

CHAPTER XXI EARTH REMOVAL

SECTION 1. Authority

This bylaw is adopted under the authority contained in Massachusetts General Law, Chapter 40, §21(17) and the Home Rule Amendment to the Massachusetts Constitution.

SECTION 2. Purpose

The purpose of this bylaw is to prevent the degradation of the town's natural resources including its soil, surface and groundwater, and naturally occurring vegetation due to the improper or uncontrolled removal or redistribution of earth and vegetation and to protect the right of every resident of the Town of Hubbardston to enjoy the natural, scenic, historic, and aesthetic qualities of the environment as declared in Article XLIX of the Constitution of the Commonwealth of Massachusetts.

SECTION 3. Definitions

Applicant:

The individual, corporation or other legal entity who makes the application for an Earth Removal Permit. Such individual, corporation or other legal entity may be the Owner of the site or may be the operator of the Earth Removal Operation. The permit shall be issued to the Applicant. If the Applicant is not the Owner of the land, the applicant shall provide the Owner's notarized permission to make an application and alter the site for an Earth Removal Operation.

Board

The Planning Board of the Town of Hubbardston who shall act as the Permit Granting Authority (PGA)

Earth

All forms of soil, including, without limitation, decomposed organic matter, loam, sand, gravel, clay, peat, hard-pan, or rock.

Earth Removal Operation

The removal from a site, by hand or by machinery, of any earth material including but not limited to loam, sand, gravel, clay, peat, hard-pan, or rock from surface or subsurface without the aid of drilling and/or blasting, together with all activities associated with the removal, including, but not limited to, the stripping of vegetation, loam, topsoil, or sod, the digging, stockpiling, processing, moving, depositing, or transportation of earth products in any form, natural, altered or otherwise. The Earth Removal Operation includes the moving of equipment required for the operation to, from, or within the site, and all land affected by the operation (e.g. fill, or storage piles, access ways, or structures). There are two classes of earth removal activities as described below:

1) Small scale earth removal:

A small scale earth removal operation is one that is for general site grading, alterations and modification where the removal is 1000 cubic yards or less, annually.

2) Large scale earth removal:

A large scale earth removal operation is earth material removal of more than 1000 cubic yards of material removed from the site on an annual basis.

Erosion

The process by which the ground surface is worn by forces such as wind, running water, ice, abrasion, gravity, transportation, or by artificial means.

Fill

- 1) Soil, earth, sand, gravel or other earth material which is deposited, placed, pushed, pulled, or transported, and includes the conditions that result from that act.
- 2) Any act by which soil, earth, gravel or other similar material is deposited, placed, pushed, pulled, or transported.

Gravel

Loose fragments of rock or coarse aggregate resulting from natural disintegration and abrasion of rock or processing of weakly bound conglomerate.

Gross Landscape Modification

The alteration of more than 50% of any single lot or more than one acre of land, whichever is less.

Loam or Topsoil

A soil consisting of a friable mixture of varying proportions of clay, sand, silt, and organic matter. Surface soil as distinguished from subsoil.

Lot

A parcel of land under single, joint, or several ownership and separated from contiguous land by property lines and/or street lines, defined by metes and bounds, or boundary lines, and shown on a deed and/or plan recorded in the Worcester District Registry of Deeds or registered in the Land Court.

Owner

Owner of the land from which earth is sought to be removed or the person lawfully standing in the stead of such owner. Ownership must be shown on the deed to the property. Person, company or agent, standing in the stead of such owner must have owner's notarized permission to do so.

Processing

The sorting or separation of earth materials into distinct categories based on particle size or type usually through the use of a screening process but not exclusively so. Processing does not include stone crushing.

Quarrying

The removal of stone (from the ground) by cutting, blasting, ripping or hammering or any other method other than collection of distinct particles (eg. glacial erratics, boulders and similar distinct, separate stone objects).

Sand

A loose granular material resulting from the disintegration of rock, consisting of smaller granules than gravel, and larger particles than silt particles.

Sediment

Earth materials transported or deposited into any body of water, creek, ravine, or other sensitive area by the movement of wind, water, ice, gravity, or by artificial means.

