

Charlemont Earth Removal Bylaw Public Hearing Version
April 18, 2014

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ARTICLE I - PURPOSE

The purpose of this bylaw, adopted under GL Ch. 40, §21(17) is to promote the health, safety, and general welfare of the residents of the Town of Charlemont, by ensuring that permanent changes in the surface contours of land resulting from the removal and re-grading of earth materials will leave the land in a safe and convenient condition for appropriate reuse without requiring excessive or unreasonable maintenance. Such earth removal activities shall not create any danger of damage to public or private property, and shall be conducted in a safe manner and with minimal detrimental effect upon the district in which the activities are located. This bylaw pertains to all commercial mining, agricultural excavation and excavation due to construction that is not exempt pursuant to Section 4.2 of this bylaw.

ARTICLE II - DEFINITIONS

Agricultural Excavation—The process of removing earth materials as necessary and incidental to prepare a site for specific agricultural use.

Commercial Mining—The business of extracting earth materials from the ground for sale or profit unless conditionally exempted under Section 4.2.

Earth Materials—All naturally occurring solids, liquids, and gases that make up or are found on, in or beneath the soil, including but not limited to clay, gravel, hard pan, loam, peat, rock, minerals, sand, and metals.

Earth Removal—The excavation, processing, and/or removal of earth materials or any action that causes the alteration of land not covered under another permit, within the legal limits of the Town of Charlemont.

Earth Removal Operations or Earth Removal Operations Area shall include all land impacted by the operation (e.g.: pits, fill or storage piles, parking areas, access ways and/or structures).

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Erosion—The process by which the ground surface is worn and carried away by natural forces such as wind, water, ice, gravity, or by artificial means.

Restoration—After an earth removal activity, the process of returning the land contours to safe and usable condition by grading and re-vegetation with suitable stabilizing plantings, or taking other measures pursuant to Section 5.11 of this bylaw.

Seasonal High Water Table—The highest underground level at which the soil and gravel are completely saturated with water, taking into account seasonal changes due to rain or drought. The water table level represents the point at which atmospheric and water pressure are equal over a period of time. The level is dependent upon site-specific factors like precipitation rates, soil permeability, geological formations, drainage patterns and proximity to nearby surface water bodies.

Sediment—Earth Materials or other organic material transported or deposited into any body of water, by the movement of wind, water, ice, gravity, or by artificial means.

Slope—An area that is more or less steep, as measured by vertical rise over a horizontal distance, expressed as a percentage or ratio.

ARTICLE III - EARTH REMOVAL COMMITTEE

3.1: Earth Removal Committee. There is hereby established a five (5) member Earth Removal Committee (ERC) for the Town of Charlemont, comprised of one representative from each of the following Town boards and departments, as appointed by the members of that board or department:

- Board of Selectmen (1 plus one member appointed by BoS)
- Board of Health (1)
- Planning Board (1)
- Conservation Commission (1)

When the ERC is first formed, one member shall be appointed for one year (BoS appointee), two members for a two years BoH and Con Comm), and two members for a three years term (Planning Board and BoS), and their successors shall be appointed for terms of three years. Should a designated member vacate the position prior to the end of the ERC term, that board or department shall appoint another representative for the remainder of the ERC term.

3.2: Quorum. No committee action shall be taken without a quorum of three (3) members (except to continue a hearing in the absence of a quorum), and no decision shall be made without the vote of a majority of the members present.

A vote on a permit for a new Earth Removal Operation requires a positive vote of a majority of the ERC (3).

3.3: Meeting Schedule. The committee shall meet, at a minimum, once a year at a place and time to be determined by the committee, and at such further times as are necessary to conduct business, such as scheduling annual site visits, reviewing regulations.

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3.4 Rules of Procedure

The Board of Selectmen will initiate the appointment of ERC members within 4 weeks after the effective date of this bylaw. The ERC shall convene no later than three months after the effective date. The ERC will adopt Rules of Procedure within two months after its first meeting. The regulations adopted shall include, but are not limited to: the method of application, number of copies to be submitted, filing fees, required exhibits, site plans, site plan review fees, monitoring fees, bond requirements, and the means of compliance, inspection and administration. The provisions of this Bylaw shall be effective notwithstanding the absence or invalidity of rules adopted by the ERC.

