



# **EARTH EXCAVATION AND RECLAMATION REGULATIONS**

**Ossipee Planning Board**  
**Ossipee, New Hampshire**

*Adopted August 19, 2008*

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## **SECTION I - AUTHORITY AND PURPOSE**

### **A. AUTHORITY**

In accordance with the provisions of New Hampshire Revised Statutes Annotated, Chapter 155-E, the Ossipee Planning Board adopts the following regulations governing the excavation of earth and the reclamation of excavation sites in the Town of Ossipee, New Hampshire.

### **B. PURPOSE**

The goals of the Earth Excavation Regulations are: to provide for reasonable opportunities for excavation; to minimize safety hazards which can be created by open excavation; to ensure that the public health and welfare will be safeguarded; to protect natural resources and environment; and to 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 II – DEFINITIONS**

- 2.1 **Abutter:** Any property owner whose property is located in New Hampshire and adjoins or is within 200 feet of the boundaries or is directly across a 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 able to demonstrate that his or her land will be directly affected by the proposal under consideration.
- 2.2 **Applicant:** The owner of record of the excavation site at the time of application, or said owner’s agent so designated in writing.
- 2.3 **Application:** A complete submission of information and plans as required by Section IV, Application Procedure of these Regulations.
- 2.4 **Aquifer:** A water-bearing stratum of permeable rock, sand or gravel **as** indicated on statewide mapping prepared by the United States Geological Survey.

- 2.5 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.
- 2.6 Excavation: A land area which is used or has been used for the commercial taking of earth material, including all slopes. Earth leaving the property for sale, barter or exchange is considered to be a commercial operation. "Excavation" shall also mean, when the context so requires, the act of extracting such materials.
- 2.7 Stationary Manufacturing and Processing Plants: Plants which are placed on the excavation site for an extended period and which grade, crush and/or stockpile excavated earth.
- 2.8: Reclamation: The restoring of an excavation site to a standard at least equal to that outlined in Section V of these regulations.
- 2.9 Regulator: For the purposes of regulating excavation pursuant to RS155-E, the Ossipee Planning Board.
- 2.10 Excavation Pit Agreement: An agreement between the excavation site owner and the operating contractor describing the terms and procedures for material excavation.

Terms not defined in these Regulations shall have the meaning as provided in RSA 155-E or in Webster's Third New International Dictionary (unabridged 2002 or subsequent version at the Regulator's discretion).

## **SECTION III - EXCEPTIONS TO PERMIT REQUIREMENT**

No excavation of earth shall take place without the owner of the premises or designated agent first obtaining a permit from the Town of Ossipee, except:

- 3.1 Excavation that is 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 when the total earth removal quantity is not more than 1000 cubic yards. This excavation cannot be started, however, until all required state and local permits have been issued.
- 3.2 Excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment when the total earth removal quantity is not more than 1000 cubic yards. In the event a possibility exists the proposed excavation may exceed the definition of "incidental," the Applicant shall meet with the Regulator on a preliminary consultation basis for a determination of whether the proposed excavation falls within the definition of "incidental." In the event the Regulator determines the proposed excavation exceeds the "incidental" threshold, the Applicant shall obtain a permit hereunder prior to performing and excavation.
- 3.3 Excavation from an area contiguous to or from contiguous land in common ownership with a stationary manufacturing and processing plant in operation as of August 24, 1979, which uses earth obtained from such areas. For the purpose of this exception, an area or other public right-of-way shall not constitute a contiguous area or land.
- 3.4 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 having 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 copy of the pit agreement shall be filed with and accepted by the Regulator prior to the start of excavation but such excavation shall not be exempt from the provisions of RSA 155-E:4 and 155-E:10.

## **SECTION IV - APPLICATION PROCEDURE**

### **4.1 General Procedure**

Whenever any excavation for commercial purposes is proposed, before any land clearing is begun or before the removal of any earth and before any permit for excavation is granted, the Applicant shall submit an application for a permit to the Regulator. The Applicant shall use an application form supplied by the Regulator. A copy of the completed application must also be sent to the Ossipee Conservation Commission by the Applicant at the time of its submission to the Regulator.

