

## ADDITIONAL PROPOSED CHANGES ARE IN RED THROUGHOUT THIS DOCUMENT

### Section IV – Special Use Regulation

B. Uses allowed only by special permit authorized by the Planning Board

#### 2. Earth Moving

##### A. Purpose

Earth moving operations, including quarries, have been an important industry and have helped maintain a strong rural economy in the town for many years. This Bylaw is set forth to ensure the continuation of earth moving operations by right with regard for the protection of human health, public safety, welfare, and the Town's natural resources including its soil, surface and groundwater, and naturally occurring vegetation due to improper or uncontrolled moving of earth, trees, and vegetation; and to protect the right of every resident to enjoy the natural, scenic, historic, and aesthetic qualities of the environment.

##### B. Definitions

**ABUTTERS:** The owners of property within 500 feet of the perimeter of the subject property.

**APPLICANT:** The owner of land from which earth will be moved or the person of lawful standing in the stead of such owner. Any person, company, or agent, not the actual property owner must have the owner's written permission to apply for an application.

**BOARD:** The Planning Board of the Town of Goshen

**EARTH:** This term shall include soil, loam, sand, gravel, clay, peat, rock, or other earth material in solid form.

**EARTH MOVING OPERATION:** Any commercial mining, stripping, quarrying, filling, digging, or blasting of earth originating from the Town of Goshen and its transportation into or out of the Town of Goshen. **Earth moving includes the subdivision of land for residential or commercial purposes.**

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

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

**LOAM OR TOPSOIL:** A soil consisting of a friable mixture of varying proportions of clay, sand, silt, and organic matter.

**PERMIT GRANTING AUTHORITY (PGA):** The Permit Granting Authority, is the Planning Board for the purposes of this Bylaw.

**PROCESSING:** The sorting or separation of earth materials into distinct categories based on particle/ slab size or type.

**RECLAMATION:** **The combined process by which adverse environmental effects of earth moving are minimized and the lands involved are returned to a beneficial end use. End uses may be open space, wildlife habitat, agriculture, residential, or commercial development. This protects the environment through reduced erosion and wildlife habitat allows productive end land uses and has the potential to increase land values and tax revenues.**

**SITE:** A distinct portion of one or more contiguous lots, under the same or different ownerships, on which an earth moving operation is conducted, or is proposed to be conducted, under the Permit.

**SLOPE:** An area that is steep, as measured by the vertical rise over the horizontal distance, expressed as a percentage or ratio. For example, a rise of one foot over three 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.

### C. Applicability

#### 1. Existing Earth Moving Operations:

An earth moving operation that is in lawful operation on the date of adoption of this Bylaw, and a landowner that already has a permit on the date of adoption of this Bylaw, may continue until such time as either the earth moving operation, or the permitted use is abandoned. Existing operations are required to submit the information in this Section within 6 months of the acceptance of this bylaw. This is for information purposes only. **If the PGA determines that the information provided does not meet the requirements of this bylaw, the PGA shall notify the business owner in writing and specify what information is lacking. Business owner shall then have 60 days from receipt of the notice to either submit the requested information or explain in writing to the PGA why the information cannot be obtained and request a limited waiver.**

- a. The location of the existing **earth moving operation and highlight the area of** active operations, including Assessors' Plot and Lot numbers, with a map showing defined monumented boundary markers of the entire site and highlight the area in acres of the active earth moving operation **for the next 5 years.**
- b. The legal name and address of the owner of the property involved.
- c. The legal name and address of the **business owner if different from the property owner**, which address shall be used by the Board for all correspondence hereunder.
- d. Names and addresses of all abutting property owners **at the time of submitting the information required in C1.**, including those across any streets **within the 500 ft as defined in ABUTTERS.**
- e. The proposed method of performance security to be used or a performance bond with the premium to be paid by owner and the declaration page reviewed by the PGA **before the bond is issued.**
- f. **Omitted for existing operations.**
- g. Topographical plans depicting the **proposed active operation for the next 5 years.**
- h. **An estimated** date the operation began.
- i. A reclamation plan prepared by a licensed professional, with all associated costs and requirements to complete the reclamation of the area of active operations. A performance bond **or other method of performance security** with the premium to be paid by the owner with the Town of Goshen as a named insured party and is indemnified by said policy. The PGA must review the declaration page before **permit is approved. The Operation and Reclamation Plan of the area of active earth moving with the performance bond or other method of performance security will be updated/ reviewed every 5 years in writing to the PGA for continuation of the permit. The plan can be updated before the 5-year period, if needed.**
- j. The anticipated date of completion/cessation of the operations or if this will be a continuous multiyear operation.

