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noncriminal disposition process as provided in M.G.L. c. 40, §21D and the Town's non-criminal disposition bylaw. If non-criminal disposition is elected, then any person who violates any provision of this Bylaw shall be subject to a penalty in the amount of \$100.

8.6.11.3. Any person found violating any provision of this Bylaw may be penalized by indictment or complaint brought in the District Court. Except as otherwise provided by law and as the District Court may see fit to impose, the maximum penalty for each violation of offense shall be \$100.

8.6.11.4. The Town may enforce this Bylaw or enjoin violations thereof through any lawful process, and the election of one remedy shall not preclude enforcement through other lawful means.

8.6.11.5 Each day a violation exists shall be considered a separate offense.

8.6.12. SEVERABILITY

The provisions of this chapter shall be severable, and if any phrase, clause, sentence or provision of these regulations shall, for any reason, be held invalid or unconstitutional, the validity of the remainder of these regulations shall not be affected thereby.

CHAPTER 9 ENVIRONMENT

9.1 EARTH REMOVAL

9.1.1 PURPOSE

The purpose of this by-law is to promote the health, safety, and general welfare of the residents of the Town of Carver, and to ensure that permanent changes in the surface contours of land resulting from the removal and regrading of earth materials will leave the land in a safe and convenient condition for appropriate reuse without requiring excessive and unreasonable maintenance or creating danger of damage to public and private property, as well as to provide that earth removal activities shall be conducted in a safe manner and with minimal detrimental effect upon the district in which the activities are located. This by law pertains to all commercial mining, agricultural excavation and excavation due to construction that is not exempt pursuant to Section 9.1.8 of this by law.

9.1.2 DEFINITIONS

Earth: all forms of soil, including but not limited to clay, gravel, hard pan, loam, peat, rock, or sand.

Lot/land: a single parcel of land lying in a single body and separated from the owner's or other party's contiguous land by property lines described in a recorded plan or deed.

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Removal: stripping, excavating, commercial mining, agricultural excavation, excavation due to construction or blasting earth and rearranging it on the same lot or carrying it away from that lot.

Property line: a line separating one lot from another.

Owner: the owner of the land from which earth is sought to be removed, including individual owners, realty trusts, companies and corporations, or other legal entities.

Abutters and other parties in interest: abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the site as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or Town.

Restoration: after an earth removal activity, returning the land contours to safe and usable condition and planting appropriate groundcover, or taking other measures pursuant to Section 9.1.5c of this by law.

Commercial Mining: The business of extracting ore, earth or minerals from the ground for sale or profit unless conditionally exempted under Section 9.1.8.

Agricultural Excavation: The process of removing earth or other materials that is necessary and incidental to prepare a site for specific agricultural use. Agricultural excavation may include the creation of wetland resource areas such as ponds, canals, cranberry bogs, and land subject to flooding as defined under the M.G.L. Ch. 131 §40 and as defined in Massachusetts Wetlands regulations 310 CMR 10.00.

9.1.3 EARTH REMOVAL COMMITTEE

9.1.3a. There is hereby established a seven (7) member Earth Removal Committee (E.R.C.). All members must be residents of the Town of Carver. The E.R.C. will consist of three (3) representatives of the Board of Selectmen at which no time shall more than two (2) of the Board of Selectman's representatives be actual members of the Board of Selectman, and four (4) additional members to be appointed by the Town Administrator subject to Section 9.1.3b and endorsed by the Board of Selectmen.

When the E.R.C. is established, one member shall be appointed for a term of one year, one member for a term of two years, and two members for a term of three years, and their successors shall be appointed for terms of three years.

9.1.3b. The membership of the E.R.C. shall be made up as follows:

Three (3) representatives of the Selectmen;

Two (2) members from three (3) nominees submitted by the Cape Cod Cranberry Growers Association;

One (1) member from nominees submitted by the Carver Board of

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Health.

One (1) member of the trucking industry, nominated by the E.R.C.

In the absence of nominees from one or more of these groups, the Town Administrator shall choose members without designation. In no case shall more than two of the appointed members represent the same trade, profession, occupation, or business interest. All members shall serve without compensation and must be endorsed by the Board of Selectman.

9.1.3c. No committee action shall be taken without a quorum of four (4) 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.

9.1.3 d. The committee shall meet, at a minimum, once a month at a place and time to be determined by the committee.

9.1.4 EARTH REMOVAL PERMIT REQUIREMENTS

9.1.4a. Except as provided otherwise in this By-law (see Section 9.1.8), no earth shall be removed from any lot in the Town of Carver without the issuance of a permit from the E.R.C.

9.1.4b. Before a permit for earth removal can be issued or denied, application shall be submitted on such forms or in such manner as the E.R.C. may specify in its rules and regulations. The regulations adopted shall include, but are not limited to: the method of application, filing fees, required exhibits, site plans, site plan review fees, monitoring fees, bond requirements, and the means of compliance, inspection and administration. This By-Law shall be effective notwithstanding the absence or invalidity of rules adopted by the E.R.C.

9.1.4 c. An expedited permit, as outlined in the E.R.C.'s Rules and Regulations, may be issued by the E.R.C provided that the proposed excavation is more than 1000 cubic yards per year, and less than 5,000 cubic yards per year. If deemed necessary by the E.R.C., an expedited permit may be required to have a Public Hearing as outlined in Section 9.1.6 of this by law.

9.1.5 SITE PLAN

9.1.5a. A site plan shall be submitted in the quantities and in the form required by the rules and regulations of the E.R.C. Such plan shall be submitted by the E.R.C. to the Planning Board, Agricultural Commission, Conservation Commission, Board of Health, Board of Selectmen, and Fire Department, Police Department, D.P.W., Board of Assessors and other officers and official boards of the Town for review and comment, as the E.R.C. may direct. A plan shall also be filed with the Town Clerk.

9.1.5b. The site plan shall be prepared by a registered professional Engineer.

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9.1.5c. The plan shall include, but not be limited to, pertinent information on the following: lot boundaries, names of abutting owners and other parties in interest, streets contiguous to the site, vegetation, existing and proposed roadways, existing and proposed buildings, location of sources of water, wetlands, primary recharge areas, the Natural Heritage & Endangered Species Program Priority Habitat of Rare and Endangered Species, sewage disposal, parking, loading areas, easements and rights-of-way, walls, fences, ditches, streams, ponds, and known permanent monuments, and other cross-sections, profiles, and contour maps needed to describe the proposal. The site plan shall show existing intermediate and final ground levels with those of adjacent properties and shall indicate natural surface water flows and drainage ditches if any. The site plan shall also show groundwater elevations before and after removal. The E.R.C. may require drainage computations based on D.E.P. drainage program TR-55 and a sediment control plan for during and after the operation with phasing as required. These computations shall indicate 10 and 100-year storm effects. The plan shall also show a fully complete restoration plan which complies with sound engineering practices and either the Natural Resources Conservation Service Conservation Practice Standard "Land Reclamation, Currently Mined Land", Code 544 or the Natural Resources Conservation Service Conservation Practice Standard "Critical Area Planting" Code 342, as determined by the E.R.C. These requirements are on file at the Board of Selectmen's Office and the Town Clerk's Office.

9.1.5 d. In certain instances as outlined in Section 9.1.4c of this By-Law, the applicant shall be allowed to submit an abbreviated application instead of the full application and site plan described above. The E.R.C. shall specify the exact form of the abbreviated application in its rules and regulations. The abbreviated application shall include, but is not limited to: the name of the owner, the location of construction, the volume of earth to be removed, the rate and time frame of removal, the removal contractor and the time frame of restoration. The application shall be designed in such a way that the applicant can file without assistance from an engineer or other professional. Within 60 days of the filing, the E.R.C. may notify the applicant that the circumstances of the project warrant a full permit application.

9.1.6 PUBLIC HEARING

9.1.6 a. The E.R.C. shall, within 65 days after the filing of a full or abbreviated application 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 written notice to the Board of Health, Board of Selectmen, Board of Assessors, Agricultural Commission, Conservation Commission, Planning Board, Police, and Department of Public Works. The applicant shall notify all abutters and other parties in interest of the hearing by certified mail and present receipts to the E.R.C. Advertising and related expenses shall be borne by the applicant, in addition to filing fees.

