

Section XII Earth Removal By-law

(Adopted: Article III, October 27, 1997 Special Town Meeting)

1.0 Authority and Purpose

1.1 Title

The by-law shall be known as the “Earth Removal by-law” for the Town of Rochester, Massachusetts.

1.2 Authority

This by-law is authorized by, and may be changed in the manner provided in the “Home Rule Amendment” (Massachusetts Constitutional Amendment, Article 89)

1.3 Purpose

The removal of earth minerals from any parcel of land not in public use in the Town of Rochester, except as hereinafter provided, is prohibited.

2.0 ADMINISTRATIVE

2.1 Definitions

EARTH MINERALS: Earth minerals include soil, loam, topsoil, sand, gravel, clay, rock, stone, peat, boulders, and any other minerals normally found in the earth.

TRANSFER OF OWNERSHIP: The transfer of ownership means the transfer of interest in property of the original applicant. However, pledging of such to secure a mortgage or other loan shall not be considered a transfer but if the lender should acquire title or interest by foreclosure it shall be deemed a transfer.

PHASE AREA: A phase area is a part of the property under consideration and is a division of the operation to be conducted.

PRIOR OPERATIONS: Prior operations mean that the property under consideration has been used for the present application during the past twelve (12) months. Upon adoption of this by-law, prior operations must comply with the provisions of this by-law within (6) months or before renewal of their permit, whichever is later.

PRONOUNS: All pronouns used in these by-laws shall be deemed to refer to the masculine, feminine, or neuter, singular or plural as the identity of the person or persons, entity or entities shall require.

2.2 Soil Board

(Amended: Renamed, Article XXV, Annual Town Meeting June 9, 2003)

2.2.1 Membership: a Soil Board (hereinafter known as the Board) is hereby established in the Town of Rochester for regulating the removal of earth minerals from land within the town and in enforcing the provisions of this by-law. The members of the Board shall consist of one member of the Board of Selectmen, or their designee, to be appointed by such Board; one member of the Planning Board, or their designee, to be appointed by such Board; one member of the Conservation Commission, or their designee, to be appointed by such Board; one member of the Board of Health, or their designee, to be appointed by such Board; and a member at large to be appointed by the Board of Selectmen.

(Amended: Article XXV, Annual Town Meeting June 9, 2003)

2.2.2 Term: Terms of office for members of the Soil Board will be for three years. Names of members so appointed will be submitted to the Board of Selectmen and the Town Clerk no later than April 15th each year.

(Amended: Article XXV, Annual Town Meeting June 9, 2003)

2.2.3 Formation of Board: Initially, the Board of Selectmen's representative shall have a one year term; the Planning Board and the Conservation Commission's representatives shall have a two year term; and the Board of Health representative and the Member at Large shall have three year terms. All terms after the initial formation shall be three year terms.

2.2.4 Alternate Member: Two Alternate Members may be appointed jointly by the Soil Board and the Board of Selectmen. One or both of the Alternate Members shall serve as full voting members on a meeting-by-meeting basis when requested by the Soil Board Chairman under circumstances when a quorum could not be otherwise achieved due to unavailability or conflict of interest by the Members. Alternate Members shall be appointed for a three year term and appointments shall be made no later than April 15th in any year when appointments are appropriate to fill vacancies.

(Amended: Article XXVII, June 9, 2003 Annual Town Meeting)

2.3 Authority of the Soil Board

(Amended: Article XXV, Annual Town Meeting June 9, 2003)

2.3.1 Earth minerals may be removed from any parcel of land within the town only after a permit authorizing such removal has been issued by the Board (unless such an activity is exempt). No permit for removal of earth minerals (including agricultural exemptions) shall be issued if such removal will

endanger the general health or safety, constitute a nuisance or be detrimental to the normal use of adjacent property due to noise, dust or vibration. The Board shall impose appropriate conditions as necessary to ensure that these interests are protected and to ensure compliance with this by-law.