### **4.2 The Completed Application**

The completed application shall consist of:

- A. The Application form containing name and addresses of Owner, Owner's agent or assignee if any, pit contractor, Abutters, location of proposed project, tax map and lot number(s), zoning district, access routes and related information as the Application may require.
- B. An excavation plan showing the excavation site and the proposal for removal of excavated material.
- C. A reclamation plan describing the process of site grading and revegetation following completion of the excavation project, and;
- D. Copies of related permit approvals or any other documents deemed by the Regulator as necessary for the excavation proposal. Such required documents and approvals may include the following:
  1. Alteration of Terrain permit from the New Hampshire Department of Environmental Services in conformance with RSA Chapter 485-A.
  2. Dredge and fill permit as required by RSA Chapter 483-A.
  3. Army Corps of Engineers Form 4345 pertaining to flow rates.
  4. Any applicable air quality permits or requirements.
  5. Timber cutting permit.

6. Any other permit or approval required for such excavation by any Federal, State or local body including but not necessarily limited to the New Hampshire State Department of Revenue Administration Intent to Excavate form as submitted to the Town of Ossipee.
7. Such other information as the Regulator may require, including, if specifically requested, but not limited to, an environmental impact study and wildlife impact mitigation plan; survey of archeological sites or sites of local historic interest including but not limited to foundations, cellar holes, stone culverts, mileage markers and burial grounds.

#### **4.3 Fee Schedule**

- A. Excavation Fee - \$50.00
- B. Abutter Notice Fee – As specified in the Application form.
- C. Public Notice Fee – \$50.00
- D. All additional expenses actually incurred by the Regulator including, but not limited to, expert fees, legal fees and investigatory expenses shall be the responsibility of the Applicant and/or the property owner. No permit shall be issued until payment of such expenses has been received by the Town.

#### **4.4 Bond**

A cash bond reasonably sufficient to guarantee compliance with the permit shall be posted with the Town Treasurer prior to the issuance of an excavation permit. The bond must be sufficient to guarantee:

- A. Compliance with the terms and conditions of the permit.
- B. Reclamation of the area to be excavated on a yearly basis in accordance with Section 5.2 of these Regulations.
- C. Maintenance of the area to be excavated on a yearly basis in accordance with Section 5.2 of these Regulations.

- D. Maintenance and/or reclamation of access roads in accordance with Section 6.2 of these Regulations. The amount of bond or shall be set by the Regulator at the time of permit issuance and will be based on current per acre costs of reclamation plus the cost of road maintenance, as determined by the Regulator, for a period to extend one year beyond the duration of the permit.

All bonds acceptable to the Regulator shall be in an amount equal to 100 percent of the estimated costs of reclamation and access road maintenance. The Applicant shall reimburse the Town for all legal costs associated with the review of any bond submitted to Regulator. The bond shall not be released until after the Regulator has made a site inspection and certifies the completion of the required reclamation in accordance with the reclamation plan. The site inspection shall occur within 12 months after the initial seeding has been completed.

#### **4.5 Action on Application**

The completed application shall be formally accepted at a regularly scheduled meeting of the Planning Board. Prior to the Regulator approving an application for an excavation permit, a public hearing shall be held and all Abutters notified in accordance with RSA 155-E:7.

Within 20 days of the hearing or any continuation thereof, the Regulator shall make a decision to grant or deny the requested permit. Excavation permit approval by the Regulator shall be in the form of a memorandum citing all permit issuance conditions, accompanied by a weatherable permit sign depicting the location of the excavation site, the signature(s) of the Regulator and the permit expiration date.

The permit sign shall be posted in a secured manner at a prominent location near the entrance to the excavation site. If the application is denied, the owner shall be notified, in writing, by the Regulator, stating the reasons for the denial.