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9.1.7 EARTH REMOVAL PERMIT CONDITIONS

9.1.7a. The E.R.C. shall determine that the proposal generally conforms to the principles of good engineering, sound planning, correct land use, and provides for the proper and reasonable reuse of available topsoil if appropriate.

9.1.7b The applicant shall be required to cover all costs for review of the proposal by a Registered Engineer or other expert as the Earth Removal Committee sees fit and chosen by the Earth Removal Committee. The applicant shall also be required to cover the cost of monitoring the project by an agent of the committees' choosing.

9.1.7c A fifty (50) foot undisturbed buffer along all property lines must be maintained at all times. The E.R.C. may in certain instances provide relief from this restriction, if the applicant shows a significant hardship and /or shows that the proposed excavation would not have a detrimental impact on the abutting property.

9.1.7d The E.R.C. shall set hours of operation, specify special truck routes, require bonds for restoration, road repair or other purposes, require monitoring fees, and impose safety-related conditions. The board shall establish provisions for monitoring the permitted earth removal activity on a regular basis, and may, to the extent permitted by law, enter the premises at any time to inspect for compliance with the conditions set forth in the permit.

9.1.7e A bond or other performance guarantee acceptable to the E.R.C. shall be established by the E.R.C. based on the estimated cost of restoration for the project as may be deemed appropriate and shall be held by the Town of Carver until all work has been completed and conditions of the special permit have been met. The E.R.C. shall require the applicant to submit status reports every 90 days to the E.R.C. on an appropriate form as outlined in the E.R.C. rules and regulations and shall require the site to be inspected by the E.R.C. authorized agent and a report filed to the E.R.C. at the end of every 12 month period.

9.1.7f In the event that the subject property is not used for said agricultural purposes after the removal, the E.R.C. may require that a bond or other performance guarantee acceptable to the E.R.C., pursuant to Section 9.1.7e, be provided, based on the estimated cost of restoration that is consistent with NRCS Conservation Practice Standard "Land Reclamation, Currently Mined Land," Code 544.

9.1.7g Applications for permits may be granted, denied, or granted in part and denied in part. The E.R.C. shall have 45 days to render a decision after the last session of the public hearing closes, provided that 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. The conditions of the permit, including the expiration date, shall be clearly set forth on the permit. The E.R.C. shall file its decision with the Town Clerk and notify the

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applicant of its decision within 21 days after the decision is made at a Public Meeting of the E.R.C.

9.1.7 h No permit shall be issued for a period in excess of 12 months. However, permits shall be extended beyond 12 months if the E.R.C. is satisfied with all quarterly reports regarding the project and that the work is carried out under the plans, specifications, and conditions previously approved after public hearing, and does not entail earth removal of a larger quantity or from a larger land area than allowed in the original permit. No project may be extended beyond a five (5) year period without a full hearing of the E.R.C.

9.1.8 EARTH REMOVAL CONDITIONAL EXEMPTIONS

An earth removal permit shall not be required for the following activities, provided the operation does not constitute a nuisance or danger to the public, and conforms to accepted engineering and/or agricultural practices:

A. Earth removal involving less than 200 cubic yards for a single or two family lot or less than 1000 cubic yards for an industrial, multi-family and/or commercial project.

B. Removal necessary for the reconstruction of existing streets and the installation of utilities;

C. Removal performed in connection with any Town, state and/or federal projects;

D. Removal necessary for normal cranberry related activities or other agricultural uses as defined under M.G.L. c131, s 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. This agricultural-related work is further defined as earth necessary to maintain or improve the applicants/owner's contiguous or non-contiguous land for agricultural purposes, and does not include the removal of earth for sale, trade or other considerations. This practice must use best management practices as outlined in the Natural Resources Conservation Service Conservation Practice Standard "Land reclamation, Currently Mined Land", Code 544 or the Natural Resources Conservation Service Conservation Practice Standard "Critical Area Planting" Code 342, as determined by the E.R.C.. Notification of this practice must be given to the E.R.C. in a timely manner. This also includes the removal of earth for sale, trade or other considerations, under this section, less than 1,000 cubic yards per year.

9.1.9 GENERAL PROVISIONS

9.1.9a. If the E.R.C. believes that there is a violation of approved plans, specifications and conditions, or believes that the actual conditions or operations on the premises constitute a nuisance or public danger, the E.R.C. shall order the operator to immediately cease and desist specific activities or the entire operation, pending a review at a posted public meeting after at least 48 hours

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notice thereof to the operator, which meeting shall be held within 7 days following the initial E.R.C. order. If the violation is immediately brought into compliance, as determined by the E.R.C. 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 E.R.C. 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 E.R.C. finds that the permit conditions may be inadequate to protect the public interest and to carry out the purpose of this By-Law, 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. Seven (7) days after the operator receives certified mail notice, the E.R.C. may revise, revoke, or continue the permit or permit conditions after such hearing, or may impose permit conditions on a previously exempt operation.

9.1.9b. All existing earth removal operations shall comply with this By-Law after sixty days of the effective date of the Annual Town Meeting vote hereof, or prior to the applicant's annual review which ever comes later and no further earth shall be removed after that date without a permit hereunder. The Earth Removal Committee shall hear and decide all applications from existing earth removal operations before the expiration of sixty days following the effective date of this By-law, if a complete application thereof is received by the Earth Removal Committee within thirty days following said effective date.

9.1.9c. The Enforcement Officer for the provisions of this By-Law shall be the E.R.C. or their designee of the Town of Carver.

9.1.9d. Criminal Penalty. Any person who violates any provision of this by-law, regulation, order or permit issued there under, shall be punished by a fine of not more than \$100.00 each day or part thereof that such violation occurs or continues shall constitute a separate offense.

9.1.9e. 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 Section 10.4 of the Town of Carver By-laws, in which case Zoning Enforcement Officer of the Town shall be the enforcing person. The penalty for the 1st violation shall be \$100.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

9.1.9f. If any earth shall be removed without obtaining earth removal permit or otherwise in violation of this section, the E.R.C. 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 may request a hearing before the E.R.C. to be held within 30 days. At such hearing the Board may modify, rescind, or uphold its order. The Board's

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order, if not appealed within seven days of receipt, or as modified, rescinded, or upheld after hearing shall be deemed final action by the E.R.C.

9.1.9h. The provisions of this By-Law 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.

9.2. WETLANDS PROTECTION

9.2.1 GENERAL PROVISIONS

9.2.1.1 Introduction

These regulations are promulgated by the Carver Conservation Commission pursuant to the authority granted to the Commission under Massachusetts General Law Chapter 40, Section 8C.

9.2.1.2 Purpose

The purpose of this By-law is to protect the wetlands, related water resources, and adjoining land areas in the Town of Carver by controlling activities deemed by the Carver Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following:

- a. Public or private water supply,
- b. Groundwater and groundwater quality,
- c. Surface water and surface water quality,
- d. Flood control,
- e. Erosion and sedimentation control,
- f. Prevention of water pollution,
- g. Storm drainage,
- h. Fisheries,
- i. Wildlife habitat,
- j. Recreation,
- k. Agriculture,
- l. Aesthetics,
- m. Fish/shellfish habitat,
- n. Rare plant and animal species,
- o. Riverfront areas.

In addition, the Commission shall provide clear guidance to applicants regarding the policies that the Commission has determined are necessary to protect wetland Resource Areas based upon Carver's particular topography and hydrology, by the unique and special value these resource areas have to the Carver residential and agricultural community, and the significant past experience of the Commission with wetlands protection.

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9.2.1.3 Statement of Jurisdiction

- (1) Except as permitted by the Commission as provided by this By-law, no person shall remove, fill, dredge, alter or build upon or within 100 feet of: any bank, wetland, marsh, swamp, bog, beach, or wet meadow, pond or lake; any land under said waters; any land subject to flooding or inundation by groundwater or surface water; or the 100 year flood plain.
- (2) Except as permitted by the Commission as provided by this By-law, no person shall remove, fill, dredge, alter, or build upon or within 200 feet on each side of perennial rivers and streams.
- (3) Except as permitted by the Commission through the issuance of a variance as defined in Section V of this By-law and the issuance of a permit as defined by Section II of this By-law, no person shall build or enlarge any structure, parking lot or impervious surface upon or within 65 feet of: any wetland, marsh, meadow, bog or swamp; any bank; any lands bordering on any lake, river, pond, stream or creek; or any land under said waters; or any land subject to flooding or inundation by groundwater or surface water.
- (4) Except as permitted by the Commission through the issuance of a variance as defined by Section V of this By-law and the issuance of a permit as defined by Section II of this By-law, no person shall build any residential dwelling within 100 feet of a cranberry bog.

