
WILTON, NEW HAMPSHIRE

LAND USE LAWS



EXCAVATION SITE PLAN REVIEW REGULATION

SECTION F

Adopted November 15, 1990
Amended September 16, 1992
Amended June 15, 1994
Amended October 15, 2014

WILTON LAND USE LAWS AND REGULATIONS
SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

TABLE OF CONTENTS

1.0	GENERAL PURPOSE AND AUTHORITY	1
2.0	DEFINITIONS	1
3.0	PERMIT REQUIRED	2
4.0	ABANDONED EXCAVATIONS	5
5.0	APPLICATION FOR PERMIT	5
6.0	ADDITIONAL PERMIT REQUIREMENTS.....	8
7.0	OPERATIONAL STANDARDS	9
8.0	SITE RECLAMATION STANDARDS	10
9.0	PROHIBITED PROJECTS	12
10.0	WAIVERS	12
11.0	APPLICATION FOR AMENDMENT	12
12.0	HEARING	12
13.0	ISSUANCE OF PERMIT.....	13
14.0	ANNUAL INSPECTION.....	13
15.0	APPEAL	14
16.0	ENFORCEMENT	14
17.0	SEPARABILITY	14

EXCAVATION

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Table of Contents

1.0 GENERAL PURPOSE AND AUTHORITY

Chapter 155-E of the New Hampshire Revised Statutes requires that, with several exceptions, all mining and excavation operations in the State obtain prior approval and permit from the local municipality in which the operation is to occur. The purpose of the Statute is to minimize safety hazards created by open excavations; to safeguard the public health and welfare; to preserve our natural assets of soil, water, forests and wildlife; to maintain aesthetic features of our environment; to prevent land and water pollution; and to promote soil stabilization.

2.0 DEFINITIONS

- 2.1 Abutter. 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, as defined in RSA 672:3.
- 2.2 Agricultural activity. Excavation of earth used exclusively for agriculture and farming as defined in RSA 21:34-a.
- 2.3 Commercial. Any use of any earth material for sale or resale on or off site of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported to land other than that from which the earth was excavated. Excavations which use earth materials in the processing of other material such as, but not limited to, concrete, asphalt and other building materials shall be considered commercial.
- 2.4 Contiguous. Land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town (RSA 155-E:2, I-b).
- 2.5 Dimension stone. Rock that is cut, shaped, or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and used for external or interior parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which sections of dimension stone are to be produced. Dimension stone does not include earth as defined in this Section.
- 2.6 Earth. Sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally-occurring unconsolidated materials that normally mask the bedrock.

WILTON LAND USE LAWS AND REGULATIONS

SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

- 2.7 Excavation. A land area which is used, or has been used, for commercial taking of earth, including all slopes.
- 2.8 Excavation of Earth. When not used in the context as defined in 2.7 above, excavation may mean the activity in which earth is exposed and removed from a site by digging or other removal processes.
- 2.9 Excavation area. The area within an excavation site where excavation has occurred or is eligible to occur under these regulations and the zoning ordinance.
- 2.10 Excavation site. Any area of contiguous land in common ownership upon which excavation takes place.
- 2.11 Incidental. Any activity that is customarily subordinate to the principal use of the property and which arises out of and constitutes a customary, minor, concurrent part of the overall effort of activity which would not be required other than as necessary to support the underlying principal activity.
- 2.12 (Reserved.)
- 2.13 Normal Landscaping. The onsite alteration and contouring and of the land exclusively devoted to improving the functional utility and planting of the grounds.
- 2.14 (Reserved.)
- 2.15 Planning Board or Board. The planning board of the Town of Wilton.
- 2.16 Silvicultural activity. The maintenance, protection, conservation, multiple use, and rehabilitation of forests for the social, economic, and environmental benefits that result from a diverse forest cover.

