

**Appendix C**

To see if the Town will vote to amend the Town of Acushnet General Bylaws, Article VI, Soil Conservation Bylaw, as shown in Appendix C, or take any other action thereon or in relation thereto. (Only changes are listed below: additions are in underline and italics; deletions are shown with strike-through. All other language not shown is unchanged.)

**SOIL CONSERVATION  
FOR THE TOWN OF ACUSHNET**

**Section 1**

A. The members of the Board shall consist of ~~one member of the Board of Selectmen, or a designee appointed by the Board of Selectmen, one member of the Planning Board, Board of Health, Conservation Commission and the Highway Superintendent, or a designee from the Highway Department, or a designee from any one of these Boards~~ the Board of Selectmen. Each of the Boards having a representative on the Soil Conservation Board shall select its representative by a majority vote of the Board ~~so represented at any meeting at which a quorum is present.~~

C. Organization

- 1. A quorum for the conduct of any and all business shall be ~~three~~ two members.
- 2. The affirmative vote of at least ~~three (3)~~ two (2) members shall be required for the recommendation to grant, modify, revoke, or remove any permit authorized hereunder.
- 6. The Board may appoint an ~~inspector~~ enforcement officer who need not be a member of the Board. The ~~inspector~~ enforcement officer shall keep a record of all duties performed and inspections made.

**Section 2  
Definitions**

- A. For the purpose of this by-law, “earth” shall include soil, loam, sand, gravel, clay, rock, bedrock, or other allied products.
- B. For the purpose of this by-law, the ~~“inspector”~~ “enforcement officer” shall be the inspector or inspectors appointed by the Soil Conservation Board to carry out these duties.
- A. As used in this by-law, the following terms shall have the meanings indicated.

**BULK MATERIAL** is stone, sand, gravel, soil, aggregate material less than twelve inches in length or diameter, and other organic or inorganic particulate matter.

**DISTURBED SURFACE AREA** means a portion of the earth's surface which has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural soil condition. This definition excludes those areas which have: (a) been restored to a natural state, such that the vegetative ground cover and soil characteristics are similar to adjacent or nearby natural conditions; (b) been paved or otherwise covered by a permanent structure; or (c) sustained a vegetative ground

cover of at least 70 percent of the native cover for a particular area for at least 30 days.

**DUST SUPPRESSANTS** are water, hygroscopic materials, or non-toxic chemical stabilizers used as a treatment material to reduce fugitive dust emissions.

**EARTH-MOVING ACTIVITIES** means the use of any equipment for any activity where soil is being moved or uncovered, and shall include, but not be limited to the following: grading, earth cutting and filling operations, loading or unloading of dirt or bulk materials, adding to or removing from open storage piles of bulk materials, quarry operations, weed abatement through disking, and soil mulching.

**DUST CONTROL SUPERVISOR** means a person with the authority to expeditiously employ sufficient dust mitigation measures to ensure compliance with this regulation and any permit or condition issued thereunder.

**HIGH WIND CONDITIONS** means that instantaneous wind speeds exceed 20 miles per hour.

**LARGE OPERATIONS** means any active operations on property which contains 50 or more acres of disturbed surface area; or any soil removal operation with a soil removal throughput volume of 15,000 cubic yards during the most recent 365-day period.

**FILL** means soil, sediments, rocks/stones, or other organic or inorganic material obtained off-site that is used to fill holes, pits or depressions; create mounds; or otherwise artificially change the grade or elevation of real property.

**SOIL REMOVAL** means the use of any equipment for any activity where soil is being moved or uncovered, and shall include, but not be limited to the following: grading, earth cutting and filling operations, loading or unloading of dirt or bulk materials, adding to or removing from open storage piles of bulk materials, landfill operations, weed abatement through disking, and soil mulching.

**OPEN STORAGE PILE** is any accumulation of bulk material, which is not fully enclosed, covered or chemically stabilized, and which attains a height of three feet or more and a total surface area of 150 or more square feet.

**PROPERTY LINE** means the boundaries of an area in which either a person causing the emission or a person allowing the emission has the legal use or possession of the property.

**WATER TABLE** means the spring high water table established from a test pit or piezometer and the level related to a permanent monument on the property.