9.2.1.4 Exceptions: Public Utilities and Emergency Repairs

- (1) The permit and application required under this By-law shall not be required for maintaining, repairing or replacing an existing and lawfully placed structure or facility used in the service of the public to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph, or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged.
- (2) Written notice must be given to the Commission at least 14 days prior to the commencement of such work and written permission must be granted by the Commission before any work begins.
- (3) The permit application process required by these by-laws shall not be required for emergency work necessary for the protection of the health or safety of the public provided that the work is performed or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof.
- (4) The Commission shall be notified prior to the commencement of emergency work or within 24 hours after commencement in order to certify the work as an emergency project and that the work is performed only for the time and place certified by the Commission for the limited purpose to abate the emergency.

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9.2.2 FILING PROCEDURES

9.2.2.1 Request for Determination of Applicability

- (1) A Request for Determination of Applicability shall be submitted to the Commission by certified mail or hand delivery to the Commission office located at the Town Hall.
- (2) The Request for Determination of Applicability shall be in the form shown in the Appendix marked "Form A".
- (3) The Request for Determination of Applicability shall be accompanied by 4 complete copies the applicant's plan which should include sufficient information to enable the Conservation Commission to determine the applicable scope of the project. The Commission may request up to 4 more copies of plans for each project.
- (4) The Request for Determination of Applicability shall be accompanied by a check or money order made payable to the Town of Carver for \$35.00 to cover administrative costs.
- (5) The Request for Determination of Applicability shall be accompanied by a check or money order made payable to the local newspaper designated by the Commission to cover the publication costs required in accordance with the open meeting law, M.G.L. c. 39, sec.23B.
- (6) The Request for Determination of Applicability shall be accompanied by a certification in the form of an affidavit of service shown in the Appendix marked "Form B" informing the Department of Environmental Protection and the owner, if the owner is not the applicant, that a determination is being requested under M.G. L. c. 131, sec. 40.
- (7) The Conservation Commission shall hold a public hearing within 21 days of its determination that the applicant's filing is complete. Prior to making such determination, the Conservation Commission may request additional information pertinent to the application.

9.2.2.2 Notice of Intent

- (1) A Notice of Intent shall be submitted to the Commission by certified mail or by hand delivery to the Commission office located at the Town Hall.
- (2) A Notice of Intent shall be in the form shown in the Appendix as "Form C".
- (3) The Notice of Intent shall be accompanied by 8 complete copies of the applicant's plan, which should include sufficient information to enable the Commission to determine the applicable scope of the project.

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- (4) The Commission at all times reserves the right to require that applicant's Notice of Intent be submitted by a professional person such as a land surveyor or civil engineer.
- (5) The Notice of Intent shall be accompanied by a filing fee the amount of which shall be determined by 801 CMR 4.02(310) (Executive Office for Administration and Finance) plus an additional cost of \$70.00 to cover administrative expenses. Payment shall be in the form of a check or money order.
- (6) The Notice of Intent shall be accompanied by a check or money order made payable to the local newspaper designated by the Commission to cover the publication costs required in accordance with the open meeting law, M.G.L. c. 39, sec. 23B.
- (7) The Commission shall have the authority to deny any project in which it determines that the application is incomplete or requires additional information not provided by the applicant.
- (8) Any person filing a Notice of Intent with the Commission shall provide the Commission with an affidavit confirming that all appropriate town officials, committees, or boards having joint jurisdiction over the proposed project have been provided with a copy thereof by certified mail or hand delivery.
- (9) The Commission shall not take final action pursuant to a Notice of Intent until all officials and boards having joint jurisdiction over the proposed project have had at least 14 days from receipt of notice to file written comments and recommendations with the Commission.
- (10) The Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant and deemed necessary by the Commission in its discretion or by other town boards and officials, as appropriate.

9.2.2.3 Notice To Abutters and Property Owners

- (1) Any person filing a permit application with the Commission shall also give written notice thereof, by certified mail or hand delivery, to all abutters using the most recent applicable tax list of the assessors.
- (2) Abutters shall include owners of land directly opposite on any public or private street or way, and the abutters to abutters within 100' of the property line of the applicant, including in any other municipality.
- (3) The notice to abutters shall include a complete copy of the applicant's plan if the Commission so requests or shall state where copies may be examined or obtained by the abutters.

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- (4) The applicant shall submit a complete copy of both the permit application and the determination by the Commission regarding the application to the property owner and any other persons determined by the Commission as eligible to receive such information.
- (5) The applicant shall inform all persons designated by the Commission as land owners other than the applicant, abutters, or persons determined by the Commission to be eligible to receive such information of the time and location of the public hearing scheduled by the Commission. Notice shall be given by certified mail or hand delivery at least 14 days prior to the public hearing.
- (6) The applicant shall provide the Commission with an affidavit confirming that all appropriate person or persons have been provided with the appropriate notice and plans as determined by the Commission.

9.2.2.4 Consultant Fee

- (1) Upon receipt of a permit application or request for determination of applicability, or at any point during the hearing process, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the "Consultant Fee." The specific consultant services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydro geologic, and drainage analysis; and researching environmental or land use law.
- (2) The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. If a fund for consultant expenses and fees is authorized by the town meeting, or by any general or special law, the applicant's fee shall be put into such fund, and the Commission may draw upon that fund for specific consultant services approved by the Commission at one of its public meetings. Any unused portion of the consultant fee shall be returned to the applicant unless the Commission decides at a public meeting that additional services will be required.
- (3) The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision. Any applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.

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(4) The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit application or request for determination filed by a government agency.

(5) The maximum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule:

	Project Cost	Maximum Fee
Up to	\$100,000	\$500
\$100,001	\$500,000	\$2,500
\$500,001	\$1,000,000	\$5,000
\$1,000,001	\$1,500,000	\$7,500
\$1,500,001	\$2,000,000	\$10,000

Each additional \$500,000 project cost increment (over \$2,000,000) shall be charged an additional \$2,500 maximum fee per increment.

(6) The project cost means the estimated, entire cost of the project including, but not limited to, building construction, site preparation, landscaping, and all site improvements. The consultant fee shall be paid pro rata for that portion of the project cost applicable to those activities within resource areas protected by this by-law. The project shall not be segmented to avoid being subject to the consultant fee. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated project costs shall not avoid the payment of the consultant fee."

9.2.2.5 Rules and Regulations

After due notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this section. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effects of this section.

9.2.3 PLANS

9.2.3.1 General

The applicant shall provide the following information upon submission of the application:

1. All drawings shall be drawn with the title designating the name of the project, location and names of the person or persons preparing the drawings, and the date prepared, including the last revision date
2. Drawings shall be stamped and signed by a duly qualified Registered Land Surveyor of the Commonwealth of Massachusetts. Plans depicting proposed drainage or septic systems must be stamped by a Registered Professional Engineer.

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3. An 8 ½" x 11" photocopy of the U.S.G.S. quad sheet, showing location of the proposed activity and the outline of the area in which the activity is located.
4. An 8 ½" x 11" section of the Town of Carver property map on which the site of the proposed activity is outlined in red.

9.2.3.2 Technical Data

The technical data shall be in narrative form with calculations submitted as necessary to substantiate the designs proposed and shall include:

1. A description of any alterations to the 100 year flood storage capacity of the site. If a change of flood storage capacity is proposed, demonstrate compensatory storage at every elevation in the flood plain.
2. Maximum groundwater elevations must be given. The calendar dates of measurement, samplings and percolation tests shall be included.
3. Soil characterizations in representative portions of the site, including depth of peat, muck and organic matter in wetland areas.
4. A storm water management plan and calculations of runoff characteristics based on the following criteria:
 - a. on-site drainage systems - 10 year
 - b. roadway cross-culverts - 25 year
 - c. retention/detention - 2 year & 100 year
5. Runoff characteristics should be calculated for pre- and post development conditions using the standard methods described in the U.S. Soil Conservation Service National Engineering Handbook.
6. Hydrographs that illustrate runoff characteristics before and after the proposed activity.
7. An erosion control plan shall be submitted describing all methods to control erosion and siltation on site, temporarily and permanently.