ARTICLE IV - EARTH REMOVAL PERMIT REQUIREMENTS

4.1: Earth Removal Permit Required. Except as provided otherwise in this Bylaw (see Section 4.2), no earth materials shall be excavated, deposited upon and/or removed from any lot in the Town of Charlemont without the issuance of an Earth Removal Permit from the ERC.

4.2: Exemptions. An Earth Removal Permit shall not be required for the following activities, provided that the operation does not constitute a nuisance or danger to the public, and conforms to accepted engineering and/or agricultural practices:

- a) Removal of less than 500 cubic yards of earth *not for sale* in an eighteen-month period;
- b) Disturbance of less than one acre of land in any twelve-month period;
- c) Removal of earth incidental to the construction of a building or structure under an existing building permit or special permit;
- d) Excavation for Title 5 (septic system) compliance;
- e) Excavation incidental to or in connection with the construction of sidewalks, driveways, roads and/or the installation of utilities approved under the Town of Charlemont Subdivision Control Regulations;
- f) Excavation in the course of normal and customary agricultural use of land (i.e. land remains in agriculture after completion of earth removal)
- g) The transfer of less than 500 cubic yards of earth from one part of the premises to another part of the same premises; or
- h) The removal of earth in connection with any town, state, and/or federal project.

4.3: Existing Earth Removal Operations. All existing earth removal operations shall be brought into compliance with this Bylaw no later than eighteen months after the effective date and no further earth removal shall take place after that date without a permit hereunder. Such applications shall be submitted no later than 14 months after the effective date so that the Earth Removal Committee can hear and decide all applications from existing earth removal operations before the expiration of eighteen months. A site visit may be conducted before the close of the public hearing.

4.4: Application Requirements. Before a permit for an earth removal operation can be issued, written application accompanied by a site plan shall be submitted on such forms or

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in such manner as the ERC may specify in its rules and regulations. The submission shall include the name, address, and telephone number of each owner of the property to which the permit will apply, and must be signed by all such owners indicating that they have reviewed and approved of such submission.

4.5: Site Plan. A site plan shall be submitted to the Town Clerk. Such plan shall be distributed by the Town Clerk to the members of the ERC and the Agricultural Commission, Fire Department, Police Department, Highway Department, and Board of Assessors. The plan shall be prepared by a registered land surveyor or registered professional engineer and shall include the following information.

A. In relation to the premises (parcel) as a whole:

- a) Locus map including legend and north arrow.
- b) Plans of appropriate scale including:
 1. Location of proposed operation area in relation to parcel boundaries.
 2. Names and locations of abutters and abutters to abutters on all sides within 300 feet, including the location of any buildings and structures.
 3. Existing streets, roads and ways, public and private within 300 feet from parcel boundaries.
 4. Main topographical features of the parcel and surrounding area.
 5. Prime farmland soils located on the subject property.
 6. Protected open space located on the subject property and on abutting properties.
 7. Wetland areas, including perennial and intermittent streams, rivers, swamps, vernal pools, ponds, as well as residential wells and primary re-charge areas to any public water supply on the parcel as well as within 300 feet of the parcel boundaries.
 8. Where relevant: Delineation of the floodplain, as shown in the Charlemont Floodplain Overlay District.

B. For the Earth Removal Operation Area, showing existing conditions:

1. Delineation of total land area (footprint) to be disturbed with reference to the final GPS coordinates of monuments to be located on site.
2. Contours showing existing elevations at two foot intervals.
3. General vegetation characteristics within 300 feet of the proposed work area.
4. Seasonal high water table.

C. Plans showing proposed work. The plans shall include:

1. Buildings, vehicular access ways, parking areas, and storage areas for topsoil, hazardous materials, etc.
2. Easements and/or rights of way and proposed truck routes utilizing public ways in the vicinity.)

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3. Identification of types and quantities of hazardous materials or wastes to be used or stored on the property, including storage areas and provisions for preventing their release into the environment.
4. Temporary erosion and sediment control measures, including drainage systems.
5. Temporary seeding and other vegetative controls.
6. Estimates of the total amounts and types of earth to be removed and the projected life expectancy of the proposed earth removal operation.

D. Plans showing Site Restoration. The plans shall include:

1. Final Contours showing finished elevations at two-foot intervals.
2. Disposition of buildings, equipment or other fixtures and access ways.
3. Erosion and sediment control measures, including drainage systems.
4. Seeding and other vegetative controls.

