

TOWN OF CANDIA
NEW HAMPSHIRE

EARTH EXCAVATIONS REGULATIONS

HISTORY:

Adopted January 11, 1989

Amended August 4, 2010

Amended July 19, 2017

Amended April 3, 2019

TABLE OF CONTENTS

REGULATIONS GOVERNING EARTH EXCAVATIONS 3

SECTION I: AUTHORITY 3

SECTION II: PURPOSE AND SCOPE..... 3

SECTION III: DEFINITIONS 3

SECTION IV: PROJECTS REQUIRING A PERMIT 6

SECTION V: PROJECTS EXEMPT FROM A PERMIT 6

SECTION VI: ABANDONED EXCAVATIONS 7

SECTION VII: PROHIBITED PROJECTS..... 8

SECTION VIII: EXCAVATION EXPANSIONS 9

SECTION IX: OPERATIONAL STANDARDS..... 9

SECTION X: SITE RECLAMATION STANDARDS..... 11

SECTION XI: INCREMENTAL RECLAMATION 12

SECTION XII: BLASTING AND ROCK FACE SLOPES 12

SECTION XIII: PERFORMANCE GUARANTEE 14

SECTION XIV: EXCEPTIONS..... 14

SECTION XV: APPLICATION PROCEDURES 14

SECTION XVI: APPLICATION SUBMISSION ITEMS..... 16

SECTION XVII: ADMINISTRATION AND ENFORCEMENT 19

SECTION XVIII: SEPARABILITY 20

SECTION XIV: EFFECTIVE DATE 20

APPENDIX I 21

APPLICATION PACKAGE 21

APPENDIX II 27

EXCAVATION PERMIT 27

APPENDIX III 29

SAMPLE SURETY LETTER..... 29

REGULATIONS GOVERNING EARTH EXCAVATIONS

SECTION I: AUTHORITY

Chapter 155-E of the New Hampshire Revised Statutes Annotated stipulates that, with some exceptions, all earth excavations in the State are subject to regulation from the local municipality in which the operation occurs. Pursuant to the authority vested in the Planning Board by the voters of the Town of CANDIA and RSA 155-E, the Planning Board adopts the following regulations to govern the excavation of earth materials in the Town of CANDIA.

SECTION II: PURPOSE AND SCOPE

The goals of this regulation are to: provide for reasonable opportunities for excavation; minimize safety hazards which can be created by open excavations; ensure that the public health and welfare will be safeguarded; protect natural resources and the environment; and maintain the aesthetic features of the Town. For the purpose of achieving these goals, no earth materials in the Town shall be removed except in conformance with these regulations.

SECTION III: DEFINITIONS

- A. ABANDONED EXCAVATION means an excavation site from which no earth of a minimum of 50 tons weight or volume to be commercially useful has been removed from that excavation site during any two-year period, either before, on, or after August 4, 1989 as described in RSA 155-E:2 II (a).
- B. ABUTTER means (1) any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. (2) For the 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. (3) 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.B. (4) For purposes of notification and receiving testimony, “abutter” means all affected towns and the regional planning commission(s) in the case of a development having regional impact, as determined by the Board. (5) For any earth excavation permit application involving blasting, “abutter” shall also include any person whose land is located within ½ mile (2,640 feet) of the area in which blasting is proposed.
- C. AGRICULTURAL EXCAVATION means excavation of earth by the Owner of the land to be used on the Owner’s land exclusively for agricultural use.
- D. AGRICULTURAL USE means land used for agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, silviculture and animal and poultry husbandry.
- E. APPLICANT means the Owner of the property to be excavated or the Owner’s agent, so designated in writing as part of the excavation application.
- F. APPLICANTION FOR AMENDMENT means an amendment of an existing excavation permit pursuant to the provisions of RSA 155-E:6.

- G. AQUIFER means a geologic formation, group of formations, or part of a formation that is capable of yielding quantities of ground water usable for a municipal or private water supply.
- H. BOARD means the Town of Candia, NH Planning Board.
- I. BUFFER means the area between the top of slope of an excavation and a highway right-of-way, an abutting property or a river, stream, wetland or a regulated floodway.
- J. COMMERCIAL EXCAVATION means excavation of earth intended for commerce, This may also include excavation that is strictly conducted for the purpose of alteration, renovation, improvement or construction to the property on which the excavation takes place. Any material leaving the property for whatever reason is considered to be a commercial operation.
- K. COMPLIANCE INSPECTION means a mandatory inspection of site conditions, erosion and sedimentation control measures, construction sequencing as they relate to the approved plans, permits, order of conditions and Town of Candia Ordinances.
- L. CONTIGUOUS means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town.
- M. 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 is 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 below.
- N. EARTH means sand, gravel, rock, top soil, loam or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally-occurring unconsolidated materials that normally mask the bedrock.
- O. EXCAVATION means a land area which is used, or has been used, for the commercial taking of earth, including all slopes.
- P. EXCAVATION AREA means the area within an excavation site where excavation has occurred or is eligible to occur under the provisions of RSA 155-E. This is also known as the pit area.
- Q. EXCAVATION SITE means any area of contiguous land in common ownership upon which excavation takes place.
- R. EXCAVATION FEE means a fee established by the Board, submitted by the Applicant to the Planning Board, following the public hearing and prior to the issuance of an excavation permit, to defray the cost of processing the application.
- S. EXCAVATION PERMIT means a permit issued by the Board 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.
- T. EXISTING EXCAVATION means any excavation, as described in RSA 155-E: 2, I, which lawfully existed as of August 24, 1979, from which earth material of sufficient weight or volume to be commercially

useful had been removed during the 2-year period before August 24, 1979 and had submitted the report as required by RSA 155-E:2, I, (d).

