

MAINTENANCE AND PROTECTION OF TRAFFIC

Section 4. The contractor or permit holder shall maintain traffic and protect the public from damage to person and property, within the limits of and for the duration of the project. Traffic shall be maintained over a reasonably smooth traveled way which shall be so marked by signs, delineation, and/or other methods that a person who has no knowledge of conditions can safely, and with a minimum of discomfort and inconvenience, ride, drive, or walk over all or any portion of the highway under construction where traffic is to be maintained. Maintenance and protection of traffic over any streets during construction shall be considered as important and necessary as is the actual

-44-

construction itself. Special attention shall be given to maintenance of a satisfactory traveled way over weekends, holidays, and during the winter season. Heavy construction equipment shall not be allowed to remain in streets during nonconstruction hours.

DETOURS

Section 5. Permission for traffic detours shall be granted only after formal request and after approval from the Fire Department and Police Department. Proper directional signs and proper detour arrows shall be used during a detour; all signs to meet the Massachusetts Standard specifications.

PENALTIES

Section 6. The Selectmen and/or their agent or agents shall have the authority to immediately revoke the permit upon any violation of the foregoing regulations.

DIVISION IV ARTICLE III

EARTH REMOVAL REGULATIONS

Section 1. Purpose: To insure that permanent changes in the surface contours of land resulting from the removal and realignment of earth materials will leave land in a safe and convenient condition for appropriate reuse without requiring excessive and unreasonable maintenance or resulting in damage to public and private property, as well as to provide that earth removal activities shall be conducted in a safe manner with due regard to safety and with minimal detrimental effect upon environment of the district in which the activities are located.

Section 2. Definitions: For the purpose of this By-Law, "earth" or "earth materials" shall be considered to refer to and to include loam, sand, gravel, stone, ore, peat, humus, clay, rock, soil, or any combination of these.

Section 3. Required Permit & Exceptions: Except as provided otherwise in this By-Law, no earth shall be removed without the issuance of a permit from the Board of Selectmen, as the permit granting authority.

As part of and set forth in such permit shall be the restriction forbidding excavation to a depth below the mean grade of an adjacent serving street, in the immediate vicinity of the street.

This By-Law shall not apply to the moving of earth materials under the provision of a duly approved subdivision plan, to work necessary for the construction of streets and the installation of utilities, to such work in connection with the excavation and grading of land incidental to construction of a duly permitted structure, not to work performed in normal

construction, maintenance or improvement of land in cranberry related activities or other agricultural use.

Section 4. Permit Procedures and Requirements:

(a) For all earth removal operations, a written permit must be obtained by the Board of Selectmen. An application for a permit shall be accompanied by an original plan and nine copies to the Board of Selectmen, who shall give the applicant a dated receipt. Within four business days, the Board of Selectmen shall transmit one copy of the application and plans to each of the following:

-45-

The Board of Health, the Building Inspector, the Conservation Commission, Municipal Maintenance Department, the Police Chief, the Town Clerk, the Town Administrator, and the respective Water Department. Each review board or position shall review the plan and application and within twenty-one days of receipt shall signify approval or objection, in writing, to the Board of Selectmen. Along with the application, the petitioner shall pay a fee, as determined by the Board of Selectmen, to cover advertising fees and expenses.

(b) Before granting any such permit, the Board of Selectmen shall give due consideration to the location of the place from which it is proposed to remove earth, to the general character of the neighborhood surrounding such location and to the effect of the proposed removal on such neighborhood, to the amount of noise, dust and vibration likely to result from the proposed removal, to the extent, depth and contour of the location and surrounding neighborhood from which such removal is proposed, to the general safety of the public on the public ways giving access to and in the immediate vicinity of such location, and to the use to which such location has been put prior to the application for a permit. A determination shall be made as to the existence of any other gravel pit in the close vicinity of the proposed location, the existence of which shall normally be considered an inhibiting factor in granting the proposed permit. No permit granted by the Board of Selectmen shall be valid for a period in excess of three years from its date of issue.

(c) **Site Plans:** Site plans shall be filed in triplicate with the Board of Selectmen for any land which is used or intended to be used for the extraction or removal of earth materials. Site plans of the removal areas shall be prepared by a registered professional engineer or a registered

land surveyor at a scale of 40 feet to the inch and shall be in accordance with and indicate the following:

1. Lot lines and ownership
2. Existing topography and proposed elevations at 2-foot contour intervals.
3. Names of abutters as found on the most recent tax list.
4. Adjacent public streets and private ways.
5. Proper provisions for safe and adequate water supply and sanitary sewerage and for temporary and permanent drainage of the site.
6. A location plan at a scale of 1"=1,500'.
7. Plan for regarding of all or parts of the slopes resulting from such excavation or fill.
8. Plan for replacement of at least six inches of topsoil over all excavated, filled, or otherwise disturbed surfaces and seeding with a perennial cover crop, reseeded as necessary to assure uniform growth and soil surface stabilization.
9. Hours of operation and plan for lighting, if night operation is contemplated.
10. Proposed lateral support to all adjacent property.
11. Proper provision for vehicular traffic, service roads, control of entrances and exits to highways.
12. The relation of future buildings, temporary buildings, and operations machinery to

the removal areas.

13. Delineation of removal areas and depths.
14. Provision for a substantial fence enclosing the excavation or quarry where any excavation or quarry will extend under original ground level or will have a depth of ten feet or more and create a slope of more than one foot in two feet. Such fence shall be located ten feet or more from the edge of the excavation or quarry, and shall be at least six feet in height.
15. Method of earth removal.
16. Distance of excavation to street and lot lines.