4.6: Procedural Requirements.

- a) All meetings of the ERC must comply with the requirements of the Open Meeting Law. The ERC shall, within 65 days after the filing of an application for an Earth Removal Permit, hold a public hearing on said application. No permit shall be issued or denied until the public hearing has been held. Notification of the public hearing shall be advertised for two consecutive weeks in a newspaper generally circulated in Town beginning at least 14 days before such hearing, and by posting a written notice in Town Hall. Notices should be sent to the Board of Health, Board of Selectmen, Board of Assessors, Agricultural Commission, Conservation Commission, Planning Board, Police, and Department of Public Works. The secretary to the ERC shall notify all abutters within 300 feet and other parties in interest of the hearing no later than two weeks before the hearing. Advertising, notice, and related expenses shall be borne by the applicant, in addition to filing fees. Any continuation of the hearing beyond the date and time noticed in the advertised hearing notice shall be announced at the hearing for a date, time, and place certain.
- b) Applications for Earth Removal Permits may be granted, denied, or granted in part with conditions and denied in part. The ERC shall render a written decision within thirty (30) days after the last session of the public hearing closes. The conditions of the permit, including the expiration date, shall be clearly set forth on the permit. The ERC shall file its decision with the Town Clerk and notify the applicant and abutters in writing of its decision within seven (7) days of that filing.
- c) No Earth Removal Permit shall be issued for a period in excess of five (5) years. However, permits may be extended annually for up to another five (5) years if the ERC is satisfied that the work is being carried out in accordance with the permit and the extension will not allow for earth removal from a larger land area than allowed in the original permit. A request for an extension must be submitted three (3) months prior to the expiration of the existing permit, including sufficient documentation demonstrating that the conditions of that permit are and will continue to be complied

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with as noted above. No project may be extended beyond a ten (10) year period from the initial date without a new application and full public hearing. Noncompliance with any portion of the expiring permit, or of any other permits granted by the Town of Charlemont, Town Bylaws or regulations, or any state or federal laws shall be grounds for denying any further permits or extensions thereof.

- d) All earth removal operations shall be subject to an annual monitoring visit to be conducted by the ERC in conjunction with the property owner and/or engineer, as appropriate. Failure to comply with the required annual monitoring visit shall constitute a violation of the Earth Removal Permit and shall be subject to the provisions of Article VI, herein, governing violations and enforcement.
- e) Earth Removal Permits shall be issued for a specific location. A permit shall not be transferable to another location unless a new Earth Removal Permit has been approved by the ERC. Any earth removal operation on a lot that is being sold to a new land owner must abide by the permit conditions granted under this bylaw.
- f) The decisions or orders of the Earth Removal Committee shall be final. Further relief shall be to a court of competent jurisdiction.

ARTICLE V - EARTH REMOVAL PERMIT CONDITIONS

5.1: Buffers. No earth removal operation shall be closer than 200 feet to any public road, street or way, or residential water supply nor any closer than 100 feet to the nearest property line before, during or after excavation. This buffer shall be left in its natural, undisturbed state, including maintaining the existing grade and vegetative cover, except for a reasonable access way and unless a more advantageous grading has been agreed upon in writing with an abutter. No excavation shall take place within 100 feet of a stream, water body, wetland or floodplain. Any proposed excavation within wetland resource areas or buffer zones shall require submission of plans to the Conservation Commission according to provisions of MGL Ch.131, Sec.40, The Wetlands Protection Act. All earth removal operations, including but not limited to pits, temporary buildings and equipment storage areas, shall be screened from public view to the extent practicable with fencing and/or vegetation, as appropriate.

5.2: Access Ways. Access ways shall be constructed in such a way as to not disrupt drainage or cause environmental damage, and shall be screened from public view to the greatest extent practicable. Access ways shall include a gate or other secure mechanism to restrict public access to the site. Access roads leading to public ways

shall be treated with oil, stone, or other suitable material to reduce dust and mud for a distance of 200 feet back from said public way. Any spillage on public ways shall be cleaned up by the operator. Before granting a permit, the ERC shall give due consideration to the general safety of the ways in the vicinity and all truck routes may be subject to the approval of the Chief of Police and/or Highway Superintendent. If direct access is to a State Highway, State Regulations apply.