- U. EXPANSION means excavation and disturbance of earth beyond the limits as shown on the plan as approved by the regulator.
- V. INCIDENTAL EXCAVATION means excavation of earth which has been granted an exception from an excavation permit by the regulator.
- W. MINOR TOPOGRAPHICAL ADJUSTMENT means a one time removal of earth from the site of less than 1000 cubic yards that is exclusively necessary to change the physical configuration of the land for a specified use or situation.
- X. NORMAL LANDSCAPING means the on- site alteration and contouring of the land exclusively devoted to improving the functional utility and planting of the grounds.
- Y. OVERBURDEN means earth and other natural materials over and around the minerals which will be displaced by excavation operations.
- Z. 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).
- AA. QUARRY means an excavation in bedrock open to the surface excavated for the purpose of removing rock, minerals or metallic ores.
- BB. RECLAMATION means the restoring of an excavation site to a standard at least equal to those outlined in Section X of these regulations.
- CC. REFERENCE LINE see RSA 483-B:4, XVII.
- DD. REGULATOR means: The Town of Candia, NH Planning Board
- EE. STATIONARY MANUFACTURING AND/OR PROCESSING PLANTS means facilities which are placed on a site for the purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated earth materials.
- FF. TEMPORARY PROCESSING EQUIPMENT means machinery or equipment placed on a site for less than three (3) months for the purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated materials.
- GG. TRIP means a single or one-direction vehicle movement with either the origin or the destination (exiting or entering) inside a study site. For trip generation purposes, the total trip for a land use over a given period of time is the total of all trips entering plus all trips exiting a site during a designated time period.
- II. VISUAL BARRIER means a man-made structure or natural vegetative growth. This includes, but is not limited to; vegetated fence rows; forested land whether managed or undisturbed, natural or planted. Where no effective barrier exists, the Board may require the planting of a row of evergreens at least 4 feet in

height at planting, which will grow to a dense vegetative buffer no less than 6 feet high, or the construction of a Board-approved fence that is opaque, neatly maintained, and not less than 6 feet high.

JJ. WELL means a hole or shaft sunk into the earth to tap an underground supply of water.

SECTION IV: PROJECTS REQUIRING A PERMIT

- A. The regulator of the Town of CANDIA has determined that none of the excavation sites within the Municipality have met the burden of proof that they are exempt from a permit under RSA 155-E:2, I (Existing Excavation) and RSA 155-E:2, III (Stationary Manufacturing Plants).
- B. Any excavation proposing to begin operation after the effective date of these regulations.

SECTION V: PROJECTS EXEMPT FROM A PERMIT

- A. 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:
- 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 SECTION XVI.
 - 2) Such excavation shall not be exempt from the Town of Candia Zoning Ordinance, or other applicable ordinances, unless such an exemption is granted pursuant to Subsection A.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 nonpermit status as provided under this Section A. Before beginning such excavation, the governmental unit or its agents shall certify to the Regulator that:
 - i. The excavation shall comply with the operational and reclamation standards of; RSA 155-E:4-a, 5 and 5a.
 - ii. The excavation shall not be within fifty feet of the boundary of a disapproving abutter or within ten feet of the boundary of an approving abutter, unless requested in writing by said approving abutter;
 - iii. The excavation shall not be unduly hazardous or injurious to the public welfare;
 - iv. Existing visual barriers to public highways shall not be removed, except to provide access to the excavation;
 - v. The excavation shall not substantially damage a known aquifer, so designated by the U.S. Geological Survey; and
 - vi. All required permits for the excavation from state or federal agencies have been obtained.
 - 3) The New Hampshire Department of Transportation or its agent may apply directly to the appeals board created under RSA 21-L to be exempted from the provisions of the Town of Candia Zoning Ordinance or other ordinances or regulations, with respect to the excavation or

transportation of materials being used exclusively for lawful construction, reconstruction, or maintenance of a class I, II, or III highway.

- i. 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.
- ii. Prior to acting on the application, the Board shall hold a hearing in the Town of Candia. 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 Board of Selectmen, if the proposed exemption concerns an excavation site, to the abutters of that site as defined in SECTION III.
- iii. Following the hearing, the 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:
 1. 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.
 2. An identification of the public interest being protected by the ordinance or regulation.
 3. 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.
 4. Any conditions to be imposed on the Applicant, to protect the public health, safety, or welfare.
- iv. The decision of the Board may be appealed in the manner provided for zoning decisions in RSA 677:4-14; provided, however, that a decision under this Subsection 4.3 shall be considered a rehearing under RSA 677, and no further motion for rehearing shall be required.