Sensitive Areas

- 1) Areas subject to the jurisdiction of either the State Wetlands Protection Act (M.G.L. Ch. 131 §40), the Hubbardston Wetlands Protection Bylaw, or both.
- 2) Areas delineated as Priority or Estimated Habitats for Rare Species as Defined by the Natural Heritage and Endangered Species Program (NHESP), a Division of the Department of Fisheries and Wildlife.
- 3) Areas designated as Watershed Protection:
 - a. Department of Environmental Protection Estimated or Defined Zones 1 and 2 to Public Water Supply Sources.
 - b. Areas delineated on the Town of Hubbardston's Aquifer Protection Favorability overlay district.
 - c. Areas subject to the Department of Conservation and Recreation (DCR), Watershed Protection per the Watershed Protection Act (350 CMR 11.00)

Sensitive Receptors:

Existing structures and uses that are not compatible with Earth Removal Operations. These include: schools, libraries, senior housing facilities, hospitals, densely developed residential areas, multifamily or cluster developments and other uses by their nature, as determined by the Planning Board, that are sensitive to noise, air and traffic caused by earth removal operations.

Silt

Loose sedimentary material with rock particles usually less than 1/16 mm or less in diameter.

Site

A distinct portion of one lot, or one or more contiguous lots, under the same or different ownerships, on which an earth removal operation is conducted, or is proposed to be conducted, under an Earth Removal Permit.

Slope

An area that is more or less steep, as measured by vertical rise over a horizontal distance, expressed as a percentage or ratio. For example, a rise of one (1) foot over three (3) horizontal feet is a slope of 33%, and is expressed as a ratio of 3:1 slope.

Stone Crushing

The mechanical operation which creates smaller sized stones or stone products from larger sized stones, boulders or particles typically using a crushing plant or similar machinery.

SECTION 4. General Provisions

- A. All operations for the removal of earth shall be regulated in accordance with the procedures, standards and conditions contained herein.
- B. Earth removal may be permitted by a permit on a lot in the Town of Hubbardston and shall run with the land and encumber said lot.
- C. Quarrying is prohibited.
- D. No Earth Removal Operation shall be permitted adjacent to any sensitive receptor or area unless mitigation measures can be implemented, which in the opinion of the Board will serve to protect such areas. as approved by the Planning Board.
- E. No person, firm, or corporation shall excavate in any one year more than five hundred (500) cubic yards of earth from any land in the Town without first obtaining an earth removal permit as provided in the following sections.

- F. Each operation proposed by the same applicant for a site with multiple lots shall require a separate Earth Removal Permit for each lot .
- G. The Permit Granting Authority for earth removal shall be the Planning Board. The Planning Board shall have the following powers and duties relative to earth removal:
 - 1. The Planning Board shall receive, review and hold public hearings, take testimony and facts and act on all complete applications for permits to conduct earth removal.
 - 2. The Planning Board shall issue all permits for earth removal according to the provisions of this bylaw.
 - 3. The Planning Board shall act to monitor compliance with issued permits and any conditions imposed thereon. The Board shall, under the provisions of this Bylaw, act to issue notice of violation(s), cease and desist orders or revoke or suspend any permit for cause.
 - 4. The Planning Board shall, annually by April 15th, file with the Board of Selectmen, a report on the current activity and status of all earth removal operations in the Town.
 - 5. The Planning Board may waive strict compliance with the requirements under Section 7 Rules and Regulations, except for large scale earth removal applications. A pre-submission review with the Board is recommended for all earth removal operations.

SECTION 5. Existing and Pre-Existing Operations

All earth removal operations in existence, or which pre-existed, in Hubbardston on the effective date of this bylaw shall be subject to the requirements stated herein according to the following:

- A. Existing operations with permits. All earth removal permits, issued either under the provisions of the Hubbardston General Bylaws or Zoning Bylaws prior to the effective date of this bylaw, shall remain in effect until their expiration date. Permit renewal for existing permits shall follow the procedures of this bylaw and be subject to all the terms and conditions contained herein.
- B. Pre-Existing operations without permits. Within thirty (30) days of the effective date of this bylaw, each existing operation without a permit shall meet with the Planning Board to discuss a process for development of a transition plan to bring the site into compliance. The Applicant shall, in consultation with the Planning Board, property owner (if not the applicant), operator and the Town's consultants, develop such transition plan to bring the operation into compliance with the bylaw to the greatest extent possible. The transition plan shall be developed and approved within ninety (90) days of the effective date of this bylaw.