3.0 PERMIT REQUIRED

No owner shall permit any excavation of earth on his premises without first obtaining a permit unless the excavation is one of the following exceptions:

- 3.1 Existing Excavations. The owner of an excavation which lawfully existed as of August 24, 1979, from which earth material of sufficient weight or volume to be commercially useful has been removed during the 2-year period before August 24, 1979, may continue to excavate without a permit subject to:
- a. Such an excavation site shall be exempt from local zoning, provided that at the time the excavation was first begun, it was in compliance with any local ordinances that may have been in effect. The exemption from local zoning includes the quarrying or crushing of bedrock for the production of construction aggregate; provided, however, that no owner shall after August 4, 1989 permit any such quarrying or crushing to occur for the first time on any excavation site without first obtaining an excavation permit from the Planning Board.
 - b. Such an excavation area may not be expanded beyond the limits of the Town in which it is situated 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 area of that date, and appraised

WILTON LAND USE LAWS AND REGULATIONS

SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

and inventoried for property tax purposes as part of the same tract as the excavation site. (As defined in RSA 155-E:2, I-b, as amended effective August 23, 1991.)

- c. Such an excavation shall be performed in compliance with the express operational and reclamation standards contained in RSA 155-E:4a, RSA 155-E:5 and RSA 155-E:5a.
- d. The owners or operators of any existing excavation area for which no permit has been obtained shall file an excavation report with the Planning Board by August 4, 1991. Any existing excavation that fails to file a report within the one year time period shall obtain a permit from the Planning Board before continuing excavation of the site.

The report shall contain the following information:

- 1. the location of the excavation--tax map and lot number;
- 2. the date the excavation first began;
- 3. a description of the permissible limits of expansion as described in Section 3.1, b;
- 4. a description of the existing excavation with a sketch map including an estimate of the area which has been excavated to date; and
- 5. an estimate of the amount of commercially-viable earth materials still available on the parcel.

3.2 Stationary Manufacturing Plants. An excavation permit shall not be required for excavations in association with stationary manufacturing plants that meet the following conditions:

- a. Excavations from an excavation site contiguous to, or contiguous land in common ownership with, stationary manufacturing and processing plants in operation as of August 24, 1979, which use earth from said excavation site; however, such excavations shall be performed solely in compliance with the express operational and reclamation standards contained in RSA 155-E:4-a, RSA 155-E:5, and RSA 155-E:5-a. Loss of 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 30 days of receiving this notice.
- b. The operation and reclamation of excavations from a site which on August 4, 1989 was contiguous to, or was contiguous land in common ownership with, stationary manufacturing and processing plants which have been granted state or local permits since August 24, 1979 and before August 4, 1989, which use earth obtained from said site shall be governed by the conditions of the state or local permit and any extensions or renewals thereof. (As defined in RSA 155-E:2, III-b.)

3.3 Highway Excavations. An excavation performed exclusively for the lawful construction, reconstruction, or maintenance of a Class I, II, III, IV, or V highway by a unit of government which has jurisdiction for the highway or an agent of the unit of government which has a contract for the construction, reconstruction, or maintenance of the highway, provided that:

- a. A copy of the pit agreement executed by the owner, the agent and the governmental unit shall be filed with and accepted by the Planning Board prior to the start of excavation, except as delineated in RSA 155-E:2.IV.(c) for exemption. Failure to file a copy of the pit agreement with the municipality or to comply with the terms of the agreement constitutes a violation enforceable under the provisions of Section 16.0 of these regulations.

WILTON LAND USE LAWS AND REGULATIONS

SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

- b. The New Hampshire Department of Transportation or its agent may apply to the appeals board created under RSA 21-L to be exempted from the provisions of local land use regulations. The appeals process includes a formal public hearing in the affected municipality as set forth in RSA 155-E:2, IV-(c).
- c. The governmental unit or its agents must comply with the following:
 - 1. the excavation shall comply with the operational and reclamation standards of RSA 155-E:4-a, RSA 155-E:5, and RSA 155-E:5-a;
 - 2. section 7.0-a of these regulations;
 - 3. the excavation shall not be unduly hazardous or injurious to the public welfare;
 - 4. existing visual barriers in the areas specified in RSA 155-E:3, III shall not be removed, except to provide access to the excavation;
 - 5. the excavation shall not substantially damage a known aquifer, so designated by the United State Geological Survey (see Section 7.0-h); and
 - 6. all required permits for the excavation from state or federal agencies have been obtained.