B. The following projects are deemed to be an exception from requiring a permit :

- 1) Excavation of earth that is a direct consequence and is exclusively incidental to the lawful construction or alteration of a building or structure, a parking lot or way including a driveway on a portion of the premises where removal occurs. This excavation cannot be started, however, until all required state and local permits have been issued.
- 2) Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E (Mining and Reclamation).
- 3) Any excavations required during a catastrophic event or a state of emergency as determined by the Town of Candia Selectmen or the Road Agent.

A person owning land abutting a site which was taken by eminent domain or by any other governmental taking upon which construction is taking place may stockpile earth taken from the construction site and may remove the earth at a later date after written notification to the Board.

SECTION VI: ABANDONED EXCAVATIONS

A. Any excavation, for which the affected area has not been brought into complete compliance with the reclamation standards of this regulation shall be considered abandoned if:

- 1) No material of sufficient weight or volume to be commercially useful has been removed from the site during any 2-year period either before, on, or after August 4, 1989.
 - 2) The excavation is in use, but either has not been brought into compliance with the incremental reclamation standards of this regulation, or a bond has not been posted and a reclamation timetable has not been approved by the Board.
 - 3) The Owner or operator of the excavation has neither secured a permit pursuant to these regulations.
- B. In the event the Board determines that any abandoned excavation presents a hazard to the public health, safety or welfare, the Owner may be required, following a public hearing, to comply with the timetable and bonding requirements outlined above, or to complete reclamation within a reasonable period of time. Should reclamation not be completed, the Board may request the Town to authorize reclamation at the Town's expense. The Town's costs shall constitute an assessment against the Owner, and shall create a lien against the property. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes
- C. The provisions of Paragraph B above also apply to any 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, if the Board determines in writing that a danger to public health or safety exists.

SECTION VII: PROHIBITED PROJECTS

- A. Excavations within 25 feet of the property boundary.
- B. Excavations within 200 feet of an existing private water supply source and 100 feet of an existing community or municipal water supply source.
- C. Where existing visual barriers would be removed, except to provide access to the excavation.
- D. Where the issuance of the permit would be unduly hazardous or injurious to the public welfare. The Board shall give particular consideration to such factors as noise, traffic, dust, fumes, or danger from operation.
- E. The Board shall not grant a permit where the hours of proposed operation will create a disturbance to abutters or neighbors who live on the street(s) providing access to the site. Unacceptable hours of operation shall presumptively include operation beyond 7 am to 6 pm Monday through Friday and 8 am to 12 noon on Saturday, with no operation on Sunday.
- F. Where an Applicant cannot demonstrate to the Board adequate safeguards to prevent damage to a known aquifer, as designated by the United States Geological Survey.
 - 1) Excavation operations shall be performed in such a manner as to not cause damage to any aquifer. The Planning Board shall determine whether or not damage to the aquifer will be incurred by considering the following criteria:

- i. The excavation shall not detrimentally affect the quality of groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants;
 - ii. The excavation shall not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer.
 - iii. The Board may require that the Applicant provide data or reports prepared by a professional groundwater consultant, which assess the potential aquifer damage that could be caused by the proposed excavation project. The Board may require that the information submitted be reviewed by its own groundwater expert at the Applicant's expense.
- G. When the excavation does not receive necessary approvals from state or federal agencies, such as Alteration of Terrain or Wetlands permits.
- H. Where the excavation is not permitted by zoning or other applicable ordinances, provided, however, that reasonable opportunities for excavation exist in town, as described in RSA 155-E:4,III.
- I. Where the project cannot comply with the requirements of these regulations ordinances.
- J. When the Applicant cannot demonstrate excavation operations can be performed in such a manner as not to cause damage to any abutting properties, building, utilities, features or facilities.

SECTION VIII: EXCAVATION EXPANSIONS

When the scope of an approved excavation is proposed to be altered as to affect either the size or location of the excavation, the rate of removal, or the plan for reclamation, the Owner must submit a new application for an excavation permit following the regulation criteria in Section XV. As part of the hearing process the regulator will consider any adverse impacts that may occur with the granting of a permit. Impacts will vary depending upon the particular neighborhood; nevertheless, the following criteria will be taken into consideration:

- The excavation will not cause a diminution in area property values or unreasonably change the character of the neighborhood.
- The excavation will not create any nuisance or create health or safety hazards.
- The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof.

SECTION IX: OPERATIONAL STANDARDS

- A. For those excavations requiring a permit, these standards are considered to be the minimum; more stringent standards such as are consistent with the purpose of these regulations may be applied, as deemed necessary by the Board.
1. No excavation shall be permitted closer than 150 feet to an existing building or structure that requires a building permit.
 2. No excavation shall be permitted below road level within 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.

