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March 1, 2013

VIA ELECTRONIC MAIL
c/o Marcia Gases barrplan@metrocast.net

John Huckins, Chairman
Barrington Planning Board
333 Calef Highway
Barrington, NH 03825

RE: Excavation Permit

Dear Chairman Huckins and Members of the Barrington Planning Board:

As you are aware, this firm represents Trinity Conservation, LLC (hereinafter "Trinity"), the applicant for an excavation permit for property identified on the Barrington Tax Maps as Map 210, Lot 57. During the course of your review of this application, Trinity has met with the Planning Board on a preliminary basis, and on a more formal basis after its application was accepted on December 4, 2012.

The project itself is fairly straightforward, and is based upon a plan of excavation in three phases. As we have discussed, the excavation use is deemed a permitted use on the property. As part of its presentation, Trinity has provided extensive engineering documentation, data and analysis to indicate that the project meets the requirements of the Barrington Zoning Ordinance and Site Plan Regulations, as well as the requirements of RSA 155-E, *et seq*. Specifically, Trinity has provided engineering and survey documentation and analysis from TF Moran, its consulting engineering firm, as well as geotechnical and pavement section analysis from HTE Northeast, Inc., regarding the condition of Green Hill Road. During a recent public hearing, Trinity also offered the testimony of Joe Tabor of Maine Drilling and Blasting, to answer questions as to potential blasting associated with the excavation activities. As described, the blasting activities are quite ancillary to the excavation activities, and would occur only once every two months on such a scale that the blasting would not be discernible at the property line of the project.

The project has been declared one of regional impact. Thus, the project has been reviewed by the Strafford County Regional Planning Commission. In addition, the cities of Dover and Rochester have been provided an opportunity to comment on the project, with the Planning Director, and other officials, of Rochester attending a public hearing and/or the recent site walk.

In addition to the above referenced review, the project has been thoroughly reviewed by the Town's own consulting engineer, Mr. Jeff Adler of Dubois & King. As a result of Mr. Adler's review, questions were presented to Trinity, and responses were provided by TF Moran,

Trinity's consulting engineers. To our knowledge, all of the comments and/or suggestions made either by the Strafford County Regional Planning Commission and/or Mr. Adler have either been incorporated within the project, or satisfactorily addressed by TF Moran. If an issue remains unaddressed, we respectfully request that such issue be identified in order that Trinity may resolve it with either the reviewer or the Planning Board.

Although not required to do so, in addition to the above, Trinity has met with the Strafford County Regional Planning Commission, the abutters during a neighborhood meeting, and with members of the Barrington Conservation Committee. As a result of its meeting with the abutters, Trinity has agreed to reduce the proposed hours of operation from 7 a.m. to 6 p.m. to 8 a.m. to 5 p.m., and has agreed to limited operations on Saturday for maintenance activities.

During the public hearing, the Planning Board has permitted broad latitude to the abutters, and the public, in order that they may adequately voice their comments or concerns with the project. Trinity has not objected to the repetitive nature of most of the comments, and understands the Board's desire to have a thorough opportunity for the community to be heard.

Finally, on February 23, 2013, an extensive site walk was performed by the Planning Board, with abutters and municipal officials in attendance as well. Trinity understands that the site walk was useful to members of the Planning Board, officials, and the public, as they were able to see first-hand the significant distances involved with the proposed project and abutting properties.

As to the project, Trinity understands it has met all requirements of RSA 155-E, including, but not limited to, all set back restrictions set forth therein. Through reports and/or studies conducted by TF Moran, Trinity has met, or exceeded the Performance Standards set forth within Article 7 of the Barrington Zoning Ordinance.

Regarding the Performance Standards, of particular concern to the Planning Board, were concerns as to noise and vibration from the project. Trinity has provided materials and studies that confirm that, with the assistance of a 20' moveable noise curtain, the noise associated with all of the equipment, derived at the source of the activity, will be reduced well below the requirement that the sound level at the property line not exceed 75 dba. In addition, TF Moran has provided a blasting protocol that is to be incorporated into the project that provides that the vibration levels associated with blasting at the property line will not exceed a peak velocity level of 0.15 inches per second, which is the level discernible to humans. Please keep in mind that the State of New Hampshire regulations actually permit peak velocity levels of up to 2.0 inches per second. Trinity has developed this protocol, despite understanding that Barrington, according to its Fire Chief, does not regulate blasting, but defers to State regulations. Further, Trinity understands that such regulation of blasting is prohibited and is preempted by the comprehensive regulatory scheme developed by the State of New Hampshire pursuant to RSA 158 and administrative rules found at Saf-C 1600, *et seq*. Again, despite the State regulations, and given the fact that the blasting component of this project is quite small, Trinity has developed such a restrictive protocol in order to voluntarily provide that blasting not be discernible at the property line of the project.