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5.3 Limits of Excavation. No earth removal operation, including storage and/or processing shall be larger than five (5) acres at one time. No excavation shall be conducted less than five (5) feet above the high water table as determined by a certified engineer or hydrologist utilizing a monitoring well, adjacent wells, test bores, test pit, or other suitable means and related to a permanent monument(s) on the property and shown on the plan. A monitoring well must be installed that provides an adequate representation of the water table during the operation of the pit. **This latter requirement may be waved by the ERC only for gravel operations existing at the time this bylaw goes into effect after a review of their present water table monitoring procedures has satisfied the ERC that groundwater quality will be protected. This exemption shall not be carried over into extensions of the 5 year permit limit.** The full extent of the permitted excavation area shall be established with reference to GPS coordinates and identified with monuments on the site to remain in place for the duration of the operation. Restoration shall be undertaken during and after the completion of all earth removal operations in accordance with section 5.9 (c) herein.

5.4: Topsoil Removal. Topsoil and subsoil shall be removed and transported to a designated stockpiling area(s), seeded with an erosion control mixture, and saved for reconstruction of the site. Topsoil and/or loam must remain on site.

5.5: Drainage. Temporary and permanent erosion control including drainage systems must be maintained. Drainage shall not flow directly into streams or ponds and there shall be no accumulation of standing ground water.

5.6: Hours of Operation. The ERC shall determine hours of operation based on location, neighborhood characteristics, and the nature of the operations to be conducted and the materials to be removed. Hours of operation shall not exceed 7 a.m. to 6 p.m. Monday through Friday and 8 a.m. to 1p.m. on Saturday, except that no blasting, drilling, or crushing operations shall be allowed on Saturdays.

5.7: Disturbances. No earth removal operation shall cause vibration, odor or flashing (except for warning devices, temporary construction or maintenance work) perceptible without instruments more than 200 feet from the boundaries of the originating premises. Sound or noise levels shall not exceed 50 dBA, measured at the boundary of a property, except in the case of a duly permitted and adequately noticed use of explosives. Lighting shall not produce illumination beyond the boundaries of the premises. All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing from the load.

5.8: Explosives (Blasting). The use of explosives must be explicitly allowed under an Earth Removal Permit in order to proceed and shall not be permitted without at least 14 days' notice. A notice of intent shall be publicly posted on site and abutters and the ERC shall be notified by certified mail at least 14 days prior to proposed use. Said use shall be done in accordance with regulations for storage or handling of explosives as published by the Commonwealth of Massachusetts (MGL Ch. 148, sec. 9).

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5.9: Hazardous Materials. Storage of hazardous materials including oil, gasoline and other petroleum products shall be protected from weather conditions and placed on a diked impermeable surface.

5.10 Importation of Materials. Plans to import extraneous materials back into the earth removal operation for re-processing need to be specified in the application and reported in writing before the annual visits. Only earth materials shall be imported for use on-site or for re-processing and re-sale.

5.11: Restoration Standards. As soon as possible after closure but no more than five months the site shall be restored according to the following criteria:

- a) No slope shall be left with a slope steeper than 3:1 (33%) unless a different slope has been approved by the ERC.
- b) All debris, stumps, etc., shall be removed from the site and disposed of in an approved location or, in the case of inorganic material, buried and covered with a minimum of two feet of soil.
- c) Ground levels and grades shall be established as shown on the site plan showing final grades. Restoration of areas no longer under excavation shall be required while excavation is occurring on other areas of the site.
- d) Retained subsoil and topsoil shall be re-spread over the disturbed area to a minimum depth of four inches and seeded with a grass or legume mixture. Trees or shrubs of native species will be planted in order to provide screening and natural beauty and to reduce erosion unless the restored site will be used for agriculture or development. The newly planted area shall be protected from erosion during the establishment period using good conservation practices.
- e) Upon completion of the operation, the land shall be left so that stormwater drains from the property at the original natural storm drainage points and so that the area of drainage to any one point is not increased.
- f) Within six months after termination of gravel operations, all equipment, buildings, structures and unsightly evidence of operations shall be removed from the premises. The ERC shall have the ability to request independent testing to determine whether or not the site is contaminated as a result of any aspect of the earth removal operation.
- g) Upon completion of the operation and when final grading has been accomplished, the applicant shall supply the ERC with a plan of the finished site prepared by a registered engineer or surveyor showing contours at two (2) foot intervals. A final site visit by the ERC will conclude the operation (see section 6.7)

ARTICLE VI - GENERAL PROVISIONS

6.1: Enforcement Officer. The Enforcement Officer for the provisions of this Bylaw shall be the ERC or their designee acting as an agent of the Town of Charlemont. The ERC shall have the ability to designate an outside consultant to fulfill the role of Enforcement Officer.