3. Vegetation shall be maintained, or, if not existing, shall be established within the peripheral areas of items 1 and 2 of this section in accordance with acceptable horticultural practices.
4. No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with State laws or rules pertaining to the storage of such materials.
5. Where temporary slopes will exceed a 1:1 grade, a fence or other suitable barricade shall be erected to warn of danger and/or to limit access to the site.
6. Appropriate drainage shall be provided to prevent the accumulation of freestanding water for prolonged periods in accordance with RSA 155-E 4-a IV.
7. Excavation practices which result in continued siltation of surface waters or any degradation of water quality of any public or private water supplies are prohibited. The burden of proof lies on the injured party to submit in writing to the Board details of the incident.
8. No excavation shall be permitted within 100 feet of any great pond, navigable river, or any other standing body of water 10 acres or more in area, or within 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 10 acres, prime wetland as designated in accordance with RSA 482-A: 15, I, or any other wetland greater than 5 acres in area as defined by the Wetlands Board.
9. Acceptable hours of operation shall be 7 am – 6 pm Monday through Friday and 8 am – 12 noon on Saturday, with no operation on Sunday. The Board may modify these hours depending on resident's needs and the needs of the gravel pit owners.
10. No excavation shall be permitted within six feet of the seasonal high water table. A waiver to such prohibition shall be granted if the Applicant demonstrates that such excavation will not adversely affect water quality, provided, however, that written notice of such exception shall be recorded in the registry of deeds, one copy filed with the Department of Environmental Services, and one copy filed with the Board.
11. 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 or topographical buffer of a minimum of fifty feet 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-foot requirement in unusual situations or in the case of an approving a butter, but in no case, shall the buffer ever be less than twenty-five feet.
12. Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. 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.
13. All temporary structures required during excavation operations shall be removed from the site within ninety (90) days after such operations cease.

14. Excavation sites shall be kept free of all discarded waste material; i.e. machine parts, cables, cans, miscellaneous debris, trash, 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).
 15. All excavation operators shall report the amount of material removed to the Town Engineer/Building Inspector. Said reports shall be submitted quarterly, as required. The Town Engineer/Building Inspector shall perform an on-site inspection to determine the accuracy of the reports.
 16. All equipment for sorting, washing, crushing, drying, processing and treating or other operation machinery shall not be used closer than one hundred feet from any public street or from any adjoining lot line.
 17. No excavation of an area shall exceed five (5) acres at any one time without reclamation.
 18. The Applicant shall be responsible for the restoration or repair of any existing Town road(s) which access the excavation site which are damaged as a result of hauling or excavation operations. The Regulator may require that these costs be bonded prior to the granting of a permit to excavate.
 19. Trucks operating on any roads within the Town of Candia, 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.
 20. No hauling over Town roads will be allowed from December 1st to May 1st 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.
 21. All proposed temporary or permanent drainage shall meet the requirements of the Town of Major Site Plan Regulations.
 22. Reinforced construction fencing, such as chain link fence, shall be provided for all locations where temporary side slopes exceed two (2) horizontal feet to one (1) vertical foot. Permanent fencing consisting of chain link fence or wood fence, six (6) feet or taller, shall be provided uphill of all locations where permanent side slopes exceed one (1) vertical feet to two (2) horizontal feet.
 23. Slope stabilization fabric or rip rap shall be designed and provided for all locations where permanent slopes are proposed in excess of three (3) vertical feet to one (1) horizontal foot.
- B. For those excavations that have been deemed to be incidental, and have received an exception from a permit, the regulator may impose operational conditions and a performance bond as may be deemed necessary to insure completion of the proposed project.

SECTION X: SITE RECLAMATION STANDARDS

- A. For excavations requiring a permit, these standards are considered to be the minimum; more stringent standards such as are consistent with the purpose of these regulations may be applied, as deemed necessary by the Board.

- B. Within 12 months following the expiration date of a permit issued under these regulations, or the completion of any excavation, whichever occurs first, the excavated area shall be reclaimed in accordance with the following standards:
1. 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.
 2. Except for exposed rock ledge, all disturbed areas shall be spread with topsoil or any other soil capable of maintaining vegetation, and shall be planted and maintained with seedlings or grass suitable to prevent erosion.
 3. All earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of.
 4. 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 Board. Changes of slope shall not be abrupt, but shall blend with the surrounding terrain.
 5. Any standing bodies of water created by the excavation that are judged to constitute a hazard to health and safety shall be eliminated.
 6. 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.
 7. Any excavation permit Applicant that requires a RSA 485-A17 alteration of terrain permit from NH DES shall incorporate the requirements of these regulations, to the extent that they are more restrictive, in any NH DES permit application. Copies of all such permits shall be filed with the Board.

SECTION XI: INCREMENTAL RECLAMATION

Any excavated area of 5 contiguous acres or more which is depleted of commercial earth materials, excluding bedrock, or any excavation from which earth materials of sufficient weight or volume to be commercially useful have not been removed for a 2-year period, shall be reclaimed in accordance with Section X of these regulations within 12 months following such depletion or non-use, regardless of whether other excavation is occurring on adjacent land in contiguous ownership. A reclamation plan, including a reclamation timetable for the depleted areas within the reclamation site, shall be submitted to the Board for approval.

SECTION XII: BLASTING AND ROCK FACE SLOPES

- A. If an excavation requires the blasting of materials, Applicant shall so indicate in the application and certify that all blasting operations shall conform to NH RSA 158, along with the rules and regulations for Explosives promulgated by the Division of State Police, NH Department of Safety.

B. Local Blasting Permit Required

1. Blasting permits are issued and administered by the Candia Fire Chief or designee. Blasters shall be responsible to pay local blasting permit fees, as determined required by the Regulator.