SECTION 6. Exemptions

A permit shall not be required for the following:

- A. Removal of earth incidental to and reasonably required in connection with the construction of any building, appurtenant walk or driveway, septic system, swimming pool or other accessory uses and expansions thereto, for which all permits required by the Town of Hubbardston have been granted, provided the quantity of materials removed shall not exceed that displaced by the portion of the building or accessory use below grade;
- B. Removal of earth in the course of customary agricultural use of land;
- C. Removal of earth in compliance with the specific requirements of an approved subdivision plan; not including individual house lot development.
- D. Removal of earth in the normal use of a cemetery;
- E. Removal of earth from land in public use; the Town will, however, develop a transition plan for the earth removal operations conducted by the Town for the extraction and processing of road maintenance materials at the so-called "town pit" on Pitcherville Road.
- F. Removal of earth for the construction, maintenance and repair of existing roadways or fire ponds, including the installation of utilities and appurtenances.

G. Removal of earth on a single lot, involving an excavation of no more than five hundred (500) cubic yards or less in one year..

The above exemptions do **not** apply to any activity which involves soil stripping or loam stripping or involves topographical changes which shall be considered gross landscape modifications.

SECTION 7. Rules and Regulations

The Planning Board may establish additional rules and regulations, including fee schedules, to implement this bylaw. Changes in rules and regulations shall be made only after the Planning Board holds a public hearing thereon, such hearing to be advertised in a newspaper of general circulation in the town twice in successive weeks, the first advertisement being not less than fourteen days before the day of the hearing, and posted in the Town Office at least 14 days before the day of the hearing.

SECTION 8. Application and Public Hearing Process

A. Application and Fees:

1. All applications for earth removal operations shall be in writing on a form approved by the Planning Board and shall be accompanied by a filing fee established by the Planning Board to be adequate to defray the costs incurred by the town to administer the application
2. Plans, prepared and stamped by a registered surveyor or engineer shall be submitted in the quantity, format and containing the contents identified in the Rules and Regulations.
3. A list of all abutters and abutters to the abutters within three hundred (300) feet of the property line as shown on the most recent tax list, certified by the Board of Assessors.
4. No application for an Earth Removal Permit shall be considered complete and shall not be acted upon, unless the Tax Collector of the Town of Hubbardston has certified, pursuant to MG.L. Ch 40, Section 57, that no debt is owed to the Town by the applicant and owner.
5. All costs relating to publication and mailing shall be borne by the applicant.

B. Hearing Process:

The Planning Board shall hold a public hearing upon receipt of a complete application within sixty (60) days of the submission of all required application materials. The Planning Board shall publish notice of the hearing, including the time and place thereof and a description of the proposal sufficient for identification, in a newspaper of general circulation in the town once in each of two successive weeks, the first publication of which shall be not less than fourteen (14) days before the hearing. Notice of the hearing shall be posted on the Official Town website at least fourteen (14) days before the hearing. This notice shall be sent by registered or certified mail at least ten (10) days before the hearing to:

1. the applicant;
2. the owner of the parcel (if different from the applicant);
3. the owners of all land abutting the parcel for which a permit is sought, including land across any public or private street or way or any body of water or watercourse from such parcel, as they appear on the most recent tax list;
4. any other owners of property within three hundred (300) feet of the property lines of the parcel;
5. the Board of Selectmen (not certified mail);
6. any other Town, Regional, State or Federal agencies deemed by the Planning Board to be affected thereby; and
7. any other persons deemed by the Planning Board to be affected thereby.