During the course of the public hearings, the Planning Board has received testimony from abutters that they believe their property values will be affected by the project. As demonstrated

above, Trinity has gone to great lengths to exceed the minimum requirements applicable to this permitted use. Early on in the process, Trinity clarified that the issue of property values is not relevant to the project, as the use is permitted. During a public hearing, counsel for the Town confirmed this fact. Despite this determination by Town Counsel, testimony continued. Some abutter even argued, that despite the advice from counsel that the matter was not an issue, the project, by its very nature, is "injurious" to the public. This logic is flawed, as the use is permitted, and would require any excavation project to be deemed injurious, but permitted at the same time. Rather, the project is required to meet the specific requirements of RSA 155-E and the Town Performance Specifications found in Article 7. The project meets or exceeds the requirements of all of these regulations.

Although the topic of "scattered and premature" has not been discussed by the Planning Board, comments beyond the public hearing have made reference to the phrase. The concept of "scattered and premature" relates only to subdivision approvals, not site plan approvals. Nothing within the enabling legislation associated with site plan regulations, which are distinct from subdivision regulations, contemplates that a site plan can be considered "scattered and premature."

Although the concept of "scattered and premature" cannot be applied to site plan review, Trinity accepts the fact that the Planning Board can require certain off site improvements for conditions caused by a proposed project. These off-site improvements are either imposed by impact fees or, where a community has not yet adopted impact fees, through the common law practice of imposing "exactions." As you may be aware, Barrington has adopted an Impact Fee Ordinance. Barrington, however, has not updated its Capital Improvement Plan, which is required in order to impose impact fees, nor has it adopted a required methodology and/or fee schedule in order to impose such fees. Nonetheless, despite the difficulties that the Town may have in imposing an impact fee, Trinity is willing to make off-site improvements, specifically to the entrance to its site and to Green Hill Road.

In addition to the improvements to the entrance of the project site, already discussed by TF Moran, Trinity has reviewed the condition of Green Hill Road. The HTE report indicates that the road can be considered in two sections. The first section is the "Westerly" side, which extends from the project access towards NH Route 202. The "Easterly" side extends from the project access towards NH Route 125.

The HTE report specifies that the Westerly side of Green Hill Road can accommodate the use by Trinity to the extent a 1.5 inch top coat of pavement was applied. HTE further considered the existing condition of the road, the maintenance history by the Town, and all other uses of this portion of the road. The HTE report indicates that the Town paved the Easterly side of the road in 2009 and the Westerly side in 2010. The report, however, indicates that the work on the Easterly side was constructed over unsuitable and/or silty materials, with groundwater appearing shallow in the area. When considering the Town's maintenance of the road, and the paving the occurred in 2009 and 2010, the report finds that, at existing condition, without the project, an additional 1" thickness wearing course would support the current traffic. When considering the existing conditions and the project, the report finds that the addition of a 1.5" wearing course would be suitable to support the project. Thus, the findings of the HTE report indicate that the proportionate share of the improvements caused by the project itself relate to 1/3 [0.5" as a fraction of 1.5"] of the cost to improve the road for existing traffic and the project traffic.

The HTE report specifies that 1,250' of the Easterly side of Green Hill Road should have a full-box reconstruction.

When considering exactions, the Planning Board must be cognizant that the power to impose such exactions must conform to the "rational nexus" test. The rational nexus test is also referred to as the "proportionality test." Simply stated, the test requires that, as to off-site improvements, any applicant must only bear that portion of the cost which bears a rational nexus to the needs created by, and special benefits conferred upon the project. New Hampshire law prohibits a town from imposing the burden of repair on an applicant simply because "but for" the project a road would not need to be repaired. This "but for" approach has been specifically held unlawful. Further, where a municipality requires an applicant to solely bear the costs of repairs, where other uses are made of the road, as is the case with Green Hill Road, such an approach is deemed to violate the NH Constitution as an impermissible taking.