2. Blasting permits shall not be issued for excavation sites until an excavation permit has been issued by the Planning Board.
3. The Fire Department, building department and all abutters shall receive written notified by the Applicant or the Developer a minimum of 7-days prior to the start of blasting operations and at the end of blasting operations.
4. The Town of Candia Fire Department shall be notified daily of blasting operations

C. Additional Minimum Requirements for Blasting

1. In recognizing that blasting for excavation sites can be intense and frequent for short-term projects or occur over a period of years, the Planning Board must collect information that will enable it to determine a project's ability to comply with the goals as delineated in Section II of these Regulations. To that end, the Planning Board shall require from an Applicant, at a minimum, but not be limited to:
 - i. Studies that will provide analysis of potential for groundwater or aquifer contamination from blasting, (i.e. – hydro geologic study, etc.);
 - ii. Detailed Blasting Plan to include drilling, explosives handling and loading procedure; observation procedures; blast evaluation procedures; procedures for handling and storage of blasted rock; and spill prevention measures and mitigation;
 - iii. As a condition precedent of an excavation permit, the Planning Board may require the Applicant to conduct pre-blast surveys on all structures and wells not controlled by the Applicant up to within 2,000 feet of the excavation area limits. Applicant shall provide a detailed record of each survey to the Fire Chief or his designee in the project file. Applicant shall be responsible for providing updated information annually over the term of the excavation permit.

D. Rock Face Slopes

1. All temporary and permanent rock face slope designs and details shall be in conformance with current New Hampshire DOT standards and specifications.
2. All rock face slopes shall be designed by and stamped by a Geotechnical Engineer, with a current professional Engineer registration in the State of New Hampshire.
3. The maximum allowable temporary and permanent rock face slopes shall be based design by the Geotechnical Engineer of record but shall not exceed a maximum slope of 1 foot horizontal to 4 feet vertical.
4. Fall zones shall be provided that are greater than or equal to half the height of the excavation. Fall zones shall be designed to slope towards the rock face at the base of the rock face.
5. Stone slopes shall be designed based on the stability of the existing material.
6. Under no circumstances shall stormwater be allowed to flow over rock face slopes in excess of six (6) vertical feet.

7. Permanent reinforced chain link fencing, six (6) feet or taller, shall be provided uphill of all rock face slopes.

SECTION XIII: PERFORMANCE GUARANTEE

- A. Prior to the granting of any permit the Applicant shall submit to the Selectmen a bond with sufficient surety as determined by the Planning Board. The purposes of the bond are to guarantee reclamation of the area, compliance with the permit, and any inspections. Off-site improvements for potential damage of Town roads or facilities caused by the transportation of earth materials shall be discussed at this stage. The surety estimate will be determined by the Town's Engineer.
- B. The surety may be in the form of cash or letters of credit, which shall be in an amount and form acceptable to the Board and its legal counsel. The surety may be phased to coincide with the phasing of work, in an amount sufficient to guarantee reclamation of the applicable section, to be released as sections are completed. Prior to a new section being opened, new securities shall be posted. The surety shall not be released until the Board is satisfied that all conditions of the site reclamation plan have been complied with.
- C. The surety may be reduced by the Board of Selectmen, in conjunction with the Road Agent and the Town's Engineer, during the course of construction, in such amounts as deemed to be in the best interest of the Town, and that the remaining performance guarantee shall be sufficient to complete all remaining construction and provide adequate retainage.
- D. 90% of the surety may be released when the Selectmen, in conjunction with the Road Agent and the Town's Engineer, are satisfied that the Applicant has complied with all the requirements as set forth in the approved final site plan. The decision to release the performance guarantee will be based upon an assessment of the plans, the proposed construction activities and the final status of work completed. The Selectmen shall notify the Planning Board when all conditions of the performance guarantee have been met, and shall have the authority to release the bond.

The remaining 10% of the performance bond shall not be released until all proposed work activities have been satisfactorily completed for one (1) year.

- E. If the Applicant has not complied within two years of the date of the approved permit, the Town may enforce the Town's rights by using the funds from the posted surety. In the event that the Town is required to enforce the performance guarantee, the Town shall be entitled to have Attorney's fees paid by the Applicant.

SECTION XIV: EXCEPTIONS

Due to the diverse nature of excavation operations which vary in scale and scope, and due to the varying conditions of the land to be excavated, the Board may, upon application and following a duly-noticed hearing, grant any exception in writing to the standards contained in Sections IX, X, XI, and XII for good cause shown. The written decision shall state specifically what requirements are being waived and include any reasonable alternatives.

SECTION XV: APPLICATION PROCEDURES

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

A. Excavation Permit Application Review

1. Applications for an excavation permits shall be filed with the Planning Board Clerk no later than 30 days before the next regularly scheduled Planning Board meeting. A complete application shall consist of a completed application page including submission items, a completed abutters list, and the appropriate fees as calculated on the application page
2. The application will be reviewed with the Applicant at the scheduled meeting. If the application is found to meet all submission requirements it will be accepted and voted by the regulator as complete and the hearing scheduled. Should the application not be accepted as complete, another review meeting must be scheduled for re-submission as outlined in Section XV, A, 1.