3.4 Other Exceptions.

- a. Excavation that is exclusively incidental to the lawful construction or alteration of a building or structure, or the lawful construction or alteration of 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 necessary for the construction or alteration of the building, structure, parking lot, or way have been issued. In the event that the incidental excavation results in the removal of more than 500 cubic yards of earth that is transported off site, an excavation permit will be required and shall be submitted per section 5 below.
- b. Excavation that is incidental to agricultural or silvicultural activities or normal landscaping. In the event that the incidental excavation results in the removal of more than 500 cubic yards of earth that is transported off site, an excavation permit will be required and shall be submitted per section 5 below.
- c. Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E.
- d. 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 Planning Board.

WILTON LAND USE LAWS AND REGULATIONS
SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

4.0 ABANDONED EXCAVATIONS

The permit and zoning exemptions under Section 3.0 shall not apply to any abandoned excavations as defined in Section 4.1.

4.1 Abandoned Excavations. Any excavation except for excavations or excavation sites described in RSA 155-E:2, III, for which the affected area has not been brought into complete compliance with the reclamation standards of this regulation (Sections 6.0 and 8.0) shall be deemed abandoned if:

- a. no earth material of sufficient weight or volume to be commercially useful has been removed from the excavation site during any two (2) year period; the owner or operator may, however, extend the period by submitting a reclamation time table to be approved by the Planning Board and posting a bond or other surety in a form and amount prescribed by the Planning Board sufficient to cover the costs of reclamation of the excavation site; or
- b. the excavation site is in use and is not a stationary manufacturing plant, but doesn't conform with the incremental reclamation requirements of this regulation or the owner or operator has not posted a bond or other surety sufficient to cover the costs of reclamation; and submitted a reclamation time table to be approved by the Planning Board;
- c. the owner or operator of the excavation has neither secured a permit pursuant to this regulation nor filed a report of an existing excavation within the prescribed time period as required by Section 3.1.

4.2 Reclamation of Abandoned Excavations. The Planning Board may order the owner of any land containing an abandoned excavation to either file a reclamation time table to be approved by the Board and bond or other surety, or to complete the reclamation in accordance with this regulation within a stated reasonable time. Failure to complete said reclamation within the prescribed time period may result in the Planning Board requesting the governing body to cause reclamation to be completed at the expense of the municipality. The municipality's costs shall constitute an assessment against the owner, and shall create a lien against the real estate on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

The site of an excavation which ceased commercially useful operation prior to August 24, 1977 (see Section 3.1), but for which the affected area has not been brought into compliance with the reclamation standards of Section 8.0, may be made subject to the remedy prescribed in this section only if the Planning Board finds in writing that specified reclamation measures are necessary to eliminate or mitigate an identified hazard to public health or safety.

5.0 APPLICATION FOR PERMIT

Any owner or owner's designee subject to this chapter shall, prior to excavation of or continuance or expansion of excavation of any land, apply to the Planning Board for an excavation permit and submit a reclamation plan. Copies of the application and the plans shall be submitted to the Wilton Conservation Commission at the same time. The permit application shall be signed and dated by the applicant and shall contain at least the information in this Section in addition to other regulation, checklist and site plan review requirements.

