

ARTICLE 26 To see if the Town will vote to amend Article VII of the Town’s General Bylaws, Removal of Soil, Loam, Sand or Gravel and Fees, by deleting said Article in its entirety and replacing it with a new Article VII, to be titled “Earth Removal”, in the form set forth below, or take any other action relative thereto.

Town of Plympton General Bylaws

ARTICLE VII EARTH REMOVAL

Section 1 Purpose.

The purpose of this bylaw is to support the maintenance of Plympton’s rural character, including its natural, scenic, historic, and agricultural qualities and to protect its water resources.

Section 2 Definitions.

Agriculture. Agriculture shall be defined in accordance with M.G.L. Ch 128, §1A, and in accordance with M.G.L. Ch 131, § 40, including Massachusetts Wetlands Regulations, 310 CMR, 10.04.

Board. The Board of Selectmen of the Town of Plympton shall act as the Permit Granting Authority (PGA).

Commercial Mining. The business of extracting ore, earth or minerals from the ground for sale or profit that is not incidental or related to any other use or activity on the property.

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

Earth Removal Operation or Operation. The processing or removal or both 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). Earth Removal Operations shall include all land impacted by the operation (e.g. pits, fill or storage piles, access ways and structures).

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

Person. Any individual, partnership, corporation, firm, association, trust or group.

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 (e.g. glacial erratics, boulders and similar distinct, separate stone objects).

Sensitive Areas. Sensitive areas shall be considered as the following:

- A. Areas subject to the jurisdiction of either the *State Wetlands Protection Act (M.G.L. Ch. 131 §40)*, *Town of Plympton General Bylaws, Article XXVIII Wetlands Protection*, or both.
- B. 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.
- C. Areas designated as Watershed Protection:
 - i. Department of Environmental Protection Estimated or Defined Zones 1 and 2 to Public Water Supply Sources.
 - ii. Areas included in MA DEP, Chapter 91, *Waterways Program*.
 - iii. Areas delineated on the Town of Plympton's Aquifer Protection overlay district and areas that are essential for safe and adequate water supply to private wells
 - iiii. Areas subject to the Department of Conservation and Recreation (DCR), Watershed Protection per the *Watershed Protection Act (350 CMR 11.00)*.
 - iv. Community Potable Water Supply Wells, Agricultural Farm Ponds and Reservoirs, Zone A and C to Public Surface Water Supplies
- D. Areas that are designated as flood zones as defined by FEMA.

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

Topsoil. Topsoil is the upper, outermost layer of soil, usually the top 2 inches (5.1 cm) to 12 inches (30.5 cm). It has the highest concentration of organic matter and microorganisms and is where most of the Earth's biological soil activity occurs.

Section 3 General Provisions.

3.1 No person shall conduct an earth removal operation in the Town of Plympton unless they are the holder an earth removal permit issued by the Board or the operation qualifies for an exemption set forth in this bylaw. The burden shall be on the operator to prove the applicability of an exemption.

3.2 Earth removal permits shall be in effect for a period of one (1) year from the date of issue.

3.3 All Earth removal operations shall be conducted in accordance with the requirements of this bylaw, regulations of the Board adopted pursuant thereto and all conditions imposed by the Board.

3.4 All Earth removal operations shall be conducted in accordance with applicable federal, state and local laws concerning the operation, including but not limited to the requirements of the Conservation Commission. It shall be the applicant's responsibility to ensure compliance with such laws and the issuance of an earth removal permit by the Board shall not authorize any earth removal operation undertaken in violation of any other applicable statute, rule or regulation.

Section 4 Existing Operations and Exemptions

4.1 Existing Operations. All earth removal operations in existence prior to the effective date of this Bylaw shall be subject to the requirements stated in the Bylaw and Regulations enacted pursuant thereto. Any person conducting an existing earth removal operation shall submit an application for an earth removal permit within thirty days of the effective date of this bylaw,

unless the operation qualifies for an exemption.