9.2.3.3 Site Plan

The applicant shall submit a site plan, at a scale of 1" = not more than 50', showing the following items:

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1. Existing and proposed contours (in contrasting symbols) shall be expressed in feet above sea level with intervals no greater than 3 feet. Date of ground survey shall be given
2. The delineation of all wetlands, lands subject to flooding, water bodies, waterways, ditches, creeks, rivers, streams, ponds, whether natural or manmade, continuously or intermittently flowing. The upland boundary of all bordering vegetative wetlands shall be shown. The 100-year flood elevation shall be shown.
3. A delineation of all alterations proposed in or having an impact on wetlands.
4. Existing stonewalls; buildings, rock ridges and outcroppings shall be shown.
5. Location, extent, and area of all existing and proposed structures, roadways, paved areas, septic systems, wells, tanks, and utility easements.
6. Proposed lowest elevations of cellars or floors.
7. Existing and proposed location, rim elevation and invert elevation of all catch basins, drains, culverts, and other drainage structures immediately upstream and downstream of the site, as well as those on site.
8. Details and locations for all temporary erosion controls proposed.
9. Proposed permanent pollution control devices on site, such as: hooded catch basins flow dissipaters, or vegetative buffers.
10. Cross-sections showing existing and proposed slope, elevations, bank and bottom conditions of each water course to be altered. Locations of cross-sections shall be specified.
11. Proposed location of any fill material, which will be stored on site.
12. State on plan the location and elevation of benchmark used for survey and datum.
13. The "limit of work" line shall be shown.

9.2.3.4 Rules and Regulations

After due notice and public hearing, the Commission may promulgate rules and regulations to fulfill the purposes of this section. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by

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a court of law shall not act to suspend or invalidate the effects of this section”; or take any other action relative thereto.

9.2.4 ENFORCEMENT AND SECURITY

9.2.4.1 Enforcement

(1) No person shall remove, fill, dredge, build upon, degrade or otherwise alter resource areas protected by this By-law, or cause, suffer or allow such activity to continue or allow such fill or other alteration to be left in place without the required authorization pursuant to this by-law.

(2) Enforcement Orders shall be issued by Commission members or the Conservation Agent in order to secure prompt and continued compliance with the Carver Wetlands By-law or work performed under Superseding or Final Orders issued by the Department of Environmental Protection.

(3) The Enforcement Order shall be in the form shown in the Appendix marked “Form D”.

(4) The Commission or its agent or other duly authorized employee shall have authority to enter upon privately owned land for the purpose of performing their duties under this By-law and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary.

(5) The Commission shall have the authority to enforce this By-law, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.

(6) Any person who violates provisions of this By-law may be ordered to restore the property to its original condition and take any other action that the Commission deems necessary to remedy such violations.

(7) Upon the request of the Commission, the Board of Selectmen and Town Counsel shall take legal action for enforcement under civil law.

(8) Upon the request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.

(9) Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

(10) Any person who violates any provision of this By-law, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of \$50 (fifty dollars)

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(11) Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the By-law, regulations, permits or administrative orders violated shall constitute a separate offense.

(12) Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the By-law, regulations, permits or administrative orders violated shall constitute a separate offense.

9.2.4.2 Security

As part of a permit issued by this By-law, in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder be wholly or in part by one (1) or more of the methods described below:

1. By a proper bond with sureties satisfactory to the Commission payable to the town or deposit of money or negotiable securities to be held by the Town Treasurer or other undertaking of financial responsibility sufficient in the opinion of the Commission to secure compliance with the Order of Conditions. Such bond or deposit shall be released upon issuance of a Certificate of Compliance.
2. By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Carver whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.
3. A Certificate of Compliance may extinguish only those bonds, securities, covenants, restrictions, or easements listed in Section IV (B) (1) and (2), but shall not extinguish any other conservation restriction(s) that might run with the land.

9.2.5 DEFINITIONS

The definitions applicable to the Carver Wetlands By-law shall be the same as set forth in 310 CMR 10.00 except for the following modifications to those definitions and additional definitions.

Aesthetics -

The relevant qualities to be protected under the Carver Wetlands By-law are those natural and natively scenic impressions of our ponds, lakes, streams, rivers, and the lands bordering them. The aesthetic trust of the Commission shall be the preservation of a perception of the land, which is most conducive to

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a continued wildlife habitat, a natural aquatic system, and a protective buffer between our wetland resources and human development activities.

Alter-

Alter means to change the condition of any area subject to protection by this By-law. Examples of alterations include, but are not limited to, the following:

- Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- Changing of pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- Drainage or other disturbance of water level or water table;
- Placing of fill, or removal of materials, which would alter elevations;
- Driving of piles, erection or repair of buildings, or structures of any kind;
- Placing of obstructions or objects in water;
- Destruction of plant life, including the cutting of trees;
- Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater;
- Use of chemicals for plant or pest control.

Applicant-

Any person who files a permit application or request for determination or applicability, or on whose behalf such an application or request is filed, is an applicant.

Conservation Commission Agent-

The Agent shall be the duly authorized representative of the Commission, with the authority to carry out certain of the Commission's functions. These shall include, but not be limited to, executing the administrative duties of the Commission, site visits, determination of filing requirement for applicants, determination of filing requirements of all property under the jurisdiction of this By-law, determination of application completeness and filing requirements.

Issuing Authority-

In the Town of Carver, both under the state wetland regulations and under the local By-laws, the issuing authority is the Conservation Commission.

Recreation-

Recreation under the Carver Wetlands By-law is defined as the use and enjoyment of our natural surroundings in a manner consistent with their preservation. Activities shall not hinder access to wetlands and related water resources.

Variance-

The Commission shall have the power, after the filing of a Notice of Intent and the conduct of a public hearing, to issue a variance to an applicant requesting to perform activities as described in Section I (C)(3) or Section I(C)(4) of this By-law. Such variance shall be set forth by the issuance of an Order of Conditions by the Commission. In order for the Commission to issue a variance with respect

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to a particular project, it must specifically find, based on clear and convincing evidence set forth by the applicant, that owing to circumstances relating to the soil conditions, hydrological conditions, topography of such land and especially affecting such land but not generally affecting wetlands within the Town, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the applicant, and that desirable relief may be granted without material detriment to the values protected by this By-law and without substantially derogating from the extent or purpose of this By-law. The Commission may impose conditions, safeguards and limitations in a variance to protect or further the interests protected by this By-law. Variances are intended to be granted only in rare and unusual cases.

Person-

Person shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town by-laws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

9.2.6 SEVERABILITY

The invalidity of any section or provision of this By-law shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination that previously has been issued.

9.3 SOLID WASTE FACILITY PUBLIC PROCESS BY-LAW

9.31 **Preamble.** This Section establishes public participation requirements to improve the public process following the filing of a site assignment application for a new solid waste facility.

9.32 **Purpose.** The purpose of this Section is to protect the rights of the people of Carver to clean air and water guaranteed by Article 97 of the Articles of Amendment to the Massachusetts Constitution, and to protect their right to petition government guaranteed by the Massachusetts Constitution, Article 19 of the Declaration of Rights, and by the First Amendment to the United States Constitution.

9.33 **Authority.** This Section is adopted pursuant to the Home Rule Amendment of the Massachusetts Constitution, Article 89 of the Articles of Amendment, independent of the provisions of Section 150A of Chapter 111 of the General Laws and regulations promulgated thereto.

9.34 **Proposed Solid Waste Facilities - Public Process.** This by-law establishes procedures to require an informational meeting by the Board of Health which is held following the filing of an application for a site assignment for a proposed solid waste facility.

- (1) The Board of Health shall hold a public informational meeting no later than fourteen (14) days prior to the commencement of a public hearing

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on a site assignment application for a proposed solid waste facility, where the applicant shall be invited to give a short presentation and answer questions from attendees.