2.4 Agricultural Exemption

2.4.1 It is the intent of these by-laws to exempt the removal of soil in conjunction with bona fide agricultural, aquacultural, horticultural, floracultural or vitacultural activities (herein, “exempt activities”) from the full application process. To secure such exemption, applicants shall submit to the Board a “Letter of Intent,” along with a filing fee of \$200. Such letter must affirmatively demonstrate that the removal is consistent with this by-law, including the criteria of Section 2.3.1. and the provisions of Section 3.0, unless otherwise waived by the Board. The provisions for Enforcement in Section 4.0 and supporting paragraphs, as the same may be amended from time to time, shall apply.

(Amended: Article XXIX, June 7, 2004 Annual Town Meeting)

(Amended: Article XXVIII, June 9, 2003 Annual Town Meeting)

2.4.2 The Applicant shall notify, by certified mail, all abutters within five hundred (500) feet of the property that the Letter of Intent has been filed and that the issue will be discussed at a public meeting. The notice to the abutters shall include specification of the date, time and place for the public meeting.

2.4.3 The Board shall review the Letter of Intent at the meeting and issue a finding relative to the exempt status within twenty eight (28) days of receipt of the Letter of Intent.

2.4.4 The Board shall require an annual report using the Agricultural Soil Permit Renewal Form, and any appropriate ancillary information, to demonstrate compliance with this By-Law, combined with a \$100 renewal fee.

(Amended: Article XXIX, June 9, 2003 Annual Town Meeting)

2.4.5 The findings of the Board shall be valid for a period of five (5) years at which time a review before the Board will be required. The filing fee and the activities required in 2.4.2 may not be required for renewal.

2.5 Application for Permit

2.5.1 Form of Application: An application for a permit under this by-law shall include a completed Application for Earth Removal Permit. The Board has authority to devise and use such a permit application form as is reasonably necessary for the execution of its duties.

2.5.2 Contents of Application: The application for an earth removal permit shall be accompanied by a report presenting the data and plans to support the application and to prove the need to remove the amounts requested. The Board of Selectmen, Board of Health, Planning Board, Conservation Commission, Zoning Enforcement Officer, Police Chief and Highway Surveyor shall review the application and, within twenty-one (21) days after receipt, signify approval or objection in writing to the Board. If a Reviewing Authority fails to respond within twenty-one days, approval is presumed. The application shall include the following:

- (1) The legal name, address and telephone number of the owner of the property involved.
- (2) The legal name, address and telephone number of the applicant.
- (3) Names and addresses of all property owners within 500 feet of the property including those across any street taken from the most recent tax list, as certified by the Board of Assessors.
- (4) A plan showing the precise location of the proposed operation prepared by a Registered Professional Civil Engineer or Land Surveyor. The plan shall contain site topography showing the present contour and proposed final contour. The vertical datum is to be established based on the National Geodetic Vertical Datum (NGVD). Contour lines are to be shown at two (2) foot intervals. All boundary lines for each phase to be clearly shown on the plan plus the locations of permanent boundary markers to be placed on the site. Plan shall show the relationships to existing wetlands (as defined by M.G.L. chapter 131 section 40, 1996) and/or to designated land areas protected by local, state or federal laws.
- (5) The applicant shall show the removal of earth minerals in phases on land areas of generally not more than five (5) acres each, hereinafter called phase areas. No earth removal work of any kind shall be permitted on more than one (1) phase area at a time except that work on one subsequent phase can be conducted for a period of six (6) months while the work on the first phase is being completed. In addition, the applicant shall have posted surety required in section 2.5.2 (7) prior to any earth removal activities in that phase. The permittee shall stake or clearly mark the bounds of each buffer and phase area with Schedule 40 two-inch PVC pipe at one-hundred foot intervals. These boundary markers shall be maintained at all times during the time period of the original and any renewed permits. The

permittee shall show in its application the order in which it plans to work each phase areas.