## SECTION V - SUBMISSION OF DOCUMENTS

### 5.1 Excavation Plan

The Applicant shall submit a plan describing the specific location and extent of the proposed excavation project. The excavation plan shall include existing topographic and site boundary information compiled and prepared by a Licensed Land Surveyor. Other information which must be contained in the plan is:

- A. Proposed topography at the completion of excavation (prior to reclamation);
- B. Distances between proposed disturbed areas and closest property lines;
- C. Zoning district(s);
- D. Existing visual barriers to be retained or new barriers to be constructed;
- E. Aquifer limits/location as identified by the U.S. Geological Survey and Water Resource Districts;
- F. Lakes, streams, wetlands and other natural habitat such as pitchpine or forest floodplain areas as designated by the New Hampshire Fish and Game Department's Wildlife Action Plan of 2006 and subsequent updates, and any other significant natural or manmade features;
- G. A description of project duration and phasing;
- H. The names of all Abutters;
- I. Notations for each type of material as to excavation site acreage and volumes of material to be removed;
- J. The location and design of site access roads leading to and from public highways;
- K. The elevation of the seasonal high groundwater table within or next to the proposed excavation;
- L. Topsoil storage sites during the excavation phase;
- M. Any easements encumbering the excavation site.

- N. Specific actions to be taken by the Applicant on the excavation site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons pursuant to RSA 155-E:3, VI-a.
- O. The plan shall be drawn at a scale of 1" = 50' and a contour interval of such scale as shall be specified by the Regulator so as to provide it with a thorough understanding of project scope. Cross-section drawings shall be required by the Regulator. (See sample of site excavation plan shown in Appendix A.)

## 5.2 Reclamation Plan

Excavation site reclamation plans shall be prepared and submitted by all new and existing site owners who are subject to RSA 155-E and these Regulations. The reclamation plan shall meet, at a minimum, the requirements set forth in RSA 155-E:5.

The character of the reclaimed landscape shall blend with the surrounding natural features. The reclaimed site shall be rendered in a condition that will not preclude its future use in a manner consistent with the zoning ordinance and map, if applicable.

The reclamation plan shall be prepared by a Licensed Land Surveyor and drawn at the same scale and shall use the same base survey information as that utilized in the preparation of the excavation plan. The reclamation plan shall contain the following information:

- A. Restored topography and sub-surface and surface drainage at completion of the reclamation phase;
- B. The phasing of the site reclamation showing designated area and completion dates;
- C. Soil specifications as required by RSA 155-E:5.
- D. Seeding and Mulching Specifications: All seeding shall be done between loss of snow cover and June 13<sup>th</sup> or between August 30<sup>th</sup> and September 30<sup>th</sup>;
- E. The plant materials to be used in the reclamation, their quantities and sizes; and,

- F. Cross-sections showing existing, excavated and restored topography configurations.

### **5.3 Incremental Reclamation:**

Incremental Reclamation shall be carried out in compliance with RSA 155-E:5-a. Unreclaimed areas of a site may not exceed five (5) acres unless allowed by the Regulator as a condition of the permit. Additional areas of land may be disturbed only after an equal area of the excavation site is reclaimed.

## **SECTION VI - SITE REQUIREMENTS**

The following site performance standards must be complied with in performing any excavation subject to RSA 155-E or these Regulations:

### **6.1 Depth of Excavation**

The excavation shall not go deeper than five feet above the seasonal high groundwater table.

### **6.2 Excavation Site Access Roads**

Access roads leading to and from the excavation site shall be paved a minimum of fifty (50) feet from the intersection of existing paved streets and roads at locations that have been duly approved by state and local officials and in a manner duly approved by state and local officials and in a manner that will not endanger the safety of highway users and local residents.

The provisions for access under the Subdivision Regulations for the Town of Ossipee shall be adhered to by the Applicant and shall be shown on the excavation/reclamation plan. Access over Class VI roads, bridges or other public ways to be utilized in the proposed excavation shall be clearly shown on the excavation/ reclamation plan. The maintenance and final condition of said roads, bridges and ways shall be defined in writing and made a part of said plan.

### **6.3 Topsoil**

Prior to the excavation of earth at a new excavation site, all topsoil material shall be stripped and stored for use in restoring the site upon the completion of excavation of that site. The removal of topsoil should be undertaken in a phased manner to minimize erosion potential. No topsoil shall be removed from the site unless agreed-to by the Regulator.

### **6.4 Timber Removal**

The applicable New Hampshire statutes and regulations pertaining to forest practice and timber harvesting shall apply to the removal of vegetative cover at excavation sites. Burial of stumps is permitted only insofar as such stumps result from timber removal on the permitted site.