**Section 3**  
**Earth Removal Procedure**

- A. No earth shall be removed from any parcel of land within the Town except as hereafter provided, and only in accordance with a written permit issued by the Board of Selectmen. The Board of Selectmen may grant a permit for such removal and for temporary structure accessory thereto, in accordance with the procedure hereafter set forth for special permits. No permit for removal shall be granted unless the Board of Selectmen finds that such removal (subject to the conditions imposed by the permit) will not be contrary to the best interests of the Town, and no removal operations subsequently conducted under such permit shall continue if contrary to such interests. For this purpose, removal of earth material shall be considered contrary to the best interest of the Town which **(1)** will be injurious or dangerous to the public health or safety, **(2)** will produce noise, dust, or other effects observable at or beyond the lot lines in amounts objectionable or detrimental to the normal use of adjacent property, **(3)** will result in transportation of materials on ways giving access to the land in question which will cause traffic congestion or hazards, **(4)** will result in transportation which will cause undue injury to the roadway surfaces, **(5)** will result in change in topography and cover which will be disadvantageous to the most appropriate use of land on which the operation is conducted, or **(6)** will have a material adverse effect on the health or safety of persons living in the neighborhood, or on the use of amenities of adjacent land. **(7) Will result in transportation of materials in excess of the Federal truck weight limits of 80,000 pounds.**
- B. Any person wishing to remove such material from a property in the Town shall file a formal application with the Board, which application shall include the following specific information and supporting documentation:
5. The proposed method of performance security to be used or a performance bond of ~~\$2,000.00~~ \$10,000.00 per acre to secure a permit.
  6. A plan and representative profiles of the area covering the permit prepared by a Registered Professional Engineer, from which final grades may be established. Topographical plans depicting existing and proposed grades. A reclamation plan prepared by a Professional Engineer with all associated costs and requirements to complete the reclamation of the entire property.
  8. In approving the issuance of a permit, the Board shall impose reasonable conditions, especially designed to safeguard the neighborhood and the town, as follows:
    - b. The placing of swales, basins, check dams, topsoil and planting of ~~grass~~ vegetation necessary to control erosion.
    - g. Routes of travel ~~or~~ and number of trips for transportation of material.
    - h. Control of temporary or permanent drainage, discharge and compliance with Article 9 of the town bylaws.

- k. At the conclusion of every day's operation, the vertical bank shall be caved into a slope no greater than a 2 to1 vertical slope to protect public safety.
- l. All soil removal activities that exist as of the effective date of this regulation must apply for a permit within sixty (60) days of such effective date.

For all active operations or large operations requiring a permit under this Regulation, the Board may consult, at the applicant's expense, and pursuant to G.L. c. 44, § 53G, a Professional Engineer and/or Licensed Site Professional (LSP) registered in the Commonwealth of Massachusetts, approved of or chosen by the Board. Said Engineer or LSP, if retained by the Board, shall assist the Board with analysis of the proposed soil removal activities so that the Board may determine whether such project may result in the removal of contaminated soil or whether such project may otherwise impact the public health safety or welfare or the environment.

Any appeal of the Board's selection of a Professional Engineer and/or Licensed Site Professional (LSP) may be filed pursuant to G.L. c. 44, § 53G.

The Board's hearing may be continued as may be necessary to receive any and all applicable and relevant evidence. In all cases, it shall be the Applicant's burden to demonstrate that the proposed soil removal will not adversely impact the public and or be contrary to the benefit of the town. The Board may deny a permit if the Applicant fails to supply adequate materials to evaluate the project or if the soil removal activities will adversely impact the public and or be contrary to the interests of the town.

- C. No permit for the removal of earth shall be issued by the Board of Selectmen, except as provided in Section 4 below, until a public hearing has been held by the Board, notice of which shall have been given by them at least fourteen days in advance, in a paper of general circulation, published not less than weekly, in the Town of Acushnet, the posting of copies thereon on municipal bulletin boards and the mailing of copies thereof to the abutting property owners within a one (1) mile radius, including those across any streets and a recommendation has been received in writing from said Board.

#### **Section 4 Exceptions**

- A. No permit shall be required for the following purposes:
  - 1. ~~Moving of earth on an individual parcel.~~
  - 3. When such earth removal is ~~not~~ necessary in connection with the construction of a building being built in accord with a permit issued by the

Building Inspector. The amount to be removed to be limited to the volume of earth necessary to construct the structure authorized by the permit.