#### 2. Earth moving **operations** of 2,000 cubic yards or more of material per calendar year (January 1 through December 31) shall require a Permit by providing in writing to the PGA/Planning Board the following information:

- a. The location of the proposed earth moving operations, including Assessors' Plot and Lot numbers, with a map showing defined monumented boundary markers of the entire site **and area highlighted in acres of the active earth moving operation for the next 5 years.**

- b. The legal name and address of the owner of the property involved.
- c. The legal name and address of **the business owner if different from the property owner**, which address shall be used by the Board for all correspondence hereunder.
- d. Names and addresses of all abutting property owners, **at the time of submitting the information required in C2.**, including those across any streets **within the 500 ft as defined in ABUTTERS.**
- e. The proposed method of performance security to be used and a performance bond with the premium to be paid by owner and the declaration page reviewed by the PGA before the permit is issued.
- f. A plan and representative profiles of the area covering the permit prepared by a licensed professional, from which final grades may be established.
- g. Topographical plans depicting existing and proposed grades with the **proposed active operation for the next 5 years.**
- h. The date the operations will begin.
- i. A reclamation plan prepared by a licensed professional with all associated costs and requirements to complete the reclamation of the area of active operations. A performance bond with the premium to be paid by the owner with the Town of Goshen as a named insured party and is indemnified by said policy. The PGA must prereview the declaration page before **permit is approved. The Operation and Reclamation Plan of the area of active earth moving with the performance bond or other method of performance security will be updated/reviewed every 5 years in writing to the PGA for continuation of the permit. The plan can be updated before the 5-year period, if needed.**
- j. The anticipated date of completion/ cessation of the operations or if this will be a continuous multiyear operation.

#### D. Permit Procedures

- 1: Existing Earth Moving operations that have been in continuous operation at the time this bylaw is accepted by the town will be granted a Permit by right. The information in Section C1. must be filed with the PGA within 6 months of this bylaw being accepted by the Town.
- 2: Any new operations or person wishing to obtain a Permit to move earth material to and/or from a property in the Town, or to use any public way within the Town for transporting such material, shall file a completed application **with information in Section C2 for a Permit with the PGA.**
- 3: Any Permit issued is non-transferable and shall automatically expire upon completion of the earth moving for which it was issued or at such time as may be specified in said Permit. If an Earth Moving site is sold as a business that will continue the existing ongoing operations at the same site, the permit is allowed to be transferred with approval of the PGA.

#### E. Permit Granting Authority Review

The PGA will consider the following when determining whether to issue a permit:

- 1: Will the activity endanger the public safety, public health or constitute a nuisance outside the permitted operating hours
- 2: Will the activity result in the transportation of materials in such manner as to cause traffic congestion, spillage, or hazards, particularly on densely populated residential streets outside normal business hours.
- 3: Proximity of the proposed use to adjacent uses.

Applicants shall submit a written statement regarding how each of the previous items will be addressed and/or mitigated.

F. General Regulations and Standards of Operation **That Apply to New and Existing Operations**

1. Earth Moving activities shall be allowed from 7:00 AM to 6:00 PM Monday through Friday and 7:00 AM to 4:00 PM on Saturday. This shall not be interpreted to limit delivery of processed or finished materials in case of public emergencies.
2. Earth Moving operations shall maintain the following setbacks
  - a) Two Hundred Fifty (250) feet from any residential dwelling and Fifty (50) feet from a property line.
  - b) A 50-foot temporary buffer for active Earth Moving operations adjacent to a public way will be maintained. This buffer may be removed and reclaimed in maximum 250-foot sections and in a maximum of 120-day activity periods. Final reclamation setbacks shall be based on approval from the Highway Superintendent.
  - c) 300 feet from a private water supply unless written agreement is obtained from the owner. Public water supplies will follow State and Federal regulations and SWAP (Source Water Assessment Program) reports.
  - d) No crushing, screening or other processing operations will take place within 300 feet of a dwelling unless written permission is obtained from the owner.
3. In approving the issuance of a permit, the PGA may impose reasonable conditions, especially designed to safeguard the neighborhood and the Town, including the following:
  - a. The finished leveling and grading shall be indicated on approved plans indicated and submitted to the Board.
  - b. The placing of swales, basins, check dams, topsoil, and planting of vegetation necessary to control erosion **and/ or visibility of the operations from abutting dwellings.**
  - c. The duration of the earth moving operations.
  - d. The construction of necessary fencing and other protections against nuisances. Boulders may be used for this purpose; boulders not used for this purpose must be disposed of as required by sub-paragraph (i) hereunder.
  - e. Method of earth moving **including method of reclamation to be used during active operations, at completion or cessation of operations.**
  - f. Hours of operation.
  - g. Routes of travel and number of trips for transportation of material of new operations.
  - h. Control of temporary or permanent drainage and discharge.

