeing such a boundary from any difference or discrepancies. The resulting adjustment shall not create any additional lots, tracts, or parcels, and all reconfigured lots, tracts, or parcels shall contain sufficient area and dimension to meet minimum requirements for zoning and building purposes.

MAJOR REVISION: Any change deemed by the Planning Board to impact previous review and planning and/or cause re-review or additional considerations to the overall proposal. i.e. lot size changes, road location and profile, types or numbers of units, reflection of wetlands, etc.

SUBDIVISION: Means the division of the lot, tract, or parcel of land into 2 or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance or building development. It includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided or as amended by RSA 672:14.

TOWN ENGINEER: The duly designated engineer of the Town of Fremont. If there is no such official, the consultant or official assigned by the Fremont Planning Board.

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 two (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 Fremont 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 Fremont 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 two (2) year period, either before, on, or after August 4, 1989; provided, however, that before the end of such two (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 Fremont 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.
 - 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 Fremont 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 Fremont. 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 and such operation shall further be subject to Site Plan Review.
 - (d) In all cases under this part, the total volume of material must be limited to no more than one thousand (1,000) 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 PRE-APPLICATION REVIEW (WORK SESSION)

An individual who anticipates submitting a formal application for an earth removal permit is encouraged, but is not required, to consult with the Planning Board in one (1) or more than one (1) preliminary consultations prior to the submission of the formal application.

- (a) The Planning Board may hold preliminary conceptual consultation and review of the basic concept of any proposal and make suggestions which may be of assistance in resolving problems meeting requirements during the final consideration of the proposal.
- (b) All sessions held prior to the formal acceptance of the application at a Public Hearing for such purpose shall be considered to be preliminary consultations and review only.
- (c) The Planning Board may conduct preliminary consultation and review apart from formal consideration and such sessions shall have no bearing on the time limits of acting upon approval or disapproval.
- (d) The Board may hold discussions with the applicant or agents and may confer with others whose interest may be affected.
- (e) Neither the applicant nor the Planning Board shall be bound by the discussions. However, the Planning Board shall be entitled to make recommendations with respect to the material presented to assist the applicant to further meet the development requirements of the Town as expressed in these regulations, other ordinances and/or regulations.
- (f) The applicant should make a presentation defining the general scope and concept of the intended operation. The entire parcel involved is to be presented
- (g) The Planning Board may communicate to the applicant in writing any suggestions, recommendations or other factors that the Board finds prudent and necessary.

4.2 APPLICATIONS

The application is to be received via certified mail and be in conformance with Fremont Zoning Ordinance and the provisions of these regulations and must include the fees for public notice of the Public Hearing. A complete application shall include:

1. Six (6) full size and eight (8) 11" x 17" sets of plans, at least two (2) of which (full size plans) will be colored. All plans are required to be drawn by a Licensed Land Surveyor licensed in New Hampshire, and in some cases as determined by the Board, stamped by a Professional Engineer.
2. a cover letter listing your intentions
3. a typed current abutters list including the applicant, anyone whose property

- physically abuts or is directly across a street or river from the subject property
- 4. the proper fee amount
- 5. a list of requested waivers, if applicable
- 6. a signed copy of the checklist provided at the beginning of these regulations

- 4.2 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 duplicate of the application and plans shall be sent to the Town Engineer and Rockingham Planning Commission for review of completeness at the time of application to the Planning Board.

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 (1) or more of the items listed under this Section 4.1.

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

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

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

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

4.2.5 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 Fremont Subdivision Regulations. All plans submitted shall be of a quality that they are easily understood and of 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 (2') feet, based on a permanent assumed benchmark;
- (d) Proposed topography at two (2') 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 (250') feet 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.
- (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 one inch equals fifty (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.

4.2.6 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 Fremont Subdivision Regulations. All plans submitted shall be of a quality that they are easily understood and of 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;
- (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.

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

4.2.8 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.

4.2.9 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.

4.2.10 All application fees.

4.2.11 Such other information as the Regulator may reasonably require.

4.3 ADDITIONAL PERMIT REQUIREMENTS:

4.3.1 No excavation of an area shall exceed five (5) acres in size at any one time without reclamation.

4.3.2 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.