New Hampshire law provides guidance to planning boards when considering the proportionality test. Specifically, factors relevant to determining a developer's proportional share of the cost for road improvements, as it relates to a project, may include, but are not limited to:

(1) the standard to which the town currently maintains the road;
(2) the frontage of the proposed subdivision;
(3) the potential traffic increase necessitated by the proposed subdivision;
(4) the character and potential for development of the neighborhood served by the road;
(5) the number of residences presently fronting on or normally trafficking these roads.

The proportionality test was originally for subdivision projects, however, New Hampshire has also applied the above test to the consideration of site plans.

As to the Town's own standard of maintaining roads, we understand in general, from the Town's 2011 Annual Report, that the Board of Selectmen hired the engineering firm of Dubois & King to complete a thorough review of the road network, and make suggestions on annual maintenance to prevent the overall road network from deteriorating. The study indicates, "... an additional $500,000 should be spent annually to maintain the current quality of the road network." See attached excerpts from the 2011 Annual Report, as Exhibit A. Further, we understand from the 2012 annual report of the Selectmen that the Town increased its fund balance to $502,439, and decided to use $449,910 on capital improvements (exclusive of the new Town Hall). See attached excerpts from the 2012 Annual Report, as Exhibit B.

As stated previously, due to the lack of maintenance by the Town and use by others, the Westerly side of the road requires 1.5" of pavement in order to accommodate the existing uses and the project. That same logic is applicable to the Easterly portion of Green Hill Road. The Town's pavement of the Easterly side of the road in 2009 was upon unsuitable material, causing the need for the full-box reconstruction of the Easterly side. Had this portion of the road been properly maintained, at best, the project's share of the costs to improve this portion would be for a 0.5" wearing course, as is the case on the Westerly side.

With all of the above in mind, and as to improvements to Green Hill Road, Trinity, again, is willing to exceed the requirements that it must meet for approval. Specifically, although

Trinity should only be held responsible for 0.5" wearing course on the Westerly side, it will agree to pay for a full 1.5" wearing course. The cost for such work has been estimated by TF Moran to be $110,687. In addition, Trinity will agree to be responsible for 1/3 of the cost for a full box reconstruction of the 1,250 foot area, plus 1/3 the cost of the 1.5" wearing course overlay identified on the Easterly side, with such funds either escrowed or satisfied by a bond approved by the Planning Director. The cost for the full box reconstruction and 1.5" wearing course overlay in this area has been estimated to be $147,006. Trinity also proposes not utilizing the Easterly side, as the Westerly side will provide full access to the site and connectors to NH Route 202, which is the preferred method to reach NH Route 16 (Spaulding Turnpike) and Interstate 95. Because Trinity would preclude use as to the Easterly side, and contribute all costs associated with the laying of the 1.5" wearing course on the Westerly side, the Planning Board will not, by approval of this approach, be obligating the Town to any expenditure of public funds. As with any impact fee or exaction, the Town, at a later date, is free to address the improvements to the Easterly side, or not, and thus use the funds set aside by Trinity, or return them should such improvements not be made by the Town within the statutory six (6) year time frame.

Trinity will contribute the above referenced amount with the understanding that, pursuant to New Hampshire law, the funds will be used by the Town within six (6) years for the specific improvements. Once the improvements to the Easterly side are complete, Trinity would then utilize that access to the site in addition to the Westerly access. Trinity believes the above approach satisfies the requirements of the site plan review, and represents a lawful approach, offering the Town the opportunity to address its delinquent maintenance of Green Hill Road by having Trinity bear the full cost of the improvements to the Westerly side, and by having Trinity agree to pay more than its share for the improvements to the Easterly side of Green Hill Road.

As a final matter, it is quite clear that it is the role of the Planning Board to determine the extent of the off-site improvements necessary, and to determine, using the proportionality test, what Trinity should contribute to such improvements. Thus, it would be premature for Trinity to meet with the Selectmen as to such improvements.

In light of the above, Trinity has prepared, as Exhibit C, a proposed list of conditions of approval. Trinity has met all of the requirements of RSA 155-E and the Town's site plan review regulations and Performance Standards. Thus, Trinity now requests approval of its application.

Sincerely,

Francis X. Bruton, III
E-mail: fx@brutonlaw.com

FXB/mas
Enclosures

cc: Marcia Gasses, Town Planner
Jae Whitelaw, Town Counsel

Exhibit A

A WORD FROM THE BARRINGTON SELECTMEN

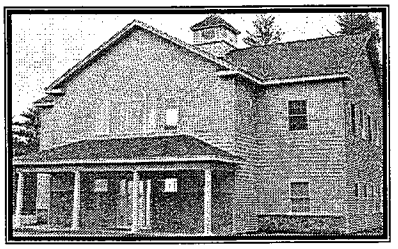
"The legitimate object of government is to do for a community of people whatever they need to have done, but cannot do at all, or cannot so well do, for themselves in their separate and individual capacities." Abraham Lincoln.