- (2) At least fourteen (14) days prior to commencement of said informational meeting, the Board of Health shall require the applicant place a large 4 foot by 8 foot sign at the proposed site, on the nearest public way, which states in a clearly readable typeface that "*This is a proposed site of a (type of facility) proposed by (name of applicant). An informational meeting on the application will be held (date)(time) at (location). For more information, contact (name, title, phone number and address of Board of Health contact),*" and which shall contain a brief description of the proposed project and where application materials can be reviewed.
- (3) At least seven (7) days prior to commencement of said informational meeting, the Board of Health shall send notice of said meeting, which shall include a brief description of the project, the date, time and location of the meeting, how residents can participate in the meeting, and where application materials can be reviewed, by first class mail to all residents and landowners located within one mile of the proposed site, including residents and landowners in an abutting town if the proposed site is within one-half mile of that town (an "abutting town").
- (4) At least seven (7) days prior to commencement of the informational meeting, the Board of Health shall forward a copy of the application for site assignment to the Carver Public Library and to the public library in an abutting town, if any, and place a copy on the internet.
- (5) At least seven (7) days prior to commencement of the informational meeting, the Board of Health shall publish notice as a display advertisement in a non-legal section of one or more newspapers of general circulation in Carver and an abutting town, if any, which shall include notice of the informational meeting and where the application materials may be reviewed, and shall send the notice as a press release to all newspapers and media outlets which circulate in the town(s).
- (6) The Board of Health shall provide for either live public broadcast of the informational meeting on the local cable access channel, or if that is not feasible, for the videotaping of the informational meeting for later broadcast.
- (7) The Board of Health may assess upon the applicant the costs for complying with the provisions of this subsection relative to the informational meeting and providing notice thereof. Said applicant may contest the amount so assessed and may request a hearing before the Board, who may then reconsider the amount of the assessment thereof.

9.35 **Severability.** Each of the paragraphs within this Section shall be construed as separate to the end that if any sentence, clause or phrase thereof shall be held invalid for any reason the remainder of that paragraph and all other paragraphs of this Section shall continue in force.

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9.4 REGULATION OF SOLID WASTE FACILITIES

94.1 **Preamble.** General Laws Section 150A, Chapter 111 requires that every person maintaining or operating a solid waste facility shall operate the facility in such manner as will protect public health and safety and the environment. Upon determination by the Board of Health that the operation or maintenance of such a facility results in a threat to public health and safety or the environment, the Board may rescind, suspend, or modify the site assignment following due notice and a public hearing.

94.2 **Purpose.** This section establishes the following procedures in addition to the procedures required by state law and regulation, to protect the rights of the people of Carver to clean air and water guaranteed by Article 97 of the Articles of Amendment to the Massachusetts Constitution.

94.3 **Authority.** This Section is adopted pursuant to the Home Rule Amendment of the Massachusetts Constitution, Article 89 of the Articles of Amendment, independent of the provisions of Section 150A of Chapter 111 of the General Laws and regulations promulgated thereto.

94.4 **Petition.** Any ten (10) or more residents of Carver may petition the Board of Health in writing alleging that said solid waste facility is operating in violation of its site assignment or of any applicable law, regulation, order, or by-law or that the maintenance or operation of a solid waste facility results or may result in a threat to public health or safety or the environment.

94.5 **Burden of Proof.** When an allegation is made that a solid waste facility is in violation of any applicable law, regulation, order, or by-law or that the maintenance or operation of a solid waste facility results in or may result in a threat to public health or safety or the environment, the burden of proof shall be on the owner or operator of said solid waste facility to prove that the facility is not in violation or that the operation of the facility does not result in a threat to public health, safety, or the environment, as the case may be.

94.6 **Preliminary Hearing.** No later than twenty-one (21) days following receipt of such a petition, the Board of Health shall schedule a preliminary hearing. The purpose of the preliminary hearing shall be to decide whether the Board should schedule a site assignment hearing pursuant to Section 150A of Chapter 111 of the General Laws to consider whether to rescind, suspend, or modify the site assignment of said facility. The preliminary hearing shall be held no later than sixty (60) days following receipt of the petition.

94.7 **Hearing Notice.** Notice of the preliminary hearing shall be made at least twenty-one (21) days prior to the commencement of the hearing by notice printed in a display advertisement in every newspaper of general circulation in Carver and an abutting town, if any. Said notice shall include the entire text or a concise summary of the petition, the date, time, and place of the preliminary hearing, how residents can participate in the meeting, and where application materials can be reviewed and the deadline for submitting written comments on the

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petition to the Board of Health. At least fourteen (14) days prior to commencement of said preliminary hearing, the Board of Health shall send a copy of said notice of said preliminary hearing by first class mail to all residents and landowners located within one mile of the proposed site, including residents of an abutting town, if any.

948 **Hearing Procedure.** The preliminary hearing shall be conducted as follows: (i) The petitioners shall first describe the basis for their petition. (ii) Then, the owner or operator of the affected facility shall be given a reasonable opportunity to respond. (iii) The Board shall then allow public testimony, and shall accept written comments for a specific period of time that shall be announced at the preliminary hearing. The hearing shall be conducted as informally as possible, and shall not follow the rules of evidence commonly followed in the courts. Any resident of Carver or an abutting town, if any, and of the general public, shall be allowed to present oral or written testimony during the hearing.

949 **Written Decision.** No later than thirty (30) days following the conclusion of the preliminary hearing, the Board shall render a written decision whether or not to convene a site assignment hearing pursuant to Section 150A, Chapter 111 of the General Laws to consider whether the site assignment should be rescinded, suspended, or modified.

94.10 **Severability.** Each of the paragraphs within this Section shall be construed as separate to the end that if any sentence, clause or phrase thereof shall be held invalid for any reason the remainder of that paragraph and all other paragraphs of this Section shall continue in force and effect.

9.5 RIGHT TO FARM BY-LAW

9.5.1 Legislative Purpose and Intent

The purpose and intent of this By-law is to state with emphasis the Right to Farm accorded to all citizens of the Commonwealth under Article 97, of the Constitution, and all state statutes and regulations thereunder including but not limited to Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9, Chapter 111, Section 125A and Chapter 128, Section 1A. We the citizens of Carver restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution ("Home Rule Amendment").

This General By-law encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmland within the Town of Carver by allowing agricultural uses and related activities to function with minimal conflict with abutters and Town agencies. This By-law shall apply to all jurisdictional areas within Town.

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9.5.2 Definitions

The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, or accessory thereto.

The words "farming" or "agriculture" or their derivatives shall include, but not be limited to the following:

- a. farming in all its branches and the cultivation and tillage of the soil;
- b. dairying;
- c. production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities;
- d. growing and harvesting of forest products upon forest land, and any other forest or lumbering operations;
- e. raising of livestock including horses;
- f. keeping of horses as a commercial enterprise; and keeping and raising of poultry, swine, cattle, ratties (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

"Farming" shall encompass activities including, but not limited to, the following:

- a. operation and transportation of slow-moving farm equipment over roads within the Town;
- b. control of pests, including, but not limited to, insects, weeds, predators and disease organisms of plant and animals;
- c. application of manure, fertilizers and pesticides;
- d. conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, provided that the activities are related to marketing the agricultural output or services of the farm;
- e. processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand including signage thereto;
- f. maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and
- g. on-farm relocation of earth and the clearing of ground for farming operations.

9.5.3 Right To Farm Declaration

The Right to Farm is hereby recognized to exist within the Town of Carver. The above- described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the

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neighborhood, community, and society in general. The benefits and protections of this By-law are intended to apply exclusively to those commercial agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this Right To Farm By-law shall be deemed as acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning law.

9.5.4 Disclosure Notification

Within 30 days after this By-law becomes effective, the Board of Selectmen shall prominently post in the Town Hall and make available for distribution the following disclosure:

"It is the policy of this community to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers and occupants that the property they are about to acquire or occupy lies within a Town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors. Buyers and occupants are also informed that the location of property within the Town may be impacted by commercial agricultural operations including the ability to access water services for such property under certain circumstances."

In addition to the above, copies of this disclosure notification shall be available in a public area at the Town Hall.

9.5.5 Resolution of Disputes

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Board of Selectmen, the Zoning Enforcement Officer, or the Board of Health, depending upon the nature of the grievance. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. The Zoning Enforcement Officer or Board of Selectmen shall forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the referring Town authority within an agreed upon time frame.