- 4.3.3 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).
- 4.3.4 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.
- 4.3.5 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.
- 4.3.6 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.
- 4.3.7 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.
- 4.3.8 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.
- 4.3.9 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.

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 three to one (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;
- 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.

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 (150') feet 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 Fremont 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 as 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 Fremont, 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 two (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 two (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 Fremont 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 Fremont.

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.

- 10.1 Major revisions and subsequent submissions may require a new acceptance date for the application or re-application. An amendment to any existing approved Excavation plan shall be subject to all original conditions and approvals unless otherwise specified.

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 ten (10) days in advance of the hearing. The ten (10) 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 Fremont Board of Selectmen and the Fremont 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.
- 12.6 Any permit allowed to expire shall require a full application process and is subject to approval and/or disapproval.
- 12.7 Notice of Decision with deed reference to be recorded at the Registry of Deeds by the Planning Board Secretary or designee.
- 12.8 All mylars to be recorded must be pre-approved by Registry of Deeds.

ARTICLE 13 RENEWAL OF PERMIT

- 13.1 The Regulator may renew any existing permit, for up to one (1) 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 Upon the filing of an application and within sixty (60) days, the Town Engineer and the Planning Board will perform an inspection of the excavation site 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.
 - 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.
 - 13.1.3-A All Engineering fees incurred in conjunction with the permit renewal shall be paid by the applicant prior to the renewal expiration date and renewal of the permit. Proof of payment shall be submitted.
 - 13.1.4 TEST PIT(s): At least one test pit is required to demonstrate that work being performed on the site is consistent with the approved excavation and properly maintains required depth to seasonal high groundwater (ESHWT), more than one test pit might be required if the owner's Engineer believes it is necessary. Test pits are witnessed by the Code Enforcement Officer or Planning Board designee. A test pit report is to be submitted with each excavation permit renewal application. In cases where it is not practical to do a test pit (ie; ledge outcroppings) a benchmark which shows the seasonal high water table in the adjoining areas and demonstrates compliance with the 4' above the seasonal high water table (8' if the property is in the Aquifer Protection District) would be an acceptable alternative to digging test pits. The applicant is responsible to show compliance and submit the Engineering report.
 - 13.1.5 The receipt of the current NH Department of Revenue Administration Intent to Excavate for the coming year and the current Notice of Excavated Material for the previous year.
- 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 in the form of a cash escrow or irrevocable letter of credit 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.

14.2

Surety of a minimum of one thousand (\$1000.00) dollars will be required for engineer review as deemed necessary by the regulators. This amount is to be held in escrow and will not be used for payment of any fees, but will be released to the owner at such time as the excavation pit is completely finished and reclaimed.

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 fifty (\$50) dollars shall be payable to the Town of Fremont prior to the issuance of a new permit. In accordance with the provisions of RSA 155-E: 8, a fee consistent with the Town of Fremont Fee Schedule shall be payable to the Town of Fremont prior to the issuance of any new excavation permit or any excavation permit renewal.

- A. An application fee consistent with the Town of Fremont Fee Schedule shall accompany any application for Waiver or Amendment to any already approved Excavation.
- 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 An additional fee consistent with the Town of Fremont fee schedule for the cost of all notice requirements including costs of postage for certified mail, plus reproduction costs, and any publication and/or posting costs shall accompany each application.
- 16.5 All mutually agreed upon expenses incurred by the Planning Board for outside assistance or consultation regarding the proposal shall be paid during the review depending on the nature of the cost and subsequent activities, but is required prior to final review at the Public Hearing. A letter so attesting such shall be directed to the Planning Board by the applicant. If a design review is required the applicant shall post a bond in the amount determined by the Board to be held by the Town until all design costs have been met by the applicant.

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 WAIVERS

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.

19.1. 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.

19.2. 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 Fremont 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 circumstance 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 Fremont.

ARTICLE 20 VALIDITY

If any section, clause, provision, portion or phrase of these regulations shall be held to be invalid or unconstitutional by any court of competent authority and jurisdiction such holding shall not affect, impair or invalidate any other section, clause, provision, portion or phrase of these regulations.