WILTON LAND USE LAWS AND REGULATIONS

SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

- 5.1 General Information. The application shall include the name and address of the owner of the land to be excavated, the person who will actually do the excavating and all abutters to the premises on which the excavation is proposed.
- 5.2 Excavation Plans and Associated Information.
- 5.2.1 All new excavations shall submit an excavation plan. All plans submitted to the Planning Board shall comply with the provisions in the Soil Erosion and Sedimentation Control Standards contained in Appendix II. At least six (6) copies of final plans and any associated information shall be filed with the Planning Board prior to issuance of a permit. (Amended June 1994). All plans submitted shall be of a quality that they are easily understood and of accuracy that compliance can easily be checked. All excavation plans submitted shall conform to the standards established below, the checklist included in Appendix IV, and contain the following:
- a. Scale bar and north arrow. Plans shall be at a scale of no greater than 1" = 100 feet;
 - b. the proposed plan name, name and address of owner of record, name of the applicant (if not the owner), owner's designated agent/representative, and the date the plans were first drafted in the lower right corner of the plan;
 - c. the tax map and lot number of the parcel proposed for excavation;
 - d. the tax map and lot number, names and addresses of owners of records for all properties abutting the parcel proposed for excavation;
 - e. the seal and signature of a land surveyor licensed in the State of New Hampshire;
 - f. the seal and signature of a professional engineer licensed in the State of New Hampshire;
 - g. a locus map, at a scale of 1" = 1,000 feet, showing the proposed operation in relation to existing roads;
 - h. property lines; location of all easements, on or below the ground;
 - i. limits of any existing and all proposed areas to be excavated, distance from excavation limits to property lines, all land within 200 feet of the perimeter of the area to excavated, and dwellings within 150 feet;
 - j. total area of proposed excavation in acres;
 - k. the total estimated duration of the excavation;
 - l. existing topography at contour intervals of five or fewer feet, based on mean sea level;
 - m. all surface drainage patterns including wetlands and standing water;
 - n. the breadth, depth, slope, and total amount of earth of the proposed excavation, and existing excavation where applicable; schedule of excavation volumes to be removed. If phased, an estimate of breadth, depth, slope and total amount of earth per phase with timeline of each phase;
 - o. a log of borings or test pits that extend to either the seasonal high water table, ledge/bedrock, or a minimum of six feet below the maximum proposed excavation depth, within or next to the proposed excavation. Location, groundwater elevation, and soils data shall be provided;
 - p. the location and extent of any stone walls, ledge outcroppings, wells, existing buildings, septic systems, utilities and the like, in the excavation area;
 - q. the location of existing buildings, structures, septic systems and wells within one hundred and fifty (150) feet of the property boundary;
 - r. any existing and all accessory facilities/activities;
 - s. wooded and heavily vegetated areas;
 - t. existing and proposed fencing, buffers or visual barriers, including height and materials;
 - u. storage areas for topsoil to be used in reclamation;

WILTON LAND USE LAWS AND REGULATIONS

SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

- v. all measures to control erosion, sedimentation, water pollution, air pollution, and hazards to human safety;
- w. location and width of all public roads and rights-of-way;
- x. the location of all driveways and road intersections within two hundred (200) feet of the property boundary;
- y. existing and proposed access roads, including width and surface materials, and intersections with town or state highways;
- z. existing and proposed parking areas; and
- aa. zoning districts.

5.2.2 The following will be required in addition to the excavation plan:

- a. copies of any permits required by state or federal regulations or applications for permits, including but not limited to the following:
 - Alteration of Terrain (RSA 485-A:17)
 - Wetlands Board - Dredge and Fill (RSA 482-A)
 - Army Corps of Engineers - Dredge and Fill
 - NH Department of Transportation - Access Permit
 - NH Department of Transportation - Pit Agreement
 - EPA Stormwater Pollution Prevention Plan – SWPPP permit;
- b. meet EPA stormwater requirements;
- c. plans shall be consistent with Section 9B.6.1 Setbacks and Buffers in the Zoning Ordinance; and be consistent with Section 9B.6.2 Transportation, when removing earth materials;
- d. photographs of existing site conditions shall accompany the excavation plan; and
- e. all measures 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.