-46-

17. Proposed disposition of boulders and tree stumps.
18. Cleaning, repair, and/or resurfacing of streets used in the removal activities which have been adversely affected by the removal activity.

(d) Land Restoration Plan(s): Land restoration plan(s) must be submitted to and approved by the Board of Selectmen subject to the regulations set forth in the following paragraphs:

1. The Board of Selectmen may require up to three approved alternative future land restoration plans be submitted for such land as is sued for the extraction of earth materials. It is recognized that land restoration of the removal areas is in the public interest.
2. Said land restoration plan and its implementation applies to the conversion of the abandoned site and its planned restoration. It is, therefore, required that any land restoration plan correspond to a situation which could reasonably occur in the immediate future (zero to five years), and be revised as necessary as the existing physical character of the removal area changes.
3. The land restoration plan or any part thereof which reasonably applies to an area which has been abandoned from removal use shall be put into effect within one year of the abandonment of said operation.

(e) Reports, Fees and other Conditions:

1. Records showing the amount of earth removal shall be provided monthly by the permit holder, and quarterly reports, certified by a registered professional engineer, shall also be submitted to the Board of Selectmen or its designee. The method of measurement of materials removed shall be determined by the Town's engineer. The Board may require more frequent reports if it deems that circumstances warrant them. Reports to the Board by said engineer shall be at the permit holder's expense.
2. The permit holder shall be responsible for all spillage onto the public ways of the Town. If for reasons of safety, it becomes necessary for the Town to clean and remove such spillage, the cost shall be charged to the permit holder. The Town may halt all earth removal activities until such time that said expenses are reimbursed.
3. The permit holder shall be responsible for all damage to public ways from traffic occurring in connection with the permit, entering and exiting the site.
4. The Board of Selectmen shall require a bond or other security to insure

compliance with its conditions of authorization unless, in a particular case, it specifically finds that such security is not warranted, and so states its decision, giving the specific reasons for its finding.

5. This permit is subject to a fee of \$0.25 per cubic yard or more, as determined by the Board of Selectmen, payable to the Town of Wareham. Any inspections by the Town's engineer to ensure that the work being done follows the approved plans shall be paid by the permit holder.

-47-

6. The Earth Removal Permit is not transferable without prior approval from the Board of Selectmen. Transfer of equity ownership or legal interest in the subject property shall be considered a transfer. The pledging of such, to secure a mortgage or other loan shall not be considered a transfer unless the lender should acquire ownership or interest by foreclosure.
7. The applicant agrees by acceptance of the permit to allow the Town or its representative free access to the site to conduct inspections to determine compliance with the conditions of the permit at any time without notice.

(f) Permits in Proposed Subdivisions: It is the intention of this section that the removal of earth materials in an amount in excess of five cubic yards from any parcel of land for which a definitive subdivision plan has been prepared shall be allowed only in the same manner as removal from other parcels of land in the Town. Consequently, approval of a subdivision plan by the Planning Board shall not be construed as authorizing the removal of material in excess of five cubic yards from the premises.

(g) Renewal of Permit: In the renewal of any permit upon its expiration, the Board of Selectmen shall give full consideration to the manner in which the permit holder has lived up to his contractual obligations with the Town. Under no circumstances shall renewal of a permit be granted where there has been a history of repeated failure to live up to restrictions and requirements of the previous permit.

(h) Penalties: The penalty for the violation of this By-Law or for the removal of any earth materials within the Town without a permit hereunder, except as herein before provided, shall be as follows:

1. For the first offense, fifty dollars.
2. For the second offense, one hundred dollars.
3. For each subsequent offense, two hundred dollars and/or revocation of the earth removal permit at the discretion of the Board of Selectmen.
4. Each truck load, of any size, of earth removed from the original site shall constitute a separate offense under this By-Law.
5. In the event that an earth removal project has begun without a permit, the Town's engineer shall, at the property owner's expense, determine the number of cubic yards removed without a permit in order to assess the number of offenses.

Such penalties shall be in addition to the existing rights of the Town to enforce its By-Laws.

(i) Existing Operations: Any existing earth materials removal activity operating under a permit previously issued by the Board of Selectmen may be continued until the expiration of said permit, provided that such earth removal activity does not adversely affect the water table or

the natural or engineered drainage of the Town, and provided that such earth removal activity does not create unreasonable noise, dust, fumes or other effects which are detrimental to the public health or welfare. Discontinuance of use for more than twelve (12) consecutive months shall be deemed to constitute abandonment.

(j) Validity: The invalidity of any section or provision of this section shall not invalidate any other section of provisions thereof. . (Article 38 of April 24, 2006 Special Town Meeting; Approved by Attorney General July 27, 2006).

-48-

**DIVISION IV
ARTICLE IV
DENIAL, REVOCATION OR SUSPENSION OF LOCAL
LICENSES/PERMITS TO DELINQUENT TAXPAYERS**

Acceptance of provisions of Massachusetts G.L. Chapter 40, Section 57 relative to the denial, revocation or suspension of local licenses and permits for failure to pay municipal taxes or charges and to adopt a By-Law pursuant to said Section 57 of Chapter 40 relative to the denial, revocation or suspension of licenses and permits to delinquent taxpayers in the following form:

Section 1. The tax collector shall annually furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than twelve month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

Section 2. The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers or any party whose name appears on said list furnished to the licensing authority from the tax collector or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list provided, however, that written notice is given to the party and the tax collector, as required by applicable provisions of the law, and the party is given a hearing, to be held not earlier than fourteen days after said notice.

Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension.

Any findings made by the licensing authority with respect to such denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension.

Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the licensing authority receives a certificate issued by the tax collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as the date of issuance of said certificate.

Section 3. Any party shall be given an opportunity to enter into a payment agreement ,