The Board of Health, except in cases of imminent danger or public health risk, shall forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the Board of Health within an agreed upon time frame.

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9.5.6 Severability Clause

If any part of this By-law is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this By-law. The Town of Carver hereby declares the provisions of this By-law to be severable.

9.6 STORMWATER MANAGEMENT AND LAND DISTURBANCE BY-LAW

9.6.1 PURPOSE

A. The harmful impacts of soil erosion and sedimentation are:

1. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
2. contamination of drinking water supplies;
3. alteration or destruction of aquatic and wildlife habitat;
4. flooding; and
5. overloading or clogging of municipal catch basins and storm drainage systems.

B. The objectives of this by-law are to:

1. protect water resources;
2. require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities;
3. promote infiltration and the recharge of groundwater;
4. ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained;
5. require practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
6. comply with state and federal statutes and regulations relating to stormwater discharges; and
7. establish the Town's legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement.

9.6.2 DEFINITIONS

ABUTTER: The owner(s) of land abutting the activity.

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AGRICULTURE: The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act and its implementing regulations.

APPLICANT: Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government to the extent permitted by law requesting a soil erosion and sediment control permit for proposed land-disturbance activity.

AUTHORIZED ENFORCEMENT AGENCY: The Planning Board, hereafter the Board, its employees or agents designated to enforce this by-law.

CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL (CPESC): A certified specialist in soil erosion and sediment control. This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.

CONSTRUCTION AND WASTE MATERIALS: Excess or discarded building or site materials, including but not limited to concrete truck washout, chemicals, litter and sanitary waste at a construction site that may adversely impact water quality.

CLEARING: Any activity that removes the vegetative surface cover.

EROSION: The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

EROSION AND SEDIMENTATION CONTROL PLAN: A document containing narrative, drawings and details developed by a qualified professional engineer (PE) or a Certified Professional in Erosion and Sedimentation Control (CPESC), which includes best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbance activities.

ESTIMATED HABITAT OF RARE WILDLIFE AND CERTIFIED VERNAL POOLS: Habitats delineated for state-protected rare wildlife and certified vernal pools for use with the Wetlands Protection Act Regulations (310 CMR 10.00) and the Forest Cutting Practices Act Regulations (304 CMR 11.00).

LAND-DISTURBING ACTIVITY: Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

MASSACHUSETTS ENDANGERED SPECIES ACT: (G.L.c.131A) and its implementing regulations at (321 CMR 10.00) which prohibit the “taking” of any rare plant or animal species listed as Endangered, Threatened, or of Special Concern.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY: The Policy issued by the Department of Environmental Protection, and as amended, that

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coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 §. 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or municipal storm drain system: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Carver.

OWNER: A person with a legal or equitable interest in property.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the Federal Government, to the extent permitted by law, and any officer, employee, or agent of such person.

PRE-CONSTRUCTION: All activity in preparation for construction.

PRIORITY HABITAT OF RARE SPECIES: Habitats delineated for rare plant and animal populations protected pursuant to the Massachusetts Endangered Species Act and its regulations.

RUNOFF: Rainfall, snowmelt, or irrigation water flowing over the ground surface.

SEDIMENT: Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

SEDIMENTATION: The process or act of deposition of sediment.

SITE: Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

SLOPE: The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

SOIL: Any earth, sand, rock, gravel, or similar material.

STABILIZATION: The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or retard erosion.

STORMWATER: Storm water runoff, snow melt runoff, and surface water runoff and drainage.

STRIP: Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil.

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VERNAL POOLS: Temporary bodies of freshwater which provide critical habitat for a number of vertebrate and invertebrate wildlife species.

WATERCOURSE: A natural or man-made channel through which water flows or a stream of water, including a river, brook, or underground stream.

WETLAND RESOURCE AREA: Areas specified in the Massachusetts Wetlands Protection Act G.L. c. 131, § 40 and in the Town of Carver's wetland by-law.

WETLANDS: Tidal and non-tidal areas characterized by saturated or nearly saturated soils most of the year that are located between terrestrial (land-based) and aquatic (water-based) environments, including freshwater marshes around ponds and channels (rivers and streams), brackish and salt marshes; common names include marshes, swamps and bogs.

9.6.3 AUTHORITY

This by-law is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34

9.6.4 APPLICABILITY

This by-law shall apply to all activities that result in disturbance of one or more acres of land that drains to the municipal separate storm sewer system. Except as authorized by the Planning Board in a Land Disturbance Permit or as otherwise provided in this by-law, no person shall perform any activity that results in disturbance of an acre or more of land. Normal maintenance and improvement of land in agricultural or aquacultural use, as defined by the Wetlands Protection Act regulation 310 CMR 10.4, are exempt. In addition, as authorized in the Phase II Small MS4 General Permit for Massachusetts, storm water discharges resulting from the above activities that are subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Policy as reflected in an Order of Conditions issued by the Conservation Commission are exempt from compliance with this by-law.

9.6.5 RESPONSIBILITY FOR ADMINISTRATION

A. The Carver Planning Board shall administer, implement and enforce this by-law. Any powers granted to or duties imposed upon the Carver Planning Board may be delegated in writing by Carver Planning Board to its employees or agents.

B. Waiver. The Carver Planning Board may waive strict compliance with any requirement of this by-law or the rules and regulations promulgated hereunder, where:

- (1) such action is allowed by federal, state and local statutes and/or regulations,
- (2) is in the public interest, and
- (3) is not inconsistent with the purpose and intent of this by-law.

C. Rules and Regulations. The Carver Planning Board may adopt, and periodically amend rules and regulations to effectuate the purposes of this by-

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law. Failure by Planning Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

9.6.6 PERMITS and PROCEDURE

A. Application: A completed application for a Land Disturbance Permit shall be filed with the Carver Planning Board. A permit must be obtained prior to the commencement of land disturbing activity that may result in the disturbance of an area of one acre or more. The Land Disturbance Permit Application package shall include:

1. a completed Application Form with original signatures of all owners;
2. a list of abutters, certified by the Assessors Office;
3. twelve (12) copies of the Erosion and Sediment Control Plan as specified in Section VI of this by-law;
4. payment of the application and review fees; and,
5. one (1) copy each of the Application Form and the list of abutters filed with the Town Clerk.

B. Entry: Filing an application for a permit grants Planning Board or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with permit conditions.

C. Other Boards: The Planning Board shall notify the Town Clerk of receipt of the application, and shall give one copy of the application package to the Board of Health, Board of Public Works, Town Engineer, Conservation Commission and Building Commissioner.

D. Public Hearing: The Planning Board shall hold a public hearing within twenty-one (21) days of the receipt of a complete application and shall take final action within twenty-one (21) days from the time of the close of the hearing unless such time is extended by agreement between the applicant and Planning Board. Notice of the public hearing shall be given by publication and posting and by first-class mailings to abutters at least seven (7) days prior to the hearing. The Town Clerk shall make the application available for inspection by the public during business hours at the Carver Town Hall, 108 Main Street, Carver MA 02330.

E. Information requests. The applicant shall submit all additional information requested by the Planning Board to issue a decision on the application.

F. Action by Carver Planning Board.

The Planning Board may:

1. Approve the Land Disturbance Permit Application and issue a permit if it finds that the proposed plan will protect water resources and meets the objectives and requirements of this by-law;

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2. Approve the Land Disturbance Permit Application and issue a permit with conditions, modifications or restrictions that the Planning Board determines are required to ensure that the project will protect water resources and meets the objectives and requirements of this by-law;

3. Disapprove the Land Disturbance Permit Application and deny the permit if it finds that the proposed plan will not protect water resources or fails to meet the objectives and requirements of this by-law.

G. Failure of the Planning Board to take final action upon an Application within the time specified above shall be deemed to be approval of said Application. Upon certification by the Town Clerk that the allowed time has passed without the Planning Board's action, the Land Disturbance Permit shall be issued by the Planning Board.

H. Fee Structure: Each application must be accompanied by the appropriate application fee as established by the Planning Board. Applicants shall pay review fees as determined by Planning Board sufficient to cover any expenses connected with the public hearing and review of the Land Disturbance Permit Application before the review process commences. The Planning Board is authorized to retain a Registered Professional Engineer or other professional consultant to advise the Planning Board on any or all aspects of the Application.