ARTICLE 21 REFERENCES

- a) Planning and Land Use Regulations
- b) Fremont Master Plan - Town of Fremont
- c) Land Subdivision Regulations - Town of Fremont
- d) Fremont Zoning Ordinance
- e) Town, State, and/or Federal Permits
- f) RSA: 155-E
- g) Earth Removal Permit - Town of Fremont

THIS CHECKLIST FORM MUST ACCOMPANY EACH APPLICATION

(signed by the actual owner)

Check List For Preparing Excavation Application

(processing of this application will be significantly delayed if it is not complete)

- _____ A cover letter of intent.
- _____ Six (6) full size sets of the plan, and eight (8) 11"x17" sets of the plan, at least two (2) of the full size plans will be colored.
- _____ A typed current abutters list (checked at the Town Office)
- _____ Fees:
Application Fees: As per the Town of Fremont Fee Schedule – currently:
New excavation = \$50.00
Renewal \$250.00
Waiver or Amendment to already approved excavation = \$250.00
Advertising = \$115.00 (or then current rate for newspaper ads)
Abutters = **currently \$ 12.49** per abutter (\$6.00 plus current postage per Town of Fremont fee schedule) The Abutters list shall include the actual owner, anyone whose stamp or seal appears on the plan, anyone whose property physically abuts or is directly across a street or river from the subject property)
(see NH RSA 672:3)
- _____ Your list of requested waivers
- Excavation Regulation 14.2
- Surety of a minimum of one thousand (1000.00) dollars will be required for engineer review as deemed necessary by the regulators. This amount is to be held in escrow and will not be used of payment of any fees, but will be released to the owner at such time as the excavation pit is completely finished and reclaimed.
- _____ I do hereby certify that this application for excavation meets all Fremont Zoning Regulations.
- _____ A copy of this application has been sent to Rockingham Planning Commission and the Town of Fremont Engineer for review.
- _____ Test pit(s) have been dug and the Engineer's report is included.
- _____ I do hereby agree that I am responsible for all costs for outside assistance and /or all consulting costs regarding this Excavation as per Article 16.5 of the Excavation Regulations.

(actual owner) **signature:** **Date:**

The application must be sent via certified mail to:
FREMONT PLANNING BOARD
P.O. Box 120

Fremont, New Hampshire 03044

APPENDIX "A"
TOWN OF FREMONT, NEW HAMPSHIRE
EARTH REMOVAL PERMIT APPLICATION
(New, Renewal, Reclamation)

This entire form must be completed with questions answered in square footage, acreage, etc. ("see plan" is not acceptable) and relevant documents provided, including an updated abutters list, or the renewal may be delayed or denied.

RENEWAL: The application must be signed by the actual owners and must be received by the Planning Board no later than ninety (90) days prior to the expiration date if the excavation is to be continued beyond the termination date. The renewal application must identify and adjust all information contained in the original application that is no longer effective for the renewal period.

Submit completed application together with fees and additional required information via Certified mail to:
Town of Fremont Planning Board, P.O. Box 120, Fremont, NH 03044

If this is a new application:

Submit completed application together with fees and additional required information via certified mail to:
Town of Fremont Planning Board, PO Box 120, Fremont, NH 03044

Renewal applications can be sent via regular mail or walked in to the Land Use Office.

Excavation Regulation 14.2

Surety of a minimum of one thousand (\$1000.00) dollars will be required for engineer review as deemed necessary by the regulators. This amount is to be held in escrow and will not be used for payment of any fees, but will be released to the owner at such time as the excavation pit is completely finished and reclaimed.

Map # _____ Lot # _____

Pursuant to RSA 155-E, the following application must be submitted to the Regulator to obtain an Excavation Permit. Prior to issuance of a Permit, the Regulator shall determine that the provisions of RSA 155-E, these Regulations and any other applicable regulations or ordinances are met.

ZONING INFORMATION

Zoning District of Property: _____

Conditional Use Permit Required: Yes _____ No _____

Is the property in the Aquifer Protection District? Yes _____ No _____

Is the property in the Flood Zone? Yes _____ No _____

Applicants qualifying under the exemption provisions of RSA 155-E: 2 and filing the reclamation plan pursuant to RSA 155-E are to utilize this form noting the intent of this application.