- i. Disposition of boulders and tree stumps. Boulders may be buried below grade. Stumps may not be buried below the normal grade.
- j. Set and maintain permanent monuments at each property corner.
- k. At the conclusion of every day's operation, the vertical unstable bank (e.g.- sand and gravel) shall be caved in to a slope no greater than a 2 to 1 vertical slope to protect public safety.

4. Other Regulatory Bodies for Earth Moving Operations Beyond This By-Law

a) Earth Moving operations are heavily regulated by a variety of agencies. These agencies include but are not limited to:

- 1. **MSHA. Mining Safety and Health Administration.** Control of noise, dust, and worker safety.
- 2. **EPA and MDEP.** Environmental Protection Agency. Massachusetts Department of Environmental Protection. These agencies regulate water runoff and stormwater on the sites.
- 3. **Bureau of Alcohol, Tobacco, Firearms and Explosives** oversees the contractors who do blasting for the owners or oversee operations who have an employee who is licensed to do on site blasting and storage of explosives. Each of the operations or their contractor advises the **Goshen Fire Chief** and as required, the **State Fire Marshal** when they will be using explosives to blast the rock to be processed.
  - a. An Annual Blasting Permit from the Fire Chief is required. The permit must be renewed if their bond or license to blast expires.
  - b. Communication when an Annual Blasting Permit is issued will be made by the Fire Chief to the abutters. **The Fire Chief and Assessor will work together to determine the Abutters for communication of the blasting permit.** At that time the abutters can request in writing providing a reliable method to be notified within 24 – 48 hours of a **request for use of an annual** permit for scheduling a blast.
  - c. Each time an Earth Moving operation wants to blast they must contact the Fire Chief for **use of their annual** permit and a site visit.
  - d. Blasting is very weather dependent, at times, requiring contact of the Fire Chief the morning of a blast and if weather turns bad, blasting is called off.
- 4. **DOT. Department of Transportation.** Regulates heavy equipment on public ways.

G. Violations and Enforcement

- 1. The PGA or its authorized agent shall enforce this Bylaw, its regulations, and the requirements and conditions of Permits issued thereunder, and may pursue civil and criminal remedies for violations of the same.
- 2. The Building Inspector is authorized to conduct inspections on behalf of the PGA. To the extent permitted by law, or if authorized by the owner, operator, or other person in control of the site, the Building Inspector or other agent of the PGA may enter on the site to conduct inspections.
- 3. The Building Inspector or other authorized agent of the PGA may issue such orders as are deemed necessary to stop violations and ensure compliance with this Bylaw, its regulations, and Permits, including an order to cease and desist operations. Such orders may be issued by certified mail, return receipt requested, or by delivery, to the property owner, Permit holder, or person responsible for operations at the site.
- 4. The PGA may seek injunctive relief to restrain violations or to compel abatement or remediation of violations.
- 5. Any person who violates any provision of this Bylaw, or regulations, Permits, and orders issued there under may be punished by a fine of not more than \$300 per offense. Each day that such violation occurs or continues shall constitute a separate offense.

As an alternative to a criminal fine, the Town may utilize the non-criminal disposition procedures of M.G.L. c. 40, §21D, in which case the Building Inspector shall be the enforcing person. The penalty for the first offense shall be \$100. The penalty for the second offense shall be \$200. The penalty for the third and subsequent offense shall be \$300.

6. If the violator holds a Permit issued under this Bylaw, the PGA may revoke the Permit after a public hearing, at which point all operations shall cease until such time as the necessary measures are taken to assure compliance with this Bylaw and a new Permit is issued.

#### Severability

The provisions of this Bylaw are severable, and the invalidity of any section, subdivision, paragraph, or other part of this Bylaw shall not affect the validity or effectiveness of the remainder of the Bylaw.