The Board of Selectmen has a solid record of achievement for 2011. One of the essential services which the State and Town provides is the road network. A road network is like most things in life that wear out with use. The Board of Selectmen hired Dubois and King engineering firm to do a thorough review of the road network, and make suggestions on annual maintenance. It is clear that the town is not doing enough annual maintenance to prevent the overall road network from deteriorating. The study indicates an additional $500,000 should be spent annually to maintain the current quality of the road network. The highway network is a priority for the Board.

There are many other examples of services which fit Abraham Lincoln's definition of legitimate objects of government. The town can take pride in the public safety services which the police, fire and rescue provide. The cultural services of the Barrington public school system, the recreation department and the library greatly enhance the quality of life now and into the future. The transfer station is important for the public welfare in keeping the community clean. The land use and building inspection departments enable a community to set its course toward quality buildings, preservation of open space and protection of the public from shoddy construction and unsafe practices.

In 2011 the Board of Selectmen invited the public to help develop a vision, mission and values statement. This appears elsewhere in this report. We encourage you to look at this document as a guide for what we wish to accomplish.

There are a variety of other town services that are essential to the Board's vision, mission and values. Many of these like tax, assessing, finance, office support, etc. were located at the old building used for town offices. Unfortunately that building has serious moisture and mold issues, is not compliant with Americans with Disabilities standards and is very inefficient with use of ever more expensive energy. After the voters rejected the proposed plan for renovation, the Board decided action was needed to protect the employees who work there and the public which visits the building. The Board entered into



a one year lease with four renewal one-year terms at the same rental rate for 333 Calef Highway. The Town Offices were moved to this relatively new office condominium building that has six units with enough space for the operation of the Town Offices. The new building is more energy efficient, ADA compliant and healthier for the employees who work there and the public which visits the building.

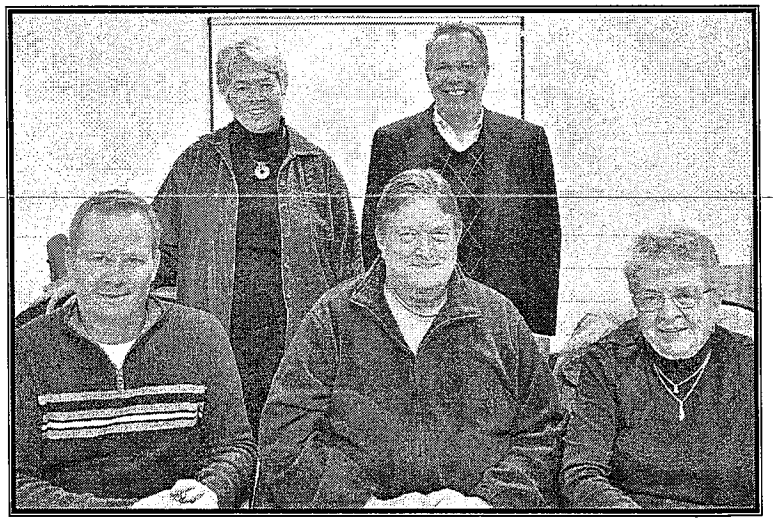
The new building also enabled the Town to make the cost-effective move to upgrade the computer and phone systems rather than costly maintenance of the old systems. This includes replacement of obsolete computers and moving to a digital voice over IP phone system. Another technological change included entering into an agreement to completely revamp the town website. The results of these upgrades should be seen in early 2012 with such potential innovations as electronic registration for recreation program, upgraded availability of assessing cards and GIS maps, a more transparent file system to enable users to find documents more easily, etc.

Residents who use Metrocast Cable services now have a local Town and School Bulletin board on Channel 26. Negotiations continue on the franchise renewal. The conclusion of that should result in the ability to broadcast recordings of the local town boards and committees and of locally produced governmental information shows. This year also marked the first time in three years in which a CPA audit was done on the town financial reports. The Board entered into a three-year agreement with Roberts and Greene the audit. The Board and staff also worked with Municipal Resources to review the town's internal controls and other financial policies and procedures. This report was funded by our risk carrier. The conclusion of the report states, "The town of Barrington seems to be headed in a very positive direction..." The suggestions of both the audit and the financial review are being implemented.