- (6) A performance bond in the amount set annually by the Board, but not to be less than \$15,000 (fifteen thousand dollars) per acre or fraction thereof, of operation shall be required. The bond must be presented to the Board before any operations begin and shall remain in force until the Board finds that the operation is complete and has been restored to usable condition.
- (7) The applicant shall indicate on a map the proposed routes to be used to transport the earth minerals. The applicant shall also provide the approximate number and size of truckloads of earth to be removed from subject property each day.
- (8) A report containing all other information necessary to prove compliance with performance criteria in 3.0.

2.5.3 Filing Fee: A Filing Fee in accordance with the following schedule shall be paid upon application:

Excavating Quantity	Filing Fee
1,000 to 100,000 cubic yards	\$500
over 100,001 cubic yards	\$1,000 plus \$100 for every 10,000 cubic yards over 100,001 cubic yards

2.6 Public Hearing

2.6.1 A Notice of Hearing shall be published by the applicant in a weekly or daily newspaper circulated within the Town of Rochester. The Notice of Hearing shall be advertised at least twice, once not less than fourteen (14) days before the hearing. The hearing shall be held within forty-five (45) days of the receipt of the application by the Rochester Town Clerk.

(Amended: Article XXX, June 9, 2003 Annual Town Meeting)

2.6.2 The applicant shall notify all owners of property within 500 feet of the applicant's property by registered or certified mail fourteen (14) days before the hearing.

2.6.3 After such public hearing is closed, within forty-five (45) days the Soil Board shall act on said application, rendering a decision in writing stating the decision and the reasons therefore and file the decision with the Town Clerk, with a copy thereof to the applicant. Such permit may be renewed in accordance with section 2.9 of this by-Law.

(Amended: Article XXXI, June 9, 2003 Annual Town Meeting)

2.7 Basis for Approval

- 2.7.1** No permit for removal of earth minerals shall be issued if such removal will endanger the general health or safety, constitute a nuisance or be detrimental to the normal use of adjacent property due to noise, dust or vibration.
- 2.7.2** Any permit issued must comply with the performance criteria contained in section 3.0 unless a waiver is requested with the permit application and the Board votes to grant the waiver at the time of permit issuance.
- 2.7.3** In issuing a permit under this By-law, the Board may impose such conditions, as it may deem necessary for the adequate protection of the neighborhood and the Town.
- 2.7.4** No permit shall be issued under provisions of this By-law for a period of more than one (1) year.

2.8 Appeals

- 2.8.1** Any appeal to the Board's decision under this By-law shall be made within twenty (20) calendar days of the decision to the Board of Selectmen.
- 2.8.2** The appeal shall be by written notice to the Board of Selectmen stating specific reasons for the appeal and giving reference to the applicable section of this By-law.
- 2.8.3** The Board of Selectmen shall, within twenty-one (21) days of receipt of the appeal, hold a properly advertised public hearing.
- 2.8.4** The Board of Selectmen shall issue a decision on the appeal within ten (10) days of the public hearing.
- 2.8.5** Any person aggrieved by the decision of the Board of Selectmen may appeal to the Superior Court.

2.9 Renewal of Permits

- 2.9.1** Application for renewal of permits shall be made ninety (90) days or more before expiration of the current permit. The application shall include a narrative and a plan showing the work completed within the active Phase and the work remaining to be completed. The renewal, if granted, shall begin at the date the current permit expires and run for one (1) year from that date. Renewal shall not be granted if work or restoration under the current permit is unsatisfactory to the Board.
- 2.9.2** The Renewal Fee for a permit is \$100 (one hundred dollars) per year.

(Amended: Article XXVII, June 7, 2004 Annual Town Meeting)

(Amended: Article XXIX, June 9, 2003 Annual Town Meeting)

2.10 Permits Issued Before the Effective Date of These Regulations

Any permit issued prior to the effective date of these regulations shall be valid until the expiration date of the permit. The permit may be renewed without a public hearing and may be issued subject to the conditions consistent with this by-law.

2.11 Re-Application After Denial of Application

After permission for an earth removal permit has been denied by the Board, no operator or owner shall be allowed to reapply for the same parcel for a period of one (1) year, unless the Board by unanimous vote so authorize.