- C. The Planning Board may continue the public hearing process for cause, for receipt of additional information or to take testimony or receive and review additional provided information. Any continuance in the public hearing process beyond ninety (90) days from date of receipt of the project shall require the written applicant's permission. Any continuance of process shall be extended to a time and date certain, which shall be announced at the public hearing.
- D. The Planning Board shall issue a decision within sixty (60) days of the closing of the public hearing. An Earth Removal Permit shall be deemed approved upon a simple majority vote of the Planning Board.
- E. The Planning Board may act to issue an Earth Removal Permit with standard conditions, with special conditions or may deny the application. If an application is denied, the reasons for denial shall be included in decision.
- F. A copy of the issued Earth Removal Permit or denial thereof shall be filed at the Office of the Town Clerk within five (5) business days of the Board's action..
- G. Appeals to the action of the Planning Board on any Earth Removal Permit may be taken to a court of competent jurisdiction. Such appeals shall be made within twenty (20) days of the filing of action with the Town Clerk. Notification of any appeal must be provided to the owner, applicant, and Hubbardston Planning Board.

SECTION 9. Conditions for all Earth Removals

A. General

The following criteria shall apply to all earth removal operations, regardless of whether a permit is required or not:

- 1. Unless otherwise provided as part of the permit: Hours of operation shall be between 6:30 a.m. and 4:00 p.m. Monday through Friday and 8 a.m. to 12 noon on Saturday, except hours of operation for a crusher shall be 8 a.m. to 4 p.m., Monday through Friday and 9 a.m. to noon on Saturday. No operations are allowed on Sunday and State holidays.
- 2. Noise from normal operations shall not exceed permissible levels as set forth in the Regulations of the Hubbardston Board of Health, Section 5: Noise Thresholds. Professional monitoring tests shall be performed by the permittee and submitted to the Planning Board and Board of Health for review.
- 3. All earth removal operations shall be conducted in such a manner to prevent the erosion of the land, siltation of waters or water bodies and prevention and control of dust and other deleterious effects of earth removal operations.
- 4. All Earth Removal Operations shall be permitted as set forth in Section 9.B.1-11, and shall include the provision for reclamation of the site, in part during operations or in whole, once excavation and earth removal activities have ceased in that part of the site. Reclamation shall include the stabilization of all surfaces by planting or other means to prevent erosion, control runoff and reduce hazards at the site. All slopes shall be graded to a maximum slope of 3:1 (Horizontal:Vertical) and shall be planted or otherwise made stable in a manner determined acceptable to the Planning Board.

B. Permit Requirements:

- 1. The limit of work shall be as described in the permit application and depicted on accompanying plans. Work outside the limit of work is expressly prohibited. Phasing limits shall be clearly depicted on submitted plans.
- 2. No excavation may extend below four (4) feet above the estimated seasonal high water table as determined by a Massachusetts Department of Environmental Protection Certified Soil Evaluator, or other expert source of determination, and/or on site groundwater monitoring wells as adjusted for seasonal variations. A minimum of two monitoring wells shall be required for each phase of operations. No areas shall be excavated to cause accumulation of standing water.

3. No permit shall be issued for a term longer than two (2) years. Permit renewal applications shall be accompanied by an operations plan for the permit period being applied for and updated site plan. Permit renewals may be granted only if the applicant has complied with all conditions of the original permit and has corrected any violations in a manner satisfactory to the Planning Board.

4. As part of and as set forth in any such permit, the Planning Board shall impose such reasonable restrictions and conditions on the exercise of the permit as it deems to be in the public interest, including but not limited to hours of operations, days of operation, noise, dust and other mitigation measures and other protective measures to be utilized during earth removal operations to limit or mitigate impacts of the operation on adjacent sites, the environment, the public good or abutters.

5. Permits are transferable with the approval of the Planning Board after submission of an operations plan that meets all requirements of the bylaw and have provisions to transfer the applicable performance bond/surety. Permits are revocable (see Section 12: Enforcement).

6. Any Order of Conditions established by the Town of Hubbardston Conservation Commission shall become part of the conditions for the earth removal operation.

7. The permit holder must comply with any and all other requirements of federal, state, or local law applicable to the operation. Violations of any and all other requirements of federal, state or local law can be considered a violation of the Earth Removal Permit and be subject to the enforcement action as described in Section 12: Enforcement.