Long-term Town Administrator Carol Reilly retired in 2011. The Board appreciates her many years of dedicated service and wishes her well. After advertising and interviewing candidates for her replacement, the Board selected John Scruton to be the new Town Administrator starting in May. John has over twenty years of experience leading communities as varied as Farmington, Goffstown, Plaistow, Nashua and most recently Rochester.

The Board of Selectmen wishes to thank all the citizens of Barrington who have participated in local government, especially those who have served on the various Boards and Committees. The Board is also grateful for an excellent group of employees who have dedicated themselves to serving the public. The Board knows there will be continuing challenges in 2012 but is eager to continue to help Barrington to be a great place to be.

Respectfully Submitted
Keith Pratt, Chair
Michael Clark
Dawn Hatch
Susan Gaudiello
Dennis Malloy
Barrington Board of Selectmen



BARRINGTON BOARD OF SELECTMEN.
Front: Keith Pratt-Chair, Michael Clark, Dawn Hatch
Back: Susan Gaudiello, Dennis Malloy

Exhibit B

The year 2012 was a good year for Barrington. The following vision statement guided our actions throughout 2012 and the development of our plans for 2013. "We, the elected governing board of Barrington, New Hampshire, seek to shape a future that values our past, preserves our natural and human resources while working together with the public toward a bright economic and community-oriented lifestyle through quality education and the provision of effective governmental services that characterize a healthy, dynamic community."

As we look back upon 2012, we believe we have diligently pursued our mission "to provide proactive leadership engage in effective communication with the public and municipal employees while overseeing a friendly, cost- effective, efficient government that promotes public safety, wise preservation and development of the social and natural environment, maintenance and development of infrastructure, and support for community services that assure quality of life."

The economic development highlight of 2012 was the cooperative effort to bring industrial development to the vacant Clark Goodwill property. An opportunity arose to do a public private partnership with Marian Noronha and Turbocam. After multiple hearings and public input, the property has now been subdivided and development is underway for Turbocam to build a 91,000 square foot complex, with two additional lots designated for future development. The anticipated completion of the first phase of construction is the summer of 2013. Not only do we anticipate 200 additional jobs at this site, but also an increase in the future tax base by millions of dollars. There are also other opportunities at the site. We thank Marian Noronha and Turbocam for their significant financial investments in Barrington.

The town is on a firm financial footing. The Board adopted a Fund Balance Policy to retain adequate reserves to provide reasonable cash flow and have reserves in case of emergencies. Through fiscally conservative spending the Town returned $ 328,469 in unexpended appropriations. The town also took in $173,960 in unanticipated revenue, increasing the fund balance by a combined $502,439. The Board proposes using $449,910 of this fund balance for capital projects that are proposed for 2013. Since this money has already been raised, these expenditures will not increase the tax rate in 2013. The only capital expenditure that is not

included in this group to be funded from the balance is the proposed renovations to the Town Hall.

A major proposal for 2013 is a bond to renovate the old Town Hall. After looking at the cost of building a new building, as well as alternatives to build a municipal complex which would include the library, the Building Committee recommended the renovation. While the town continues to operate midway through the second year of a short-term lease at 333 Calef Highway, the Board of Selectmen agreed with the Building Committee that the least expensive long-term alternative is renovation of the currently unusable old Town Hall. This would also provide for the space needs of the SAU, as well as allowing the recreation department to run programs, such as the Discovery Center, which will be displaced from the ECLC as of September 2013.

The town continued its efforts to improve and protect the town's highway infrastructure in 2012 by implementing the first year of its multiyear road improvement plan with the paving of Tolend Road, Smoke Street, Deer Ridge Road and parts of Young Road, Hall Road and Mallego Road. The budget for 2013 contains the second year of this paving plan. Most of these funds are in the operating budget, but some are in a warrant article using fund balance. The warrant also contains an article to set up a new Capital Reserve for bridge replacement. The state provides an 80% match for bridge replacement to those communities on a waiting list. However, to get on the waiting list, the town must come up with initial engineering designs. The proposed capital reserve will provide funds for that work. For the first time in several years, the town also painted double yellow lines on over 30 miles of roads to enhance public safety. The Town also adopted a road excavation and driveway apron policy to ensure the integrity of the town roads.