~~4. When such earth is not needed in connection with the construction of a private road.~~

~~C. Earth removal activities in lawful operation on any parcel of land at the time this By law is adopted may continue unless and until abandoned for more than twelve (12) consecutive months.~~

### **Section 5 Specific Limitations**

- A. No permit for the removal of earth shall be approved by the Board of Selectmen except upon the condition that a drainage layer of not less than eighteen inches (18) in depth, with a permeability of <10 -5 and a cover of topsoil of not less than 4 inches in depth shall be replaced or allowed to remain, except that it shall be no greater than the depth of the topsoil, if any, shown on submitted plans, and except where, due to construction of roads, buildings or other permanent physical features, such provision is impractical.
- B. Every permit granted under this bylaw shall be valid for a period not to exceed one year. Requests for renewal must be submitted no later than the end of the 10th month following issuance, with decisions on renewal to issue within thirty days of such request. Renewals shall be granted based upon compliance with the terms of the underlying permit. Any expansion or material modification of the underlying soil removal activities, as may be determined by the Board's Agent, shall require a new hearing.

### **Section 7 Fees**

- A. The Board of Selectmen shall establish such fees as it shall find necessary for the administration of this By-law, including for the issuance of the original permit, renewal permits, semi-annual inspections, complaint inspections and special inspections.

### **Section 8 General Administration**

- A. The Board or inspector may enter upon the premises involved ~~from time to time~~ to inspect and ensure proper conduct of the work. (These words must be incorporated in permit and appear thereon.)
- C. Prior to the anniversary date of the permit, each petitioner shall specify the number of cubic yards of material to be taken out of his pit the following year. At the end of the year, he shall file a statement of how many cubic yards have been ~~taken~~ removed during that preceding year. Annual removal shall not exceed the amount ~~stated~~ permitted at the beginning of the year unless the Board of Selectmen, on the advice of their inspector, determines there will be no adverse effect to the Town.

- D. A permit shall be issued only after full payment of all annual fees and charges and receipt of a bond or other approved financial assurance.

### **Section 9 Violations**

- A. The inspector, if he concludes that there has been a violation of this By-law, he or she shall hand deliver or send to the person in charge or permit holder, by certified mail, return receipt requested, to the address stated on the initial application, or any other manner provided for by law, a notice ordering a cessation of the improper activities.
- B. If a permit holder or other offender persists in such violation, the inspector shall seek the imposition of the penalties authorized by paragraph 17, of Section 21D of Chapter 40, G.L., through appropriate legal action; and the penalty for removing earth in violation of this By-law shall be a fine of not more than ~~fifty (50)~~ two-hundred dollars (\$200) for the first offense after such warning; not more than ~~one hundred (100)~~ three-hundred dollars (\$300) for the second offense; and not more than ~~two hundred (200)~~ three-hundred dollars (\$300) for any subsequent offense. Each day or part thereof shall constitute a separate offense.

### **Section 10**

Any soil or loam shall, in connection with removing sand and gravel under this permit, be stockpiled on the premises in accordance with a stockpile plan approved by the Board.

As soon as practicable, and in accordance with good conservation practices not to exceed 90 days, all stripped areas shall be graded and covered with a drainage layer, topsoil and loam, ~~and~~ and vegetated in a proper soil conserving manner.

As soon as practicable, and in accordance with good conservation practices not to exceed 10 days, as soon, as the loam is restored, it shall be planted with a suitable cover crop approved by the Board to prevent erosion of the surface.

No ~~earth grave~~ shall be removed within four feet of spring high water table. This elevation shall be established from a test pit or piezometer and the level related to a permanent monument on the property. This information shall show on the topographic plan.

No mounds of loam, fill, silt, waste, gravel, stones, brush, sand, etc. are to be left at the completion of this operation, or upon the termination of this permit.

At the completion of the operation, or upon the termination of this permit, any uncovered portions of the pit shall be sloped and reclaimed ~~24-garred~~ as provided in the paragraphs above.

The conveyance of the property covered by this license by the licensees, or either of them, shall result in the termination of the right to remove any further earth, sand, rock and gravel under this permit and the premises shall be restored as above provided. This termination shall not be effective if prior to such conveyance as bond conditioned upon

the full performance of all the terms and conditions of this license and with sureties satisfactory to the Soil Conservation Board of Acushnet shall be filed with such Board.