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6.2: Violation. If the ERC believes that there is a violation of approved plans, specifications and conditions of an Earth Removal Permit, or believes that the actual conditions or operations on the premises constitute a nuisance or public danger, the ERC shall order the operator to immediately cease and desist specific activities or their entire operation, pending a review at a posted public meeting after at least 48 hours' notice thereof to the operator, which meeting shall be held within seven (7) days following the initial ERC order. If the violation is immediately brought into compliance, as determined by the ERC and/or their agent, then no public hearing will be necessary. However, the applicant shall have the right to request a public hearing at any time during the review of any purported violation of approved plans. If, after review, the ERC is satisfied that the alleged violation, nuisance, or public danger was corrected or unfounded, it shall revoke or revise its cease and desist order as appropriate. If, after such review, the ERC finds that the permit conditions may be inadequate to protect the public interest and to carry out the purpose of this Bylaw, or that a conditionally exempt earth removal activity may require the imposition of conditions to protect the public interest, it shall schedule a public hearing upon the same notice and hearing requirements as for an original permit. No sooner than seven (7) days after the operator receives certified mail notice of the public hearing, the ERC may revise, revoke, or continue an existing permit, or may impose permit conditions on a previously exempt operation.

6.3: Criminal Penalty. Any person who violates any provision of this bylaw, regulation, order or permit issued there under, shall be punished by a fine of not more than **\$300.00**. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

6.4: Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in M.G.L. Ch. 40 §21D and **the Town of Charlemont Bylaws (12/14/2010)**, in which case the Enforcement Officer shall be the individual designated under 6.1. The penalty for the 1st violation shall be **\$300.00**. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

6.5 Civil Enforcement. The ERC may seek injunctive relief to restrain violations or to compel abatement or remediation of violations of this bylaw.

6.6: Restoration Order. If any earth materials are removed without obtaining an Earth Removal Permit or otherwise in violation of this section, the ERC may order the restoration of the property involved in accordance with the provisions of this section. Such an order of restoration will not constitute a waiver of any other fines or penalties for such violations. Anyone aggrieved by such order may, within seven days of the receipt thereof, request a hearing before the ERC to be held within 30 days. At such hearing the Board may modify, rescind, or uphold its order. The Board's order, if not appealed within seven days of receipt, or as modified, rescinded, or upheld after hearing shall be deemed final action by the ERC.

6.7: Abandonment. An earth removal operation shall be considered abandoned when no significant activity has taken place on the site for more than one (1) year without the written

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consent of the ERC for the suspension or delay of operations. If the owner or operator of the earth removal operation fails to restore a site in accordance with the conditions of the permit and/or the requirements of this section, the Town may seek a court order to enter the property and physically restore the site utilizing the performance bond provided by the applicant.

6.8: Performance Bond: The ERC **may** require, as a condition to granting a permit, that the applicant furnish a performance bond or other acceptable security in an amount sufficient to guarantee satisfactory compliance with the requirements of this bylaw and any other conditions imposed in the permit in the event the Town must restore the landscape. The amount of the bond shall not exceed 125 percent of the anticipated cost of restoration, as established in a fully inclusive estimate of the costs associated with restoration, provided by the applicant and prepared by a qualified engineer. Costs shall reflect prevailing wages and include the costs of repairing any damage to roads in the vicinity as a result of the earth removal operation, as well as a mechanism for calculating increased restoration costs due to inflation. The security shall not be released in whole or in part until a registered professional engineer or a registered land surveyor has certified that the restoration has been completed in compliance with this bylaw, the permit and the plan specifications.

6.9: Severability. The provisions of this Bylaw are severable; and if any provision or application of such provision to any person or circumstance is held invalid or unconstitutional, this shall not affect the remaining provisions.