I. Project Changes: The permittee, or their agent, must notify the Planning Board in writing of any change or alteration of a land-disturbing activity authorized in a Land Disturbance Permit before any change or alteration occurs. If the Planning Board determines that the change or alteration is significant, based on the design requirements listed in Section 7.B. and accepted construction practices, the Planning Board may require that an amended Land Disturbance Permit application be filed and a public hearing held. If any change or alteration from the Land Disturbance Permit occurs during any land disturbing activities, the Planning Board may require the installation of interim erosion and sedimentation control measures before approving the change or alteration.

9.6.7 EROSION AND SEDIMENT CONTROL PLAN

A. The Erosion and Sediment Control Plan shall contain sufficient information to describe the nature and purpose of the proposed development, pertinent conditions of the site and the adjacent areas, and proposed erosion and sedimentation controls. The applicant shall submit such material as is necessary to show that the proposed development will comply with the design requirements listed in Section 7.B. below.

B. The design requirements of the Erosion and Sediment Control Plan are:

1. Minimize total area of disturbance;
2. Sequence activities to minimize simultaneous areas of disturbance;
3. Minimize peak rate of runoff in accordance with the Massachusetts Stormwater Policy;

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4. Minimize soil erosion and control sedimentation during construction, provided that prevention of erosion is preferred over sedimentation control;
5. Divert uncontaminated water around disturbed areas;
6. Maximize groundwater recharge;
7. Install and maintain all Erosion and Sediment Control measures in accordance with the manufacturers specifications and good engineering practices;
8. Prevent off-site transport of sediment;
9. Protect and manage on and off-site material storage areas (overburden and stockpiles of dirt, borrow areas, or other areas used solely by the permitted project are considered a part of the project);
10. Comply with applicable Federal, State and local laws and regulations including waste disposal, sanitary sewer or septic system regulations, and air quality requirements, including dust control;
11. Prevent significant alteration of habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Endangered, Threatened or Of Special Concern, Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species from the proposed activities;
12. Institute interim and permanent stabilization measures, which shall be instituted on a disturbed area as soon as practicable but no more than 14 days after construction activity has temporarily or permanently ceased on that portion of the site;
13. Properly manage on-site construction and waste materials; and
14. Prevent off-site vehicle tracking of sediments.

C. Erosion and Sedimentation Control Plan Content. The Plan shall contain the following information:

1. Names, addresses, and telephone numbers of the owner, applicant, and person(s) or firm(s) preparing the plan;
2. Title, date, north arrow, names of abutters, scale, legend, and locus map;
3. Location and description of natural features including:
 - (a) Watercourses and water bodies, wetland resource areas and all floodplain information, including the 100-year flood elevation based upon the most recent Flood Insurance Rate Map, or as calculated by a professional engineer for areas not assessed on these maps;
 - (b) Existing vegetation including tree lines, canopy layer, shrub layer, and ground cover, and trees with a caliper twelve (12) inches or larger, noting specimen trees and forest communities; and

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(c) Habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Endangered, Threatened or of Special Concern, Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species within five hundred (500) feet of any construction activity.

4. Lines of existing abutting streets showing drainage and driveway locations and curb cuts;
5. Existing soils, volume and nature of imported soil materials;
6. Topographical features including existing and proposed contours at intervals no greater than two (2) feet with spot elevations provided when needed;
7. Surveyed property lines showing distances and monument locations, all existing and proposed easements, rights-of-way, and other encumbrances, the size of the entire parcel, and the delineation and number of square feet of the land area to be disturbed;
8. Drainage patterns and approximate slopes anticipated after major grading activities (Construction Phase Grading Plans);
9. Location and details of erosion and sediment control measures with a narrative of the construction sequence/phasing of the project, including both operation and maintenance for structural and non-structural measures, interim grading, and material stockpiling areas;
10. Path and mechanism to divert uncontaminated water around disturbed areas, to the maximum extent practicable;
11. Location and description of industrial discharges, including stormwater discharges from dedicated asphalt plants and dedicated concrete plants, which are covered by this permit;
12. Stormwater runoff calculations in accordance with the Department of Environmental Protection's Stormwater Management Policy;
13. Location and description of an implementation schedule for temporary and permanent seeding, vegetative controls, and other stabilization measures;
14. A description of construction and waste materials expected to be stored on-site. The Plan shall include a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;
15. A description of provisions for phasing the project where one acre of area or greater is to be altered or disturbed;
16. Plans must be stamped and certified by a qualified Professional Engineer registered in Massachusetts or a Certified Professional in Erosion and Sediment Control; and
17. Such other information as is required by the Planning Board.

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9.6.8 INSPECTION AND SITE SUPERVISION

A. Pre-construction Meeting: Prior to starting clearing, excavation, construction, or land disturbing activity the applicant, the applicant's technical representative, the general contractor or any other person with authority to make changes to the project, shall meet with the Planning Board, to review the permitted plans and their implementation.

B. Board Inspection: The Planning Board or its designated agent shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the land disturbance permit as approved. The Permit and associated plans for grading, stripping, excavating, and filling work, bearing the signature of approval of the Planning Board, shall be maintained at the site during the progress of the work. In order to obtain inspections, the permittee shall notify the Planning Board at least two (2) working days before each of the following events:

1. Erosion and sediment control measures are in place and stabilized;
2. Site Clearing has been substantially completed;
3. Rough Grading has been substantially completed;
4. Final Grading has been substantially completed;
5. Close of the Construction Season; and
6. Final Landscaping (permanent stabilization) and project final completion.

C. Permittee Inspections. The permittee or his/her agent shall conduct and document inspections of all control measures no less than weekly or as specified in the permit, and prior to and following anticipated storm events. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for maintenance or additional control measures. The permittee or his/her agent shall submit monthly reports to the Planning Board or designated agent in a format approved by the Planning Board.

D. Access Permission. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Planning Board, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this by-law and may make or cause to be made such examinations, surveys or sampling as the Planning Board deems reasonably necessary to determine compliance with the permit.

9.6.9 SURETY

The Planning Board may require the permittee to post before the start of land disturbance activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by Town counsel, and be in an amount deemed sufficient by the Planning Board to ensure that the work will be completed in accordance with the permit. If the project is phased, the Planning Board may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until [the Board] has received the final report as required by Section 10 and issued a certificate of completion.

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9.6.10 FINAL REPORTS

Upon completion of the work, the permittee shall submit a report (including certified as-built construction plans) from a Professional Engineer (P.E.), surveyor, or Certified Professional in Erosion and Sediment Control (CPESC), certifying that all erosion and sediment control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved permit. Any discrepancies should be noted in the cover letter.

9.6.11 ENFORCEMENT

A. The Planning Board or an authorized agent of [the Board] shall enforce this by-law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

B. Orders

The Planning Board or an authorized agent of the Planning Board may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include:

- (a) a requirement to cease and desist from the land-disturbing activity until there is compliance with the by-law and provisions of the land-disturbance permit;
- (b) maintenance, installation or performance of additional erosion and sediment control measures;
- (c) monitoring, analyses, and reporting
- (d) remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity.

C. Criminal Penalty. Any person who violates any provision of this by-law, regulation, order or permit issued there under, shall be punished by a fine of not more than \$100.00 each day or part thereof that such violation occurs or continues shall constitute a separate offense.

D. 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 G.L. Ch. 40, 21D and Section 10.4 of the Town of Carver By-laws, in which case Zoning Enforcement Officer of the Town shall be the enforcing person. The penalty for the 1st violation shall be \$100.00. The penalty for the 2nd violation shall be \$200.00. The penalty for the 3rd and subsequent violations shall be \$3,000.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

E. Appeals. The decisions or orders of the Planning Board shall be final. Further relief shall be to a court of competent jurisdiction.

F. Remedies Not Exclusive. The remedies listed in this by-law are not exclusive of any other remedies available under any applicable federal, state or local law.

9.6.12 CERTIFICATE OF COMPLETION

The issuing authority will issue a letter certifying completion upon receipt and approval of the final reports and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this by-law.

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9.6.13 SEVERABILITY

If any provision, paragraph, sentence, or clause of this by-law shall be held invalid for any reason, all other provisions shall continue in full force and effect.