8. The permittee shall submit an operations report to the Planning Board every six months containing details on the amount of material removed, percent of restoration completed and an estimated timeline to complete the removal operations as permitted.

9. The permit shall not become effective until the applicant has filed the proper security and paid all required fees and review costs.

10. Permits for Large Scale Earth Removal shall require a bond or other surety as required by Section 11 of these bylaws.

11. All permits shall include the provision for reclamation of the site, in part during operations or in whole, once excavation and earth removal activities have ceased in that part of the site. Reclamation shall include the stabilization of all surfaces by planting or other means to prevent erosion, control runoff and reduce hazards at the site. All slopes shall be graded to a maximum slope of 3:1 (Horizontal:Vertical) and shall be planted or otherwise made stable in a manner determined acceptable to the Planning Board.

C. Specific Conditions:

The Planning Board shall have the authority to impose specific conditions on a Earth Removal Operation as determined necessary to meet the Purposes of the Bylaw.

SECTION 10. Inspections

The Planning Board shall require a deposit for periodic inspections of permitted earth removal sites, by an agent of the town to determine compliance with permit conditions. Upon entering the site, the town's agent will identify him/herself to an employee, if one is present. During times of active operation, the Planning Board may have its agent prepare monthly compliance review reports for the Planning Board.

Expenditures from this deposit shall be made only in connection with the review and inspection of the specific project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay a review fee shall be grounds for revocation of the application permit.

SECTION 11. Surety and Performance Bond

The permittee shall furnish a performance bond or other security in a form satisfactory to the Treasurer and Town Counsel sufficient to insure satisfactory performance of the requirements of the permit,

including all phases of the earth removal operation and restoration of the site, and any conditions imposed thereupon.

After completion of the operation, and upon receipt of the permittee's written request, the Board may grant a partial release of any security posted by the applicant. The remainder of the security shall be released one year after the operation has been completed or the permit has expired, if the town's agent certifies that

1. the restoration has been completed in compliance with the permit,
2. the permittee has submitted an "as-built" plan approved by the agent,
3. no deterioration of the site has occurred for a period of one year. During the year following the partial release of the security, the applicant shall be responsible for repairing any damage to the site.

SECTION 12. Enforcement

The provisions of this bylaw shall be enforced by the Planning Board's designated agent or the Hubbardston Building Inspector.

If, after reviewing the reports from the permittee, the Town's agent, or other source the Planning Board concludes that there has been a violation of this bylaw, it shall send a notice of the specific violation to the permittee, by registered or certified mail or by process server, to the record address and applicant, as applicable. The notice shall specify a time for compliance. If compliance is not achieved by the specified date, the following penalties shall apply:

SECTION 13. Penalties

- A. Penalties - Criminal Disposition. Whoever is found to have violated any provision of this bylaw may be penalized by indictment or complaint brought to the Superior Court, Housing Court, or Gardner District Court, and a penalty of \$300.00 shall be imposed for each violation. Each day on which a violation exists shall be deemed to be a separate offense, with the first day of violation to be construed as the date on which the owner and applicants, as applicable was first notified of the violation.
- B. Penalties - Non-criminal Disposition. In addition to the procedures described above, the provisions of this bylaw may be enforced by the Planning Board by way of the non-criminal disposition procedure provided in the Mass General Laws, Chapter 40, Section 21.D. Each day on which a violation exists constitutes a separate offense. The penalty for each offense shall be Three Hundred Dollars (\$300.00).
- C. In the event the permitting authority determines that any person, firm or corporation whether or not an Owner, as defined herein, is in violation of this bylaw, the person, firm or corporation may be assessed the cost of any and all action taken to remedy the violation, including reasonable attorney's fees, as provided for by M.G.L. Ch 40, section 31.
- D. The Planning Board may revoke or suspend the permit of any person, firm or corporation holding a permit under this bylaw if such person, etc. violates, disobeys, or fails to comply with any of the provisions of this bylaw. A permit may be revoked only after a hearing, the notice of which shall be the same as described in Section 7.C. Such hearing shall be held within thirty (30) days after the deadline for correction of a violation of the bylaw. A decision on revocation must be made within thirty (30) days of the closing of the hearing.