### **6.5 Visual Barriers**

A vegetative or topographical buffer of a minimum of 50' shall be maintained between surrounding streets, highways, commercial and residential land uses and the excavation site. The Regulator shall direct the Applicant as to specific requirements for the proposed excavation site.

### **6.6 Slopes**

The Regulator may, at its discretion, specify excavation slopes that will minimize erosion from reclamation work or heavy rain or snow load. A slope of 3:1 will generally be considered acceptable, except for a long slope where a terrace or other formation to slow or impede water runoff may be required. For shorter slopes, when the soil is suitable, a 2:1 slope may be deemed acceptable.

### **6.7 Standing Water**

No excavation may cause or create, directly or indirectly, any standing body of water. The Regulator may grant, in writing, a special exception to allow standing water provided that the public health, safety and welfare will not be adversely affected. Such body of water shall be indicated on the plan and the exception noted.

### **6.8 Equipment**

A list of proposed equipment, including but not limited to trucks (loaded weight), crusher, water supply and disposal systems, machine shop and any other equipment must be provided to the Regulator with the excavation plan.

## **6.9 Storage**

If any material is planned to be stockpiled, the location shall be indicated on the excavation plan. The storage of material excavated from other, noncontiguous sites, may be permitted only by specific approval of the Regulator.

## **6.10 Rate of Reclamation**

All excavation must be reclaimed so as to comply with RSA 155-E:5 and these Regulations by the end of the calendar year following the year in which the excavation operation was halted. The Regulator may waive this requirement in cases of unusual hardship.

## **6.11 Debris**

Debris resulting from the excavation shall be buried or removed. All rocks are to be removed, buried, or used for landscaping in accordance with the reclamation plans.

## **6.12 Waste material**

The excavation site shall be kept free of all discarded waste material, including but not limited to machine parts, cables and cans.

## **6.13 Setback**

If the proposed site is close to surface water such as a stream, river or pond, or wetland, particular attention shall be paid to the setback of the excavation from the water or wetland. Setbacks shall comply with RSA 155-E:4(a) and any pertinent local, state or federal regulations.

## **SECTION VII - PROHIBITED PROJECTS**

The Regulator shall not grant a permit:

- 7.1** Where an excavation is proposed below road level within 50 feet of any highway right-of-way unless such excavation is for the purpose of said highway;
- 7.2** For excavation within 50 feet of the boundary of a disapproving Abutter or within 10 feet of the boundary of an approving Abutter unless approval is requested by said Abutter;
- 7.3** When the excavation is not permitted by zoning or other applicable ordinance;
- 7.4** When the issuance of the permit would be unduly hazardous or injurious to the public health or welfare;
- 7.5** Where existing visual barriers in the area specified in RSA 155-E:3,III would be removed, except to provide access to the excavation;
- 7.6** Where the excavation would substantially damage quality of the groundwater and/or result in reduction in the long-term volume of water of a known aquifer as designated by the United States Geological Survey or a Water Resource District;
- 7.7** When excavation is situated with respect to inland surface waters in such manner that a permit is required from the Water Supply and Pollution Commission, the Water Resources Board, the special board on Dredge and Fill, or other state or federal agencies with jurisdiction over the premises. However, the Regulator may approve the application contingent upon the Applicant obtaining all necessary permits.
- 7.8** Where the project cannot comply with the reclamation provisions of RSA 155-E:5.

## **SECTION VIII – PERMITS**

### **8.1 Granting of Permit**

- A. Permits shall be issued only in the name of the owner and shall not be transferable without the prior written consent of the Regulator. A copy of the permit shall be prominently displayed at the site or the principal access to the site.
- B. A permit shall be valid for a maximum of six (6) years and the expiration date shall be specified. A plan update showing current reclamation status and further planned reclamation shall be required every two (2) years, to be verified by an independent professional engineer at the Applicant's expense, to be filed within 30 days of the permit's anniversary date. A permit is automatically withdrawn if no work is done on the site for a period of two (2) years.
- C. Failure to apply for a permit shall be considered a violation, and operators who fail to apply or operate in the absence of a valid permit will be subject to appropriate legal action pursuant to Section X of these Regulations.
- D. The Regulator may include in the permit any such reasonable conditions as are consistent with the purpose of these Regulations.