2.12 Transfer of Permit

2.12.1 The permit is not transferable. Transfer of legal ownership in the subject property shall be considered a transfer.

2.13 *(Deleted: Article XXVI, June 9, 2003 Annual Town Meeting)*

2.14 *(Deleted: Article XXVI, June 9, 2003 Annual Town Meeting)*

2.15 Exempt Activities

2.15.1 No permit shall be required for the transfer of earth minerals between parcels within the Town of Rochester held in common ownership for the improvement of the premises.

2.15.2 This by-law shall not apply to excavation or fill: (a) to the extent reasonable necessary for construction of a building authorized by the Zoning By-law, provided that in the case of any structure requiring site plan review under the Zoning By-law, such excavation and fill is specifically authorized by the Site Plan Review Decision; and (b) to the extent reasonable necessary for the construction of Common Driveways and Flexible Development projects (each, together with related drainage and utility systems) authorized by special permit, and construction of subdivision roads (together with related drainage and utility systems) authorized by the Planning Board approval under the subdivision control law, and construction of site improvements specifically authorized by special permit by the Board of Appeals, provided that such exemption shall only extend to excavation and filling shown on plans approved by Board of Appeals and Planning Board, respectively. Activity under subdivision approvals and other municipal permits issued before June 7, 2004 shall continue to be governed by the language of Section 2.15.2 in effect before this amendment.

(Amended: Article XXVIII, June 7, 2004 Annual Town Meeting)

2.15.3 A permit shall not be required for the removal of earth minerals if the total amount of earth removed from the parcel or any subsequent subdivisions thereof is less than one thousand (1,000) cubic yards, regardless of ownership and passage of time.

3.0 Performance Criteria

3.1 Dimensional Requirements

3.1.1 Excavation shall never be lower than the running contour of the adjacent road bed, except excavation for building basements or excavation for the construction of cranberry bog in which case excavation below the road contour shall not take place within forty (40) feet of the centerline of such road, however at the discretion of the Board this requirement may be modified provided that specific permit conditions are adopted.

3.1.2 The finished level and grading shall leave no slope exceeding a grade of three (3) feet horizontal and one (1) foot vertical.

3.1.3 To ensure lateral support for adjacent properties, no excavation shall take place within twenty-five feet of any boundary line of any lot subject to this bylaw. The Board may waive this requirement if furnished with the written consent of all record owners of property abutting that portion of land that is subject to the waiver.

(Amended: Article XXVI, June 7, 2004 Annual Town Meeting)

3.2 Traffic

3.2.1 The applicant shall construct a mechanism to clean earth minerals and foreign matter from truck tires prior to entering a public way. The mechanism shall include a paved apron for the first twenty-five feet from the road and the remainder of the mechanism can consist of crushed stone, rubble block or other suitable materials.

3.3 Restoration of Land

3.3.1 All disturbed surfaces shall receive a minimum of four inches (4") of plantable soil. The surface shall be seeded with an erosion resistant seed mixture.

3.3.2 Restoration after excavation for reservoirs on sites permitted by the Soil Board for soil removal may require use of rip-rap for retention of slopes and sidewalls.

(Amended: Article VIII, October 29, 2007 Special Town Meeting)

3.4 Time of Operation

3.4.1 Time and days of operation shall be established by the Board, however, no operations shall take place at the site of the permit before 7:00 a.m. or after 5:00 p.m. No trucking of earth materials will be allowed on Sundays except for transporting sand reasonable necessary for the sanding of bogs.

3.5 Inspections

3.5.1 An on-site inspection shall be done by Board members and the Zoning Enforcement Officer before a permit is granted or a renewal thereof.

3.5.2 Period inspections shall be done by the Board or their designee.

3.5.3 All inspections shall be done at the discretion of the Board with 48 hours notice in writing to the permit holder or permit applicant.

3.6 Ground Water

3.6.1 All excavations shall be at least six (6) feet above the maximum groundwater elevation. The maximum groundwater elevation shall be determined utilizing methodologies specified in Title V of the state sanitary code (310 CMR 15.000).