5.3 Reclamation Plan and Associated Information.

5.3.1 Reclamation Plans for all excavations shall be provided at the same scale as the Excavation Plan covering the same area. All plans submitted to the Planning Board shall comply with the provisions in the Soil Erosion and Sedimentation Control Standards contained in Appendix II. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. At least six (6) copies of final plans shall be filed with the Planning Board prior to issuance of a permit. (Amended June 1994)

The Reclamation Plan shall include:

- a. the seal and signature of an engineer and/or land surveyor licensed in the State of New Hampshire;
- b. all boundaries of the area proposed for reclamation;
- c. final topography and final slopes of the area proposed for reclamation;
- d. sections showing existing, excavated and reclaimed topography;
- e. final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities;
- f. schedule of final reclamation activities including soil conditioning specifications, seeding mixtures and mulching specifications, cover vegetation including quantities and sizes, and fertilizer types and rates;
- g. phasing of reclamation (areas and dates); and
- h. Identification of subsequent use of the site, if known or anticipated.

WILTON LAND USE LAWS AND REGULATIONS
SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

5.3.2 The following will be required in addition to the excavation plan:

- a. photographs of the site before excavation (from at least two different vantage points).

6.0 ADDITIONAL PERMIT REQUIREMENTS

6.1 Size and Reclamation Time Limit on New Excavations. No excavation of a permitted area shall exceed five acres in size at any one time. In addition, the size of the area for any permitted excavation shall not exceed that area which can be reclaimed according to the approved application within a one (1) year period.

If reclamation of the site is not completed within the one (1) year permit period the Town may declare part or all of the bond forfeit, and use these monies to reclaim the site, in addition to the requirements of Section 13.0 (Issuance of Permit). At no time shall more than one permit be allowed on a lot of record.

6.2 Size and Reclamation Time Limit on Expansions of Excavations. No expansion and reclamation of an excavation shall exceed the already disturbed area of the excavation plus five acres. However, the entire excavation area shall not exceed that area which can be reclaimed according to the approved permit within a one (1) year period. If an excavation operating at the time of adoption of this regulation cannot be reclaimed within one (1) year, no additional excavation into an undisturbed area shall be permitted until the existing excavated area is reclaimed based on an approved permit as required by this regulation. In the case of excavation in operation at the time of adoption of this regulation that is not being expanded, the permit period allowed for reclamation shall also be one (1) year.

If reclamation of the site is not completed within the one (1) year permit period the Town may declare part or all of the bond forfeit, and use these monies to reclaim the site, in addition to the requirements of Section 13.0 (Issuance of Permit). At no time shall more than one permit be allowed on a lot of record.

6.3 Excavation Sites Considered Non-Conforming. Expansion of any site used for sand and gravel excavation is limited to such activities which are considered a permitted or allowed use in the corresponding zoning district. When an excavation is not allowed by local zoning or similar ordinances regulating the location of the excavation site in effect on August 4, 1989, expansion may be restricted or modified with conditions by order of the Planning Board if after notice to the owner and a public hearing the Board finds that such expansion will have a substantially different and adverse impact on the neighborhood.

6.4 Hours of Operation. The hours of operation shall be determined by the Planning Board during the permit process. The level of operation and the type of neighborhood affected shall be considered by the Board in establishing these hours.

6.5 Hauling Information. Hauling information, including routes to be utilized and average daily trips, shall be provided to the Planning Board prior to the issuance of an Excavation Permit. The Planning Board may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. The Planning Board 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 optimized in the hauling plan.

WILTON LAND USE LAWS AND REGULATIONS
SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

7.0 OPERATIONAL STANDARDS

The following standards apply to the operation of all permitted excavations within the Town.