1. Intent of Application

Excavation Permit _____ Reclamation Plan Submittal _____

Permit Renewal _____

2. Date of Submission _____

3. Name of Property Owner _____

Mailing address _____

Contact # _____

4. Name of Applicant/Contractor _____

(person actually doing the excavation)

Mailing address _____

Contact # _____

5. Earth to be removed from: Location of proposed/existing excavation (municipality, nearest roads other locational information) _____

6. Type of material: _____
(gravel, loam, top soil, clay, stone, etc.)
7. Area of land to be excavated: _____
A. Area excavated during the last year. _____

B. Area to be excavated during the next year: _____
8. Total estimated volume to be excavated: _____
(in cubic yards)
A. Total estimated volume excavated during the last year: _____

B. Total estimated volume to be excavated during the next year. _____
9. Removal schedule: _____
10. Description of the breadth, depth and slope of proposed excavation: _____

11. Elevation of the highest annual average ground water table within and next to the proposed excavation: _____

12. Access to public highways:
 - a) Detailed plan to be provided by proposed excavator indicating position of entry to public highway.
 - b) If access to public highway is to be across land other than that owned by permit applicant, the following must be provided:
 - 1) Plan for proposed access indicating distances from dwellings, other buildings, water wells and sanitary systems
 - 2) Notarized signed permission from owner(s) of land to be used for access
13. Copies of all local, state and federal permits required and obtained. Permits include, but are not limited to the following:
 - (a) WSPCD (RSA 485-A: 17, RSA 148:5-a)
 - (b) Wetland Board (RSA 483-A)
 - (c) State Highway Department (Access Permit, RSA 249:13-18)
 - (d) State Pit Agreement (per NHDOT Standards Specifications for Road and Bridge Construction, Section 106)
 - (e) Army Corps of Engineers Dredge & Fill Permit
14. Excavation Plan - Six (6) full size sets of the plan, and eight (8) 11"x17" sets of the plan, at least two (2) of which are colored.
15. Reclamation and Restoration Plan with timetable – Six (6) full size sets of the plan, and eight (8) 11"x17" sets of the plan, at least two (2) of which are colored.
16. Proposed bond by applicant to cover restoration.
(this may be changed by the regulator)

17. Hauling Information:
 - a. Routes to be utilized
 - b. Frequency of truck traffic over routes
 - c. Size and weight of trucks used
18. Tax Map and Lot number, name and address of all abutters (see definition). Names must be current, based on town records, five (5) days prior to the submission of the application. (List below or attach separate sheet and show clearly on plan).
19. Application Fees –See “Town of Fremont Fee Schedule”
20. Permit
21. Hours of operation _____

An application for permit renewal must be submitted to the Regulator by the owner if excavations to be continued beyond the termination date. The renewal application must identify and adjust all information contained in the original application that is no longer effective for the renewal period.

TEST PITS: At least one test pit is required to demonstrate that work being performed on the site is consistent with the approved excavation and properly maintains required depth to seasonal high groundwater (ESHW), more than one test pit might be required if the owner’s Engineer believes it is necessary. Test pits are witnessed by the Code Enforcement Officer or Planning Board designee. A test pit report is to be submitted with each excavation permit renewal application. In cases where it is not practical to do a test pit (ie; ledge outcroppings) a benchmark which shows the seasonal high water table in the adjoining areas and demonstrates compliance with the 4’ above the seasonal high water table (8’ if the property is in the Aquifer Protection District) would be an acceptable alternative to digging test pits.

This is to certify that the information contained in this Application is complete and true to the best of my knowledge.

This Application must be signed by the current owner of the property.