4.2 Exemptions.

4.2.1 Exempt Activities. The following earth removal operations may be conducted without an earth removal permit.

A. Earth removal operations for any federal, state or municipal purpose by or on behalf of the Town of Plympton or any department or agency thereof;

B. Earth removal of up to fifty (50) cubic yards in a calendar year in the course of normal gardening or landscaping;

C. The removal of earth that is merely incidental to the construction or installation of buildings, structures, swimming pools, septic systems, utilities, fences, athletic courts, driveways, parking lots, walkways and other construction or installations occurring on the site from which the earth is removed; provided that the project is being done in accordance with all required permits and approvals, the amount of earth removed does not exceed the amount needed for the construction or installation and the removal of earth does not result in topographical changes to the surrounding land;

D. The removal of earth in connection with agricultural use of land which is customarily incidental to agricultural maintenance and improvement practices as defined under M.G.L. c131, § 40, 310 CMR 10.04: (a) land in agricultural use, (b) normal maintenance of land in agricultural use and (c) normal improvement of land in agricultural use, and/or which may be cited in an Orders of Conditions by the Conservation Commission. Exempt agricultural related projects must follow USDA Natural Resources Conservation Service or established best management practices. Upon completion of an exempt project, where applicable, restoration or stabilization activities should follow Natural Resources Conservation Service Practice Standard "Critical Area Planting" Code 342, with regional conditions applied. Agricultural earth removal activities are further defined as earth necessary to maintain or improve the applicants/owner's contiguous or non-contiguous land for agricultural purposes and does not allow the removal of earth for sale, trade or other considerations.

E. Earth removal up to five hundred (500) cubic yards for a subdivision which is entirely incidental to the subdivision, site plan or special permitting process in compliance with the specific requirements of an approved, definitive subdivision plan.

F. The transfer of material from one part of a lot to another part of the same lot.

G. Earth removal conducted in accordance with the provisions found in the Massachusetts Contingency Plan, 310 CMR 40.0000.

H. The board reserves the right to question what the owner/operator considers to be an exempt project and the owner/operator shall be prepared to document how the exemption applies. Advance notification to the board of exempt projects is not required but is encouraged in instances where truck traffic may exceed what is customary for any particular operation.

4.2.2 Activities Eligible for Exemption. The above earth removal activities are considered incidental to the cited purpose of the exempt activities and do not require a permit (provided that the conditions set forth in Section 4.2.3 are not present). For the purposes of this section, incidental shall be defined as meeting all of the following:

A. Is minor in significance to the primary use

B. Is commonly established as reasonably associated with the primary use

C. Is necessary to carry out the primary use

D. Is minor in its net effect to that of the principal use, based on the amount of material to be removed and the time period over which it is to be removed and/or the amount of money to be derived from the earth removal operation.

4.2.3 Board Determination of Exemption. Notwithstanding the provisions of sections 4.2.1 and 4.2.2, the Board may prohibit or require an earth removal permit for otherwise exempt operations if:

A. the operation constitutes a nuisance or danger to the public, the operation will damage or threaten a private or public water supply, and/or public or private wellheads, or if the operation does not conform to accepted engineering and/or agricultural best management practices.

B. The proposed earth removal operation and/or construction related activities are pretext for earth removal and sale, or that the proposed earth removal shall cause damage to the public health, safety, private and public water supply or the environment.

C. The operation involves soil stripping or loam stripping or involves topographical changes which shall be considered gross landscape modifications.

Section 5 Procedures (Permit Applications, Site Plan Requirements, Hearings.)

5.1 Permit Applications and Site Plans.

Applications for Earth Removal Permits shall be made to the Board by filing an application with the Board on a form to be provided by the Board. The required information shall include but not be limited to the following:

A. The location of the proposed excavation.

B. The legal name and address of the owner of the property involved.

C. The legal name and address of the applicant (if different than the owner).

D. A plan and representative profiles of the area, prepared by a Registered Professional Engineer, from which final grades may be established.

E. The anticipated amount (in cubic yards)of earth to be removed.

F. The reason for the project.

G. The location to which the earth will be deposited.

H. Previous earth removal activities on the property.

I. Traffic studies, legal, or hydrogeological studies, or other studies deemed necessary by the Board to conduct an adequate technical and legal review of the Permit application.

J. Locations of all private, community, agricultural reservoirs and public water supply wells or reservoirs within one thousand (1,000) feet of the site's property line.

K. 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 Plympton has certified, pursuant to M.G.L. Ch 40, §57, that no debt is owed to the Town by the applicant and owner.