- a. No excavation covered under RSA 155-E shall be permitted closer than 50 feet of the boundary of a disapproving abutter or within 10 feet of an approving abutter unless approval of a lesser distance is requested by the abutter, as defined in RSA-E:4.II.
- b. No excavation covered under RSA 155-E shall be permitted closer than 150 feet of an existing dwelling or to a dwelling for which a building permit has been issued at the time the excavation is begun.
- c. All areas used for the excavation of earth materials shall be set back and separated by an undisturbed natural wooded buffer at least 300 feet from all public roads except Webb Road and from all lot lines, except that:
 1. The setback may be reduced to 25 feet from other lots in the Gravel Excavation District with the written permission of the abutting lot owner,
 2. There is no setback requirement from lot lines between multiple lots containing land encompassed in a single excavation.
 3. Access roads may be constructed through the buffer area.
- d. 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.
- e. Vegetation shall be maintained or provided within the peripheral areas required by Section 7.0 a, b and c.
- f. 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.
- g. No actual excavation is to exceed five (5) acres at one time unless specifically authorized by the Planning Board.
- h. Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process. Excavations shall comply with the Soil Erosion and Sedimentation Control Standards contained in Appendix II.
- i. No excavation shall be permitted closer than six feet to the seasonal high water table or to bedrock (as indicated by the required borings or test pits). The Planning Board may approve a lesser distance if the applicant provides scientific information sufficient to determine subsequent use of the site would not be precluded or present a public health threat; or if the applicant places restrictions upon future development of the site.
- j. No excavation shall be closer than ten feet to the seasonal high water table within the Town of Wilton Floodplain Conservation District, Wetlands Conservation District and Aquifer Protection District. The Planning Board may approve a lesser distance if the applicant provides scientific information sufficient to determine subsequent use of the site would not be precluded or present a public health threat; or if the applicant places restrictions upon future development of the site.
- k. Excavation that is not considered incidental to agriculture or sivilcultural activities or normal landscaping, further defined in Section 3.4 above, shall not occur without approval from the Planning Board and proof that the excavation does not negatively impact water quality.
- l. Where the depth of excavation will exceed 15 feet and/or where temporary slopes will exceed 1:1 grade, a fence or other suitable barricade shall be erected to warn of danger and/or limit access to the site.

WILTON LAND USE LAWS AND REGULATIONS

SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

- m. No area shall be excavated which will cause the accumulation of free standing water for prolonged periods. Appropriate drainage shall be provided.
- n. Excavation projects requiring Alteration of Terrain Permits from the Department of Environmental Services (DES) under RSA 485-A:17 shall file a copy of the permit, and provide copies of Alteration of Terrain updates, with the Planning Board prior to receiving a permit.
- o. Topsoil shall be stripped from the excavation area and stockpiled on-site for use in subsequent reclamation of the site. In conformance with the reclamation plan, top soil may be removed and taken off the excavation site if sufficient topsoil is kept on site to effect the reclamation.
- p. All temporary structures required during excavation operations shall be removed from the site within 30 days after such operations cease.
- q. No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with State laws or rules pertaining to such materials.
- r. 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 surety, as prescribed by the Planning Board, sufficient to cover the cost of reclaiming the land area to be excavated.
- s. No excavation shall be permitted within 75 feet of any great pond, navigable river, or any other standing body of water 10 acres or more in area or within 25 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 New Hampshire Department of Environmental Services Wetlands Board.
- t. On-site composting, backhauling, storage of landscaping materials and use as a contractor yard is prohibited unless prior authorization and approval has been granted through the site plan process.

8.0 SITE RECLAMATION STANDARDS

The Planning Board or its designee shall periodically inspect the excavation operations and shall perform a final reclamation inspection in order to ensure that the approved plans have been followed. The standards below apply to the reclamation of permitted excavations in the Town of Wilton.

- a. No slope in soil material shall be left steeper than 3:1 (three horizontal feet for each one foot of vertical drop) unless it can be demonstrated by the applicant that a steeper grade can be adequately vegetated and stabilized. Under no case shall a soil material slope be left steeper than 2:1.
- b. All debris, stumps, boulders, etc. shall be lawfully disposed of in a manner acceptable to the Planning Board or its designee.
- c. Ground levels and grades shall be established as shown on the approved reclamation plan as soon as practical after site excavation has been completed, but no later than one year.
- d. Stockpiled topsoil shall be spread over the disturbed area to a depth to allow and maintain vegetation. Areas posing the most critical problems for re-vegetation shall be given first priority should available topsoil be limited. The disturbed area(s) shall be fertilized, if necessary, and seeded with a grass or grass-legume mixture.
- e. If deemed necessary by the Planning Board, suitable trees or shrubs may be planted in order to provide screening and natural beauty and to aid in erosion control. Such planted areas shall be protected from erosion during an appropriate establishment period by mulch and structural erosion control devices.