The Selectmen have improved communication with the public with a totally renovated website at www.barrington.nh.gov as well as extensive use of information on Channel 26. The Board of Selectmen also adopted a new website policy to reflect the continuing changing landscape of technology. The Board has held many public meetings and numerous public hearings to gather information for decision making and share with the public how the community is being run.

The Board of Selectmen values the hard working employees who provide the public services to the community. The Board implemented changes so that compensation for positions was more internally consistent and externally competitive. Increases were only given to employees with successful evaluations. The Board also implemented a short-term disability plan for employees and froze the sick bank at current levels. In 2012 the Board also addressed the auditor's concerns about the method of accounting for earned time buy-out. The town revised its policy to limit the amount that could be bought out in any given year, placed caps on accumulation, and included buy-out expenditures in the 2013 budget. The Board adopted a hiring procedure to standardize the process and reduce the risk of errors.

The Board of Selectmen is proposing an article in the 2013 warrant amending the ambulance revolving fund to hire staffing for the ambulance during the day on weekends. The Fire Chief made the proposal as part of the continuing effort to provide better public safety and a quicker response. The funds to pay these employees would come from the user fees generated by those who use the ambulance. The vast majority of these fees is paid by insurance companies.

Finally the Board wishes to thank the many citizens who contribute their time and efforts to serve the community in various ways. As written on the San Diego County Administration Center, "Good Government Demands the Intelligent Interest of Every Citizen." Citizen volunteers are at the heart of community and their contribution is part of what makes Barrington a great place to live. There will always be challenges in public service, but with the help of a dedicated group of employees and the support of the public, we anticipate another good year in 2013.

Exhibit C

Proposed Conditions of Approval

The following conditions shall be considered Conditions Subsequent

1) Prior to commencement of excavation activities, upgrade point of access of site with 2" wearing course for a distance of 100' to the west and 100' to the east of said access

2) Prior to commencement of excavation activities, upgrade or contribute to such upgrade for an overlayment of 1.5" wearing course to be applied to the westerly side of Green Hill Road from the point of access to the project to NH Route 202.

3) Prior to commencement of excavation activities, post a bond acceptable to the Planning Director and Town Counsel for the payment of one-third (1/3) of certain improvements to the easterly portion of Green Hill Road. Said improvements are limited to full box reconstruction of 1,250', as identified in the HTE report dated January 3, 2012 (attached hereto) and the overlayment of 1.5" wearing course to extend from the point of access to the project to NH Route 125.

4) All access to the project shall be from the westerly direction to NH Route 202 until the improvements, as set forth herein, to the easterly direction to NH Route 125 have been completed.

5) Subsequent to the commencement of excavation operations, attend a compliance hearing before the Planning Board during April of each even number year.

6) The use of acoustical walls shall be implemented during any crushing, sound levels shall be recorded (at least 3 times per year) at portion of project that is along Rochester city line during crushing. Crushing shall temporarily cease if sound levels exceed 75 decibels at the property line until additional sound mitigation practices are employed.

7) Blasting shall conform to the NH Department of Safety rules established per SAF-C 1600. The Blasting contractor will monitor ground vibrations produced by each blast and will produce printed seismograms of vibrations that are recorded in units of particle velocity in inches/seconds. These printed measurements will be retained by the blasting contractor for a period of at least six months and will be made available to the Town and State officials upon request. Blasting shall temporarily cease if vibration levels exceed a peak velocity level of .015 inches per second at the property line until additional vibration mitigation practices are employed.

8) Prior to commencement of blasting, contractor shall identify drinking water wells located within 2000 feet of the proposed blasting activities, develop a groundwater quality sampling program to monitor for nitrate and nitrite either in the drinking water supply wells or in other wells that are representative of the drinking water supply wells in the area. The plan must include pre and post blast water quality monitoring and be approved by NHDES prior to initiating blasting. The groundwater sampling program must be implemented once approved by NHDES.

9) The Gravel excavation operation will be performed so as to only disturb 10 acres at a time. The area completed will be stabilized with grass prior to clearing, grubbing and excavating the next phase area.

10) Normal business hours are proposed to be Monday through Friday from 8:00 a.m. to 5:00 p.m., where business will be open to the public. Routine maintenance may be performed on the grounds on Saturday from 8:00 a.m. to 5:00 p.m.; however the business will be closed to the public on Saturday. Routine maintenance shall consist of cleaning equipment, reclamation, inspection and maintenance of storm water treatment and conveyance practices, maintenance of the access roadway and related activities.