L. Site plans of the removal areas shall be prepared by a registered professional engineer or a registered land surveyor at a scale of forty (40) feet to the inch.

5.2 Hearing Process.

5.2.1 Upon receipt of a completed application and payment of applicable fees, the Board shall conduct a public hearing on the application. Notice of said hearing shall be provided by registered or certified mail at the applicant's expense, to all abutters, owners of land directly

opposite on any public or private street or way, and abutters to abutters within 300 feet, and to all town boards and entities designated by the Board, and by publication in a newspaper of general circulation in the Town once, at least fourteen days prior to the hearing.

5.2.2 In no case shall the Board issue a permit for removing a greater amount of earth than the Board deems necessary for the purpose stated in the permit application.

5.2.3 The Permit shall not be transferable to a different Legal Entity or individual or with the sale of the property.

Section 6 Operating Conditions.

6.1 Approvals. In approving the issuance of a permit, the Board may impose reasonable conditions, designed to protect public health, safety and welfare, and natural resources, which may include, but not be limited to, the following:

A. The placing of topsoil and planting necessary to restore the area to usable condition. Cover of topsoil of not less than 4 inches in depth shall be replaced or allowed to remain, whereas, agricultural related projects should follow USDA/NRCS restoration guidelines or established industry best management practices.

B. The duration of the removal operation.

C. The construction of necessary fencing and other protections against nuisances and/or erosion.

D. Method of removal.

E. Temporary structures.

F. Hours of operation.

G. Routes of travel or transportation of material.

H. Control of temporary or permanent drainage.

I. Disposition of boulders and tree stumps.

J. Set and maintain permanent monuments at each property corner.

K. Slopes shall not be steeper than 4 to 1, except for agricultural projects where USDA/NRCS design standards or established industry best management practices necessitate a different final slope. In addition, the Board may specifically authorize a finished grade in excess of 4:1 based on site specific conditions.

L. The lowest excavated point shall be no less than ten (10) feet above the existing groundwater table, except for relevant agricultural water-dependent projects, such as but not limited to cranberry bogs, ponds/reservoirs, ditches and bypass canals. To ensure this minimum depth, the property owner shall, at his expense, install observation wells in accordance with the requirements of the Board's agent

M. No area shall be excavated so as to allow the accumulation of freestanding water, except as necessary for specific agricultural projects.

N. Prior to commencing earth removal operations, the applicant shall post with the treasurer of the town of Plympton proper bond in such amount and with such sureties as determined by the Board to be sufficient to guarantee compliance with the terms and conditions of the permit.

O. All earth removal operations shall be conducted in such a manner to prevent the erosion of the land, pollution and siltation of waters or water bodies, disturbing or negative impacts to sensitive areas and sensitive receptors, and prevention and control of dust and other deleterious effects of earth removal operations.

P. All Earth Removal Operations shall include the provision for restoration of the site, in part during operations (phasing) or in whole, once excavation and earth removal activities have ceased in that part of the site.

Q. The Board shall require the person holding a permit hereunder to provide to the Board on a quarterly basis with documentary evidence of the quantities of material excavated, the date of removal of such material, and the owner of the vehicle used to transport the material.

R. The Board may require bonds for restoration, road repair or other purposes and monitoring fees.

6.2 Denials. If the Board finds, based on the facts adduced at the hearing, that the permit may result in a nuisance or that it will otherwise create a risk of harm to public health, safety or welfare or natural resources, the Board may deny the application

Section 7 Permit Prohibitions.

7.1 Notwithstanding the Board's discretion in granting earth removal permits, no earth removal permit shall be issued in the following circumstances, provided, however, that the Board may grant a variance from the requirements of this section if it finds, after a public hearing as set forth in section 5, that a level of protection for public health, safety and welfare, and natural resources at least equivalent to the standard set forth in this bylaw can be achieved without strict application of the provision from which a variance is sought.

A. There shall be no quarrying.

B. There shall be no earth removal operations between sunset and sunrise of the next day

C. There shall be no use of explosives.

D. There shall be no processing or stone crushing.

E. There shall be no commercial mining.

F. The finished leveling and grading shall be indicated on the approved plans as indicated and submitted to the Board, but in no event shall any grade be below the grade of any abutting and established way open to the public or private use, except that if on the authority of a Registered Civil Engineer it is determined by the Board that such a change in grade below the existing grade is advantageous to the proposed change in topography.