WILTON LAND USE LAWS AND REGULATIONS

SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

- f. Upon completion of the reclamation operations, 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.
- g. The responsible party shall not be released from its performance commitment (reclamation bond) until the Planning Board certifies compliance with all terms of the Excavation and the Reclamation Plans. This bond needs to be in place for a minimum of 18 months after the reclamation of the site has been completed and approved by the Planning Board or the Planning Boards's designee.
- h. Except for excavation sites of operating stationary manufacturing plants, any excavated area of 5 contiguous acres or more, which is depleted of commercial earth materials, excluding bedrock, or any excavation from which earth materials of sufficient weight or volume to be commercially useful have not been removed for a one year period, shall be reclaimed in accordance with Sections 6.0 and 8.0 within one year. Each operator shall submit a reclamation plan and timetable.
- i. Activities must be consistent with Section 9B.6.4 of the Zoning Ordinance.

WILTON LAND USE LAWS AND REGULATIONS
SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

9.0 PROHIBITED PROJECTS

The Planning Board shall not grant an Excavation Permit under the following conditions.

- a. The excavation would violate the operational standards of Section 7.0.
- b. The excavation is located within 50 feet of the boundary of a disapproving abutter or within 10 feet of the boundary of an approving abutter unless approval of a lesser distance is requested by the abutter.
- c. Issuance of the permit would be unduly hazardous or injurious to the public welfare.
- d. Existing visual barriers would be removed, except as necessary to provide access to the excavation.
- e. The excavation would substantially damage a known aquifer, so designated by the United States Geological Survey.
- f. The excavation is within 150 feet of an existing dwelling or a dwelling for which a building permit has been issued at the time the excavation is begun.
- g. The excavation requires land use permits from state or federal agencies; the Planning Board may approve the application when all the necessary permits have been obtained.
- h. The project cannot comply with the reclamation provisions of Sections 6.0 and 8.0.
- i. The excavation is not permitted by zoning or other applicable ordinance.

10.0 WAIVERS

The Planning Board, upon application and following a hearing, may grant a waiver in writing, to the standards contained in Sections 6.0, 7.0, and 8.0 for good cause shown. The written decision shall state specifically what standards, if any, are being relaxed and include reasonable alternative conditions.

11.0 APPLICATION FOR AMENDMENT

When the scope of a project for which an excavation permit has been issued is proposed to be altered 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. The amended application shall be subject to approval in the same manner as provided for an excavation permit. No application for amendment to increase the size of a permitted excavation will be allowed unless at least one-half of the area covered by the prior permit is reclaimed in accordance with the approved site Reclamation Plan.

12.0 HEARING

Prior to approving an application for an excavation permit or an application for an annual excavation inspection, the Planning Board shall hold a public hearing within 30 days of receipt of a completed application. A notice of said hearing in compliance of the provisions of RSA Chapter 155-E, as shall be, from time to time amended, shall be sent to all abutters, shall be published in a paper of general circulation in the Town, and shall be posted in the Town. Within 20 days of said hearing or any continuation thereof, the Planning Board shall render a decision approving or disapproving the application, giving reasons for disapproval.

WILTON LAND USE LAWS AND REGULATIONS
SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

13.0 ISSUANCE OF PERMIT

If the Planning Board, after public hearing, approves the application for a permit and determines it is not prohibited by Section 9.0, it shall grant the excavation permit upon receipt of an excavation permit fee of \$50, and the posting of a bond or other surety with the municipal treasurer in the amount determined by the Board to be sufficient to guarantee compliance with the permit. The excavation permit shall be granted for a period of five years from the date the permit was issued, unless specified otherwise by the Planning Board. The performance bond or other surety shall be for a period of the permit plus 18 months after the reclamation of the site has been completed and approved by the Planning Board's designee; the expected duration of the excavation shall not be greater than five years unless an application for amendment is filed and is granted.