B. Board Action on Completed Application

1. Upon acceptance of a completed application the Planning Board will hold a public hearing within 30 days to consider the application.
2. Within 20 days of the close of the hearing on the application, or any continuation thereof, the Board shall make a decision. Notice of this decision shall be recorded in the minutes of the meeting and placed on file in the Town offices within 144 hours.
3. The Applicant shall receive a copy of the minutes along with the decision. If the application was approved with special conditions, these conditions shall also be stated. In the event the application is disapproved, the reasons for the disapproval shall be given.

C. Notices Required for Public Hearing

1. All abutters will be notified by certified mail, not less than 10 days prior to the meeting at which the application will be submitted for acceptance. Names and addresses of abutters must be taken from Town records not more than five (5) days before filing the application.
2. Public notice will appear in a newspaper of general circulation and in at least three public places not less than 10 days prior to the meeting.
3. The notice must include the location and general description of the proposal, as well as the date, time and place of the meeting.

D. Fee Schedule

1. The following schedule of fees shall apply to all major Earth Excavation plan review applications:

A. Application Fee	\$200.00
B. Legal Notice Fee	\$50.00*
C. Abutters, Applicant, Owner, Engineer, Architect, Licensed Land Surveyor, Soil Scientist Notices (each)	\$6.54*
D. Engineering Review Fee	(as determined) ¹
E. Mylar Recording Fees: (22" x 34" sheet)	\$45 plus \$26.00 per sheet
F. Permit Fee	\$50.00

* Subject to postal and noticing fee increases.

¹ Estimate provided for each project

2. Failure to pay the described costs shall constitute grounds for the Board to not accept the application.
3. Upon the Town's receipt of an Excavation Permit Application the Town's Engineer shall develop a review fee cost to perform a technical review of the application. Prior to the application being accepted by the Town, the Applicant shall provide a check in the amount fee cost to the Town to be held in escrow for the Town's Engineer to perform technical review(s) of the submitted application.
4. A permit fee of \$50 shall be paid upon the issuance of a permit, to defray the costs of permit compliance.
5. The site Owner or authorized agent shall upon submission of an application to the Land Use Office, meeting with the Planning Boards Completeness Review Committee to perform a completeness review of all Earth Excavation Permit applications.
6. Upon approval by the Town of the Earth Excavation Permit the Town's Engineer shall develop a construction cost estimate for the purpose of establishing a project completion surety. The Applicant or the Developer shall provide an acceptable form of the surety in the amount determined prior to the Planning Board signing the final plat plans.
7. Upon approval of the Earth Excavation Permit the Town's Engineer shall develop a Compliance Monitoring fee estimate for the purpose of inspecting the work for compliance with the permit, the approved plans and Town regulations and standards. The Applicant or the Developer shall provide the estimated amount in escrow prior to the Planning Board signing the final plat plans.
8. Prior to the start of construction activities, the Developer shall provide a construction schedule and shall request and attend a pre-construction meeting with the necessary Town Departments and the Town's Engineer.
9. Additional fees shall be charged should the Board require the advice of an Engineer or other expert to review plans or inspect the site to determine permit compliance.

SECTION XVI: APPLICATION SUBMISSION ITEMS

The Applicant for an excavation permit shall submit to the Planning Board a completed application form, including a current abutters list, an excavation and a reclamation plan, any other submission documents as requested, and the filing fee. At least three copies of all plans shall be filed with the Planning Board prior to a regularly scheduled Board meeting, and one copy shall be sent to the Conservation Commission. The plans shall be at a scale of 1" = 100'.

A. Excavation Plan

The excavation plan shall address specific actions to be taken on the site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons. The plan shall, at a minimum, contain the following items

1. Name and address of the Owner, the excavator (if different) and all abutters.
2. Name, address and signature of the person preparing the plan; date, bar scale and north arrow.
3. Zoning district boundaries of the proposed area and within 200 feet of the boundary of the project.
4. Excavation Plan by a licensed Engineer of the location and boundaries of the proposed and any existing excavations; the area in square feet and acre. Board will accept copies of engineering drawings required by NHDES in lieu of additional Engineer drawings.
5. The location of existing stone walls, ledge outcroppings, utilities, buildings, structures, septic systems and wells within 200 feet of the boundary of the project.
6. Public streets, driveways, intersections, rights-of-way, and all easements within 200 feet; road network to be affected; intended transportation routes to be used.
7. Existing and proposed topography at contour intervals of five feet or less.
8. All surface drainage patterns including wetlands and standing water.
9. Sketch and description, and/or Engineer surveyed map at the request of the Board, of existing and proposed access roads, including width and surface materials.
10. The breadth, depth and slope of the proposed excavation and the estimated duration of the project.
11. An estimate of the total volume of earth to be excavated.
12. The elevation of the highest annual average ground water table within or next to the proposed excavation.
13. 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.
14. Proposed temporary and permanent fencing, buffers or other visual barriers, including height and materials.
15. All measures to control dust, erosion, sedimentation, water pollution, air pollution, and any hazards to human safety.
16. 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 stamp and signature shall also appear on the plan.Plans and details for storm water management.
17. Plans for equipment maintenance.