3.6.2 Residential water supply wells of residences within five hundred (500) feet of subject operation shall be tested before commencement of operations and upon written complaint of possible contamination of any residence within such area. Any detrimental change in results will be cause to suspend operations until the cause is determined. Analytical parameters shall include pH, specific conductance, total dissolved solids, dissolved oxygen, BOD, COD, iron, manganese, nitrates, ammonia and sulfates.

3.7 Surface Water

3.7.1 The permittee shall design, construct and maintain proper stormwater controls to prevent the siltation of surface water. Such controls shall be maintained until the phase has been completed and final permanent erosion resistant vegetative cover has been established.

3.8 Importation of Earth Materials

No earth materials, waste debris or unsuitable materials shall be imported to a permitted soil removal site other than that required for the restoration of the site per Section XII, 3.3, or completion of the approved project.

(Amended: Article VII, October 29, 2007 Special Town Meeting)

3.9 Outside Consultatnts

3.9.1 When reviewing an application for, or when conducting inspections in

relation to a permit, the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project, because of the projects potential impacts, or because the Town of Rochester lacks the necessary expertise to perform the work related to the permit. The Board may require the applicants to pay a “project review fee” consisting of the reasonable costs incurred by the Board for the employment of outside consultants, engaged by the Board, to assist in the review of a proposed project.

(Amended: Article IX, October 29, 2007 Special Town Meeting)

3.9.2 In hiring outside consultants, the Board may engage engineers, planners, lawyers, urban designers or other appropriate professionals, who can assist the Board in analyzing a project to ensure compliance with all relevant laws, ordinances/bylaws, and regulations. Such assistance may include, but not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board’s decision or regulations, or inspecting a project during construction or implementation.

(Amended: Article IX, October 29, 2007 Special Town Meeting)

3.9.3 Failure of the applicant to pay a review fee shall be grounds for denial of the application or permit.

(Amended: Article IX, October 29, 2007 Special Town Meeting)

3.9.4 At the completion of the Board’s review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant’s successor in interest. A final report of said account shall be made available to the applicant or the applicant’s successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant’s successor in interest shall provide the Board with documentation establishing such a succession in interest.

(Amended: Article IX, October 29, 2007 Special Town Meeting)

3.9.5. Any applicant may take an administrative appeal from the selection of an outside consultant to the Board of Selectmen. Such an appeal must be made in writing and may be taken only within twenty (20) days after the Board has mailed or hand-delivered notice to the applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist of an educational degree in, or related to, the field at issue or three (3) or more years of practice in the field at issue or a related field. Any required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the

Board of Selectmen within one (1) month following the filing of an appeal, the selection made by the Board shall stand.

(Amended: Article IX, October 29, 2007 Special Town Meeting)

4.0 Enforcement

The enforcement authority for the Earth Removal By-law shall be the Soil Board or its designee.

(Amended: Article XXVI, June 9, 2003 Annual Town Meeting)

- 4.1** Any person, firm or corporation violating, disobeying or refusing to comply with any of the provisions of this By-Law shall be prosecuted under the terms of General Laws, Chapter 40, Section 21. cl. (17), and shall be subject to a fine of not more than \$50 for the first offense, not more than \$100 for the second offense and not more than \$200 for any subsequent offense, or such other fines as may be specified in M.G.L. Chapter 40, Section 21, cl. (17) as the same may be amended from time to time. Each day during any portion of which such violation is allowed to continue shall be considered a separate offense.

(Amended: Article XXVI, June 9, 2003 Annual Town Meeting)

- 4.2** The Board may revoke or suspend the permit of any person, firm or corporation holding a permit under this By-Law if such person, firm, or corporation violates, disobeys, or fails to comply with any of its provisions after sending notice to the permit holder by certified mail (return receipt requested) at least fourteen (14) days prior to the date of a public hearing and after such public hearing, on proof of a violation of any permit condition. The Board shall provide written notice to the permit holder of any said (r)evocation or suspension of a permit.

(Adopted: Article XXVI, June 9, 2003 Annual Town Meeting)