G. No permit for the removal of earth shall be approved by the Board if the work extends within four hundred (400) feet of a way open to the public whether public or private, or within two hundred (200) feet of a building or structure or property line, unless the Board is satisfied that such removal will not undermine the way or structure, or prove detrimental to the neighborhood.

H. 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.

I. No permit shall be issued or renewed under this bylaw until the applicant has submitted to the Board current and complete information on the actual and proposed depth of excavation and the maximum groundwater elevation throughout the entire area proposed to be excavated.

J. The removal of soil, loam, sand, gravel or other earth material from land in any district which falls within the Wetlands Act and local bylaw is prohibited, unless expressly allowed under the agricultural provisions of said Act or by-law.

K. No earth removal operation shall be permitted adjacent to any sensitive receptor or area unless mitigation measures approved by the Board, and consistent with any related decisions by the relevant review board, committee or agency, can be implemented.

L. No permit for earth removal shall be issued if such removal will result in traffic hazards in residential areas or congestion or physical damage to streets, roads or ways.

Section 8 Permit Renewal.

8.1 In its discretion, the Board may annually grant a further permit extension for one additional year, not to exceed five years in total. However, no permit extension shall be issued unless the applicant has conformed to all requirements of the original and each extended permit. Sixty days before the annual renewal date, the applicant must file a written request to the permit granting authority for an extension.

8.2 Permit renewal applications shall be accompanied by an operations plan for the permit period being applied for and an updated site plan.

8.3 Any application for renewal not submitted within the time required by this bylaw shall be treated as a new application.

8.4 Each renewal application shall include all of the information required by the Board and shall specify the number of cubic yards of material removed during the prior permit term and shall be accompanied by an elevation plan on a 50-foot grid prepared by a Registered Civil Engineer, showing before, after and proposed final elevations.

Section 9 General Administration.

9.1 The Board or its designated representatives may enter upon the premises involved from time to time to inspect and ensure proper conduct of the work.

9.2 The Board may adopt and may from time-to-time revise a schedule of reasonable fees to cover the costs associated with the administration of this bylaw.

9.3 The Board may engage engineers, scientists, financial analysts, planners, attorneys or other appropriate professionals, who can assist the Board in analyzing a project or application to ensure compliance with all relevant laws, bylaws, standards 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.

9.4 The Board may adopt and from time-to-time revise regulations for the imposition of reasonable fees for the employment of such outside consultants

9.5 The Board or its designated representatives reserve the right to inspect the applicant's records at any time.

Section 10 Rules and Regulations. The Board may adopt and amend reasonable rules and regulations to carry out the purpose of this Bylaw. Said rule-making authority includes, but is not limited to, regulations for conducting public hearings, defining the scope and applicability of exemptions and establishing information needs and criteria for determining whether an earth

removal project is likely to result in a nuisance or if it will otherwise create a risk of harm to public health, safety and welfare, and/or natural resources.

Section 11. Enforcement.

11.1 The Board may modify, suspend or revoke any permit issued pursuant to this bylaw for any violation of this bylaw or regulations adopted pursuant thereto or any conditions imposed by the Board, or if it is determined commercial mining is occurring. Such modification, revocation or suspension may take place after a hearing held by the Board of which the permit holder is given seven (7) days written notice. Such notice shall be deemed given upon mailing same, certified mail, return receipt requested, to the address listed on the permit application.

11.2 This bylaw may be enforced by the Town's Building Commissioner or his/her designee. Whoever violates any provision of this bylaw may be penalized by a noncriminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition bylaw. If noncriminal disposition is elected, then the non-criminal fine for each such violation, if not otherwise specified, shall be \$300 for each day and for each unit of removal on which a violation exists

11.3 Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

11.4 Whoever violates any provision of this bylaw may be penalized by indictment or on complaint brought in the district court. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

11.5 The Board may enforce this bylaw or enjoin violations thereof through any lawful process, and the election of one remedy by the Board shall not preclude enforcement through any other lawful means.

Section 12 Severability. The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.