18. Methods to prevent materials from the site from being tracked onto public roadways.
19. Copies of all necessary state and federal permits.
20. A construction phasing plan or plans.
21. A typical rock face slope with an associated fall zone.
22. Existing foliage and proposed limits of clearing.
23. A restoration plan and associated details.
24. Signed and dated by licensed soil scientist/Engineer. Board will accept copies of engineering drawings required by NHDES in lieu of additional drawings.
25. Existing and proposed access roadways.
26. Aquifer locations and limits as identified by the U.S. Geological Survey.
27. Blasting provisions, if required, consistent with NHDOT requirements.
28. Location of three (3) ground water monitoring wells.
29. Locations of all existing and proposed easement, on and below ground.

B. Reclamation Plan

The reclamation plan shall address the effects of the proposed excavation on soil, surface, and ground water, vegetation, overburden, topography, and fill material, and should address future land use consistent with the Master Plan. The plan shall, at a minimum, contain the following items:

1. Seal and signature of a licensed surveyor or Engineer. Board will accept copies of engineering drawings required by NHDES in lieu of additional drawings.
2. All boundaries of the area proposed for reclamation and the land within 200 feet of the boundary of this site.
3. First topography of the area proposed for reclamation, at contour intervals of five feet or less.
4. Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities.
5. Timetable as to fully-depleted sites within the excavation area.
6. Schedule of final reclamation activities including seeding mixtures, cover vegetation, fertilizer types, and application rates.
7. Soil conditioning specifications, i.e. liming and fertilizing required based on soil analysis;
8. The proposed planting materials to be used in the restoration, and their quantities and sizes.

9. An erosion and sedimentation control plan.
10. Phasing of site restoration showing designated areas and completion dates.
11. Such other information as the Regulator may reasonably require.
12. Loam shall be a minimum of 4-inches thick and shall be screened.
13. Specified winter stabilization requirements for the site in conformance with current NHDES requirements for October 15th through April 15th.

C. Traffic Circulation and Truck Routes

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.

D. Other Information:

The Board reserves the right, per NH DES RSA 155-E: 3, VII to request any other information it deems necessary to make an informed decision, or to have plans reviewed by an outside agency. According to the authority vested in the Board by NH DES RSA 155-E: 11, III & RSA 676:4, I(g), any reasonable expenses incurred for such information or reviews shall be charged to the Applicant. Failure to pay such costs constitutes valid grounds for the Board to deny the application.

SECTION XVII: ADMINISTRATION AND ENFORCEMENT

A. Permits

1. Permits shall be issued only to the Owner or his agent and shall not be transferable without the prior written consent of the Board. A copy of the permit shall be prominently displayed at the site or the principal access to the site.
2. A permit shall be valid for six years and the expiration date shall be specified. A permit is automatically withdrawn if no substantial work is done on the site for a period of two years from the date of the issuance of the permit.
3. Excavation of earth without a valid permit is a violation of RSA 155-E and these regulations. Violators shall be issued a cease and desist order FOR NON-COMPLIANCE.
4. The Board may include in the permit any such reasonable conditions as are consistent with the purpose of these regulations.
5. The Board will establish a schedule by which all permitted sites are inspected on an annual basis. The gravel pit committee will conduct an annual inspection except in the year of application

B. Compliance Inspections

The Board or its designee shall make at a minimum annual inspections or as required of all excavation sites to determine if the operations are in compliance with these regulations, the issued permit, the Town's regulations and the approved plans.

1. A site inspection review letter will be sent to the Owner citing and deficiencies and providing a timeline for correction of the deficiency.
2. Should identified deficiencies not be corrected within 14-days the Applicant and Developer shall be issued a cease and desist order FOR NON-COMPLIANCE and will be required to present a remediation plan and schedule of corrective action to the Planning Board.

C. Suspensions and Revocations

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

D. Appeals

Any person affected by the Board's decision to approve or disapprove an application or any amendment thereto or any suspension or revocation of a permit, may appeal to the Board for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall be filed within ten (10) days of such decision and shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable. The Board shall either grant or deny the request for rehearing within twenty (20) days, and if the request is granted, a rehearing shall be scheduled within thirty (30) days. Any person affected by the Board's decision on a motion or rehearing may appeal in accordance with RSA 677:4-15.

E. Penalties

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

SECTION XVIII: SEPARABILITY

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

SECTION XIV: EFFECTIVE DATE

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

APPENDIX I

APPLICATION PACKAGE

APPLICATION FOR EARTH EXCAVATION
TOWN OF CANDIA

(Incomplete applications will be returned to the Applicant with no action taken by the Board)

Date Received: _____

File No.: _____

Fee Schedule:	Amount	Check #
a. Application.....	\$ 75.00	
b. Engineering Fee.....	_____	
c. Advertising.....	\$100.00	
d. Certified Mail: gravel Pit Owner @ \$6.54	_____	
e. Number of Abutters _____ @ \$6.54.....	_____	
 TOTAL.....	 \$ _____	

1. Name of Owner/Applicant: _____

Name of Agent or Pit Owner, if different from Owner: _____

(Notarized letter must be submitted indicating agent assigned and the amount of authority given)

Signature of Owner/Applicant: _____

2. Current mailing address: _____

Telephone Number: _____

3. Date of Submission: _____

(Note: Section XV requires submission of completed applications 30 days before the next regularly scheduled Planning Board meeting)