A copy of the permit shall be prominently posted at the excavation site and the principal access thereto. A permit shall not be assigned or transferred without the prior written consent of the Planning Board. The Planning Board may include in a permit such reasonable conditions as are consistent with the purpose of this regulation including requirements which are more stringent than RSA 155-E and the provision of visual barriers to the excavation.

14.0 ANNUAL INSPECTION

An inspection and certification is required to be conducted annually by the applicant's engineer, who shall be a Licensed Professional Engineer in the State of New Hampshire. The applicant's engineer must prepare an Annual Excavation Inspection Report (Appendix VI of the Wilton Land Use Laws and Regulations) and certify, with his/her professional stamp, that the existing excavation and reclamation site is in compliance with the original plans submitted to the Planning Board and the New Hampshire Department of Environmental Services. Noted deficiencies will require remedial action. If deficiencies are identified, a plan addressing remedial action should be submitted at the next regularly scheduled Planning Board meeting.

It is the responsibility of the owner/operator to submit to the Planning Board its materials for the Inspection and Certification. All materials must be submitted to the Planning Board for their review at a Public Hearing within 1 year from the date of permit approval or previously submitted Certification. Failure to submit materials and certification within the stated time period will result in a Cease and Desist. To ensure that the most current excavation conditions are represented in the report, inspections shall occur no more than 60 days prior to the date upon which the annual inspection is submitted to the Planning Board for their review. The Planning Board reserves the right to do its own inspection.

If in the event the applicant does not elect to utilize an engineer of his/her choosing, the annual inspection and certification process will be conducted by an agent of the Planning Board. An hourly inspection rate, determined annually by the Planning Board and Planning Board Agent must be placed in an escrow account thirty days prior to the date of annual inspection. After the annual inspection, if a deficit of escrow funds exists, the applicant must pay the difference; and if a surplus of funds exists, the town will return the unused portion to the applicant. If payment has not been received, the Planning Board may suspend or revoke the permit, according to Section 16.0 Enforcement.

WILTON LAND USE LAWS AND REGULATIONS
SECTION F - EXCAVATION SITE PLAN REVIEW REGULATION

15.0 APPEAL

If the Planning Board 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 Board for a rehearing on such decision or any matter determined thereby. 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 10 days of the date of decision appealed from. The Planning Board shall either grant or deny the request for rehearing within 10 days. If the request is granted, a rehearing shall be scheduled within 30 days. Any person affected by the Board's decision on a motion for rehearing may appeal in accordance with the procedures specified in RSA 677:4-15.

16.0 ENFORCEMENT

- a) The Planning Board or its duly authorized agent may suspend or revoke the permit of any person who has violated any provision of his/her permit or this regulation 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 Section 15.0. Failure to file for a permit as required by this regulation shall be considered a violation subject to the enforcement provisions of this regulation.
- b) Fines, penalties and remedies for violations of this regulation shall be the same as for violations as stated in RSA 676:15, RSA 676:17, RSA 676:17-a, and 676:17-b.
- c) To ascertain if there is compliance with this regulation, a permit issued hereunder or an order issued hereunder, the Planning Board or its duly authorized agent(s) may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since the effective date of this regulation.
- d) In accordance with RSA 155-E:10 II, the regulator or a person directly affected by such violation may seek an order from the superior court requiring the violator to cease and desist from violating any provision of a permit or this chapter and to take such action as may be necessary to comply with the permit and this chapter. If the superior court issues such an order, the superior court in its discretion may award all costs and attorney's fees incurred in seeking such an order to the regulator or person directly affected by such violation.

17.0 SEPARABILITY

The invalidity of any provisions of this regulation shall not affect the validity of any other provision.