### **8.2 Inspections**

- A. The Regulator shall establish a schedule by which all permitted sites are inspected on a regular basis.
- B. The Regulator or its duly authorized agent shall make, at a minimum, a scheduled annual inspection of all excavation sites to determine whether the operations are in conformance with these Regulations and approved plans.
- C. An unscheduled inspection may be made if the Regulator, or its duly authorized agent, has a reasonable belief that a violation of law or these Regulations has occurred or is occurring.
- D. The Regulator may contract with a qualified professional consultant as determined to be appropriate, at the expense of the Applicant, to provide legal services, inspection services, testing services, and any other such services as the Regulator may require to ensure compliance with any permit to operate a gravel pit in the Town of Ossipee.

### **8.3 Permit Amendment**

If adherence to the permit conditions (including the excavation/reclamation plans) cannot be maintained, the Applicant shall apply to the Regulator for a permit amendment. An application shall be completed and submitted to the Regulator in the manner provided in Section IV of these regulations.

An excavation permit may be modified at any time when, in the opinion of the Regulator, the operation is causing documented wear and tear or littering of streets or roads in the Town or is causing documented annoyance to its inhabitants or is being conducted in violation of any of the terms and conditions of the permit. The modification of a permit shall not relieve the Applicant from any obligations under this permit.

### **SECTION IX - ABANDONED EXCAVATIONS**

An abandoned excavation, as defined in RSA 155-E:2(II), shall be subject to the reclamation standards of these Regulations and as provided for in RSA 15-E:2(II).

## **SECTION X – ADMINISTRATION**

### **10.1 Enforcement**

- A. The Regulator or its duly authorized agent is responsible for the enforcement of these regulations as provided in RSA 155-E:10. The excavation permit may be suspended or revoked if any person violates any provision of a permit or these regulations; or of Chapter 155-E; or fails to provide a required update report; or fails to pay a duly assigned fee or inspection expense; or has made a material misstatement in the permit application upon which a permit was granted.

Such suspension or revocation shall be subject to a motion for a rehearing thereon and appeal in accordance with RSA 155-E:9. In the case of an existing excavation for which no permit has been granted, the Regulator or any person affected by such excavation may seek an order in Superior Court as provided in RSA 155-E:10, II.

- B. To ascertain if there is compliance with these Regulations or RSA Chapter 155:E, the Regulator or its duly authorized agent may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since the effective date of these regulations.
- C. Violations of any regulation herein may be punishable by civil penalties pursuant to RSA Chapter 676. The Town may, in addition to other remedies, institute injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin or abate any violation. If the Town prevails in any legal actions brought hereunder, it shall recover reasonable attorney's fees and its costs, including, but not limited to, inspection fees, expert fees and investigatory expenses.

Additionally, the Court may order, as an additional civil penalty, restitution for any public funds expended which are not otherwise reimbursed hereunder. Further, an alleged violator may be required to post bond, pursuant to RSA 676:17, IV.

### **10.2 Appeals**

A person, aggrieved by the official decision of the Regulators, may appeal for a rehearing on such decision as provided by RSA 155-E:9.

**10.3 Other Regulations**

Where these Regulations are in conflict with RSA Chapter 155-E or other local ordinances and/or regulations, the more stringent shall apply.

**10.4 Adoption**

These Regulations shall be effective upon the filing of same with the Board of Selectmen and the Town Clerk following a public hearing on same and their adoption and certification by the Regulator.

**10.5 Validity**

The invalidity or unenforceability of any provision of these regulations shall not render invalid or unenforceable any other portion of these regulations.