4. Location of proposed and/or existing excavation: _____

5. Tax Map #: _____ Lot #: _____ Zoning District(s): _____

6. Type of Operation: _____

7. If existing, date of commencement _____

8. Submission Items:

- a. Excavation and/or Reclamation Plans completed by licensed Engineer.
- b. Name, address and license # of Engineer
- c. Engineer cost estimates
- d. Evidence of ability to provide bond or surety
- e. Test pit results
- f. Abutters list
- g. Local, State and/or Federal Permits
- h. Fees

CANDIA PLANNING BOARD
LIST OF ABUTTERS
(To be attached and submitted with application)

Name of Applicant _____ Tax Map # _____ Lot # _____

Name of Agent or Pit Operator if different from Owner _____

Address _____

Abutter means any person whose property is located in CANDIA or adjoining towns, and adjoins or is directly across the street or stream from the land under consideration by the Planning 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 any proposal under consideration. For purposes of receipt of modification 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.

1. Name _____ Tax Map # _____ Lot # _____

Address _____

Zip Code _____

2. Name _____ Tax Map # _____ Lot # _____

Address _____

Zip Code _____

3. Name _____ Tax Map # _____ Lot # _____

Address _____

Zip Code _____

4. Name _____ Tax Map # _____ Lot # _____

Address _____

Zip Code _____

5. Name _____ Tax Map # _____ Lot # _____

Address _____

Zip Code _____

6. Name _____ Tax Map # _____ Lot # _____

Address _____

Zip Code _____

10. The excavation will not cause the accumulation of freestanding water for prolonged periods.
11. The excavation is not within 75' of any great pond, navigable river, or any other standing body of water ten acres or more in area.
12. The excavation is not within 25' of any stream, river, brook that normally flows throughout the year, or any naturally-occurring standing body of water less than ten acres, prime wetland, or any other wetland greater than five acres in area.

Reclamation Checklist

1. Tree seedlings will be planted in areas visible from a public way to replace trees that were removed.
2. All disturbed areas will be reseeded.
3. Provision is made for the removal of all stumps and other debris.
4. Soils will be graded according to soil type, and changes in slope will not be abrupt.
5. No standing bodies of water created by the excavation will be left if they create a public safety hazard.
6. The topography will be left so that drainage reverts to its original points and proportions of flow.

APPENDIX II
EXCAVATION PERMIT

CANDIA, NEW HAMPSHIRE

EXCAVATION PERMIT

PURSUANT TO RSA 155-E

PERMIT #: _____ ISSUE DATE: _____

EXPIRATION DATE: _____

LOCATION:

STREET: _____

MAP #: _____

LOT #: _____

OWNER (S): _____

ADDRESS: _____

THIS PERMIT IS NON TRANSFERABLE WITHOUT THE PRIOR, WRITTEN APPROVAL OF THE CANDIA PLANNING BOARD PURSUANT TO RSA 155-E:8

NOTE: Pursuant to RSA 155-E:10 – The regulator or its duly authorized agent may suspend or revoke the permit of any person who has violated any provision of his permit or this chapter or made a material misstatement in the application upon which his permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with RSA 155-E:9.

Issued by:
CANDIA, NH Planning Board

Chairman of the Planning Board

THIS PERMIT IS TO BE PROMINENTLY POSTED AT THE EXCAVATION SITE OR AT THE PRINCIPAL ACCESS PURSUANT TO RSA 155-E: 8.

APPENDIX III
SAMPLE SURETY LETTER

Irrevocable Standby Letter of Surety

DATE:

Beneficiary: Town of CANDIA (hereinafter "Town")
45 Washburn Road
CANDIA, New Hampshire 03222

Re: **APPLICANT'S NAME**

Dear Chairman and Members of the Planning Board:

We, **BANK'S NAME**, hereby establish in favor of the Town, for the account of **APPLICANT'S NAME**, our Irrevocable Standby Letter of Credit (hereinafter "Credit") in the amount of **AMOUNT (\$#)**. Funds under the Credit are available to the Town, in any number of draws, by your sight draft(s) drawn on us identifying the above-referenced Credit Number, if presented at our office at **BANK'S ADDRESS**, prior to the expiration of this Credit together with the original of this Credit and either of the following statements signed by you:

1. "We are drawing under Irrevocable Standby Letter of Credit No. ____ because **APPLICANT'S NAME** is in default of completion of the reclamation improvements required by the CANDIA Planning Board for the property located at **GRAVEL PIT ADDRESS**, said reclamation improvements being shown on the plan of land entitled "Plan Showing Property of **APPLICANT'S NAME**, dated _____, as prepared by **SURVEYOR'S NAME** (Hereinafter "Plan")."; or
2. "We are drawing under Irrevocable Standby Letter of Credit No. ____ because **BANK'S NAME** has elected not to renew such Credit."

The Credit expires at the close of business on _____. However, unless we elect not to extend the Credit, it will be automatically extended for additional consecutive one-year periods. If we elect not to extend the Credit beyond any applicable expiration date, we shall provide written notice of such election at least sixty (60) days prior to such expiration date, sent by Certified Mail Return Receipt Requested, to the Town's Chairman of the Planning Board at 74 High Street, CANDIA, New Hampshire 03034, and the Town's Attorney's Upton & Hatfield 10 Centre Street PO Box 1090, Concord, NH 03302-1090.