Submitted by:

OWNER: _____
Signature

DATE: _____

OWNER: _____
Print

FOR OFFICIAL USE ONLY

(do not write in space below)

Permission to remove the above described earth:

APPROVED: _____ NOT APPROVED: _____
conditions attached reasons

Planning Board/Regulator

Witness

Fremont, New Hampshire 03044

Expiration date _____

Date paid: _____

Fee (yearly) _____

APPENDIX B
TOWN OF FREMONT
EXCAVATION AND RECLAMATION CHECKLIST

Map #____ Lot # _____

In order to be complete, an application for an Excavation Permit must contain the following. If a listed item is considered by the applicant to be inappropriate with respect to the proposed project, enter "N/A" and provide an explanation at the end.

___1. a copy of the application has been submitted to the Conservation Commission, Rockingham Planning Commission and the Town Engineer.

___2. The application has been signed and dated.

___3. The names and addresses of the owner, the person who will do the excavating and all abutters have been submitted.

___4. An Excavation Plan (Six (6) full size sets of the plan, and eight (8) 11"x17" sets of the plan, at least two (2) of which are colored) which:

- ___a. is at a scale of no less than 1":50'
- ___b. shows the area to be excavated, appropriate buffers, and any dwelling units, septic systems and wells within 150'
- ___c. is easily understandable and clear
- ___d. has the seal and signature of a registered engineer or land surveyor
- ___e. has existing topography at two (2) foot intervals
- ___f. shows the breadth, depth and slope of the proposed excavation, (and existing excavation where applicable)
- ___g. shows existing vegetation
- ___h. Shows all surface drainage patterns, including wetlands and standing water
- ___i. shows the locations of all easements on and below the ground
- ___j. includes the locations and widths of all public roads and rights- of-way
- ___k. includes a log of borings or test pits to include groundwater levels
- ___l. shows stone walls, ledge outcroppings, wells, existing buildings, septic systems, utilities, and the like
- ___m. includes a locus map at a scale of one inch equals one thousand feet (1":1000') showing the proposed operation in relation to existing roads
- ___n. shows existing and proposed excavation areas
- ___o. shows any and all accessory facilities/activities
- ___p. includes existing and proposed access roads including widths and surfaces
- ___q. shows the locations of driveways and road intersections within two hundred (200) feet of the property boundary
- ___r. includes fencing, buffers and other visual barriers including heights and materials
- ___s. identifies storage areas for topsoil to be used in reclamation
- ___t. identifies all measures to control erosion, sedimentation, water and air pollution and safety hazards
- ___u. all surface drainage patterns including wetlands, and standing water, lakes, streams, etc. on site and within two hundred (200) feet of the perimeter of the area to be excavated. Wetland with a Certified Wetland Scientist stamp.
- ___v. identifies Aquifer locations and limits as identified by the US Geological Survey and any zoning districts
- ___w. includes copies of all state and federal permits required for the excavation
- ___x. statements as required by Section 4 Part A (subpart 8)
- ___y. blasting provisions and procedures
- ___z. Photographs of the existing site
- ___aa. Location of three (3) groundwater wells

___5. Application fee and performance bond submitted

- ___ 6. A site Reclamation Plan (Six (6) full size sets of the plan, and eight (8) 11"x17" sets of the plan, at least two (2) of the full size plans are colored) which:
- ___ a. is at the same scale as the Excavation Plan
 - ___ b. is clear and easily understandable
 - ___ c. includes the seal and signature of a registered engineer or land surveyor
 - ___ d. shows all boundaries of the area proposed for reclamation
 - ___ e. includes the proposed final topography of the reclaimed area
 - ___ f. shows proposed final surface drainage patterns
 - ___ g. includes the schedule of final reclamation activities including the seeding mixtures, cover vegetation, fertilizer types and rates
 - ___ h. identifies the subsequent reuse of the site if known or anticipated
- ___ 7. Completed checklist with justification/explanation for all omissions

Waivers: 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.

Amendments: Major revisions and subsequent submissions may require a new acceptance date for the application or re-application. An amendment to any existing approved Excavation plan shall be subject to all original conditions and approvals unless otherwise specified.

APPENDIX C
TOWN OF FREMONT

Colors for plans

Green = wetlands

Blue = water

Gray = pavement

Brown = road shoulders/dirt drives

Red = proposed changes

Orange = existing lot lines

Yellow = setbacks (to side & rear lot lines)

Purple = well radius & septic location