***Adoption Verification:***

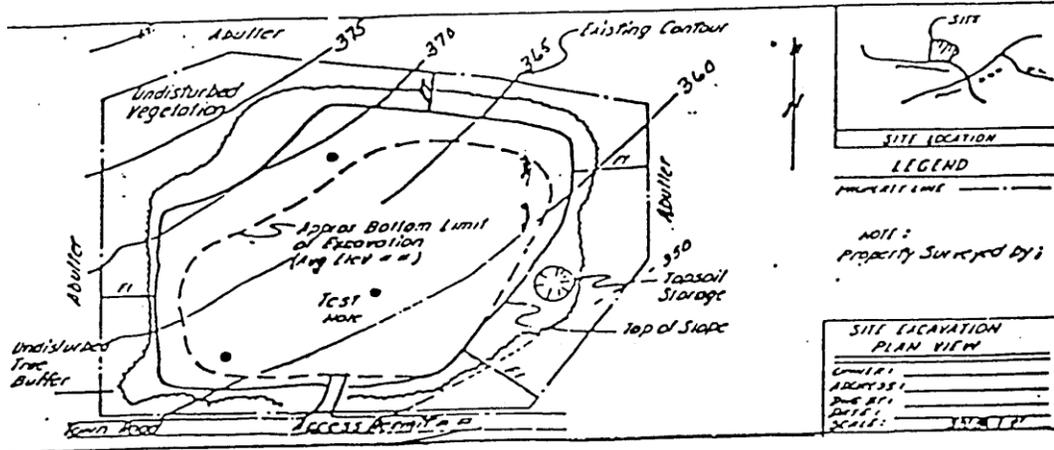
These regulations have been adopted by the Ossipee Planning Board on August 19, 2008, after a duly notified public hearing held on August 19, 2008.

Planning Board Certification (majority of signatures required)

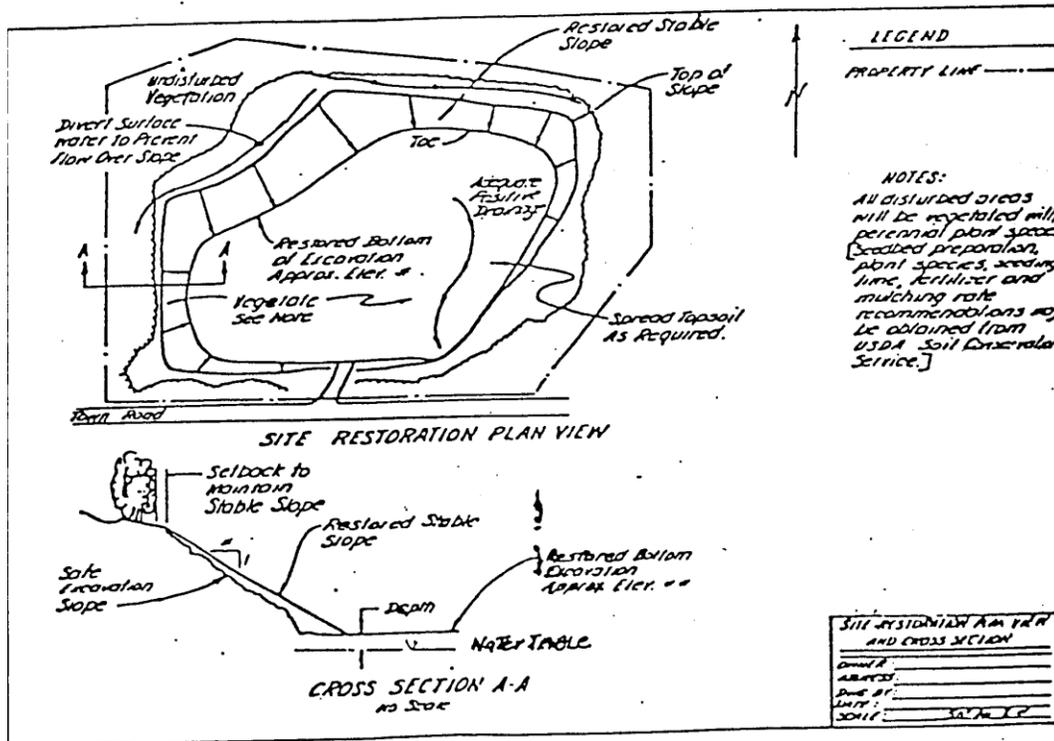
_____	Bruce Parsons, Chairman
_____	Bill Grover, Vice Chairman
_____	Ralph Buchanan, Member
_____	Karen Foster, Member
_____	Carol Gartland, Member
_____	Robert Gillette, Member
_____	Donna E. Sargent, Member

# APPENDIX A – Sample Site Excavation Plan Drawing

## APPENDIX A



EXAMPLE OF SITE EXCAVATION PLAN VIEW



EXAMPLE OF SITE RESTORATION PLAN VIEW AND CROSS SECTION VIEW