9.7 ILLICIT CONNECTIONS AND DISCHARGES TO THE MUNICIPAL STORM DRAIN SYSTEM BYLAW

9.7.1 PURPOSE

Increased and contaminated stormwater run-off are major causes of:

1. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
2. contamination of drinking water supplies;
3. alteration or destruction of aquatic and wildlife habitat; and
4. flooding.

Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of Carver's water bodies and groundwater, and to safeguard the public health, safety, welfare, and the environment.

The objectives of this by-law are:

1. to prevent pollutants from entering Carver's municipal separate storm sewer system or municipal storm drain system (MS4);
2. to prohibit illicit connections and unauthorized discharges to the MS4;
3. to require the removal of all such illicit connections;
4. to comply with state and federal statutes and regulations relating to stormwater discharges; and
5. to establish the legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement.

9.7.2 DEFINITIONS

For the purposes of this by-law, the following shall mean:

AUTHORIZED ENFORCEMENT AGENCY: The Department of Public Works, its employees, or agents designated to enforce this by-law.

BEST MANAGEMENT PRACTICES (BMPs): Activities, prohibitions of practices, general good housekeeping practices, structural and non-structural controls, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge, or waste disposal, or drainage from raw materials storage.

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CLEAN WATER ACT: The Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) as hereafter amended

DISCHARGE OF POLLUTANTS: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

GROUNDWATER: All water beneath the surface of the ground.

ILLEGAL DISCHARGE: Any direct or indirect non-stormwater discharge to the municipal storm drain system, except as specifically exempted in Section 6, subsection 4, of this by-law. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from fire-fighting activities exempted pursuant to Section 6, subsection 4, of this by-law.

ILLICIT CONNECTION: Any surface or subsurface drain or conveyance that allows an illegal discharge into the municipal storm drain system. Illicit connections include conveyances that allow a non-stormwater discharge to the municipal storm drain system including sewage, process wastewater or wash water, and any connections from indoor drains sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this by-law.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water from infiltrating the underlying soil.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) OR MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Carver.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT: A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

NON-STORMWATER DISCHARGE: Any discharge to the municipal storm drain system not composed entirely of stormwater.

PERSON: Any individual, partnership, association, firm, company, trust, corporation, and, any agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

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POLLUTANT: Any element or property of sewage, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include:

- (1) paints, varnishes, and solvents;
- (2) oil and other automotive fluids;
- (3) non-hazardous liquid and solid wastes and yard wastes;
- (4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations, and floatables;
- (5) pesticides, herbicides, and fertilizers;
- (6) hazardous materials and wastes; sewage, fecal coliform, and pathogens;
- (7) dissolved and particulate metals;
- (8) animal wastes;
- (9) rock; sand; salt, soils;
- (10) construction wastes and residues;
- (11) and noxious or offensive matter of any kind.

PROCESS WASTEWATER: Any water that, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

RECHARGE: The process by which groundwater is replenished by precipitation through the percolation of run-off and surface water through the soil.

STORMWATER: Run-off from precipitation or snow melt.

TOXIC OR HAZARDOUS MATERIAL OR WASTE: Any material that, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious, or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive, or infectious waste, acid, and alkali, and any substance defined as Toxic or Hazardous under G.L. Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

WATERCOURSES: A natural or man-made channel through which water flows or a stream of water, including a river, brook, or underground stream.

WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

WASTEWATER: Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

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9.7.3 APPLICABILITY

This by-law shall apply to flows entering the municipally-owned storm drainage system.

9.7.4 RESPONSIBILITY FOR ADMINISTRATION

The Department of Public Works shall administer, implement, and enforce this bylaw. Any powers granted to or duties imposed upon the Department of Public Works may be delegated in writing by the Superintendent of Public Works to employees or agents of the Department of Public Works.

9.7.5 REGULATIONS

The Department of Public Works may promulgate rules and regulations to effectuate the purposes of this by-Law. Failure by the Department of Public Works to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw.

9.7.6 PROHIBITED ACTIVITIES

1. Illegal Discharges

No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal storm drain system, watercourse, or into the waters of the Commonwealth.

2. Illicit Connections

No person shall construct, use, allow, maintain, or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation, or custom at the time of connection.

3. Obstruction of Municipal Storm Drain System

No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior approval from the Department of Public Works.

4. Exemptions

This section shall not apply to discharges or flows resulting from fire-fighting activities, nor to any of the following non-stormwater discharges or flows provided that the source is not a significant contributor of a pollutant to the municipal storm drain system:

- (1) Waterline flushing;
- (2) Flows from potable water sources;
- (3) Springs;
- (4) Natural flows from riparian habitats and wetlands;
- (5) Diverted stream flows;
- (6) Rising groundwaters;
- (7) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- (8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;

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- (9) Discharges from landscape irrigation or lawn watering;
- (10) Water from individual residential car washing;
- (11) Discharges from de-chlorinated swimming pool water (less than one ppm chlorine) provided it is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- (12) Discharges from street sweeping;
- (13) Dye testing, provided verbal notification is given to the Department of Public Works prior to the time of the test;
- (14) Non-stormwater discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
- (15) Discharges for which advanced written approval is received from the Department of Public Works, if necessary to protect public health, safety, welfare, or the environment.

9.7.7 EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS

The Department of Public Works may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened illegal discharge that presents or may present imminent risk of harm to the public health, safety, welfare, or the environment. In the event any person fails to comply with an emergency suspension order, the Authorized Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare, or the environment.

9.7.8 NOTIFICATION OF SPILLS

Notwithstanding any other requirements of local, state, or federal law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials at that facility or operation that is resulting or may result in illegal discharge of pollutants, that person shall take all necessary steps to ensure containment and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the Fire Department, the Police Department, the Department of Public Works, and the Conservation Commission. In the event of a release of non-hazardous material, said person shall notify the Authorized Enforcement Agency no later than the next business day. Written confirmation of all telephone, facsimile, e-mail, or in-person notifications shall be provided to the Authorized Enforcement Agency within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

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9.7.9 ENFORCEMENT

9.7.9.1. The Department of Public Works, or an authorized agent of the Department of Public Works (as designated by the Superintendent of Public Works) shall enforce this bylaw, and the regulations promulgated thereunder, as well as the terms and conditions of all permits, notices, and orders, and may pursue all civil and criminal remedies for such violations.

9.7.9.2 Civil Relief

If anyone violates the provisions of this bylaw, regulations, permit, notice, or order issued thereunder, the Department of Public Works may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities that would create further violations or compelling the person to abate or remediate the violation.

9.7.9.3 Orders

The Department of Public Works may issue a written order to enforce the provisions of this by-law or the regulations thereunder, that may include: (a) elimination of illicit connections or discharges to the storm drainage system; (b) termination of access to the storm drainage system; c) performance of monitoring, analyses, and reporting; (d) cessation of unlawful discharges, practices, or operations; and (e) remediation of contamination in connection therewith. If the Department of Public Works determines that abatement or remediation of contamination is required, the order shall set forth a deadline for completion of the abatement or remediation.

9.7.9.4 Criminal and Civil Penalties:

Any person who violates any provision of this by-law, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine not to exceed \$300.00 for each day such violation occurs or continues or subject to a civil penalty not to exceed \$300.00 for each day such violation occurs or continues, which may be assessed in an action brought on behalf of the Town of Carver in any court of competent jurisdiction.

9.7.9.5 Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the Town of Carver may elect to use the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D and Section 10.4 of the Town of Carver By-Laws, in which case the Department of Public Works or its Superintendent of Public Works or other authorized agent of the Town of Carver shall be the enforcing person. The penalty for the 1st violation shall be \$50.00. The penalty for the 2nd violation shall be \$150.00. The penalty for the 3rd and subsequent violations shall be \$ 300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

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9.7.9.6 Entry to Perform Duties Under this By-Law

To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Department of Public Works, its agents, officers, and employees may enter upon privately-owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys, or sampling as the Department of Public Works deems reasonably necessary

9.7.9.7 Appeals

The decisions or orders of the Department of Public Works shall be final. Further relief shall be to a court of competent jurisdiction.

9.7.9.8 Remedies Not Exclusive

The remedies listed in this by-law are not exclusive of any other remedies available under any applicable federal, state or local law.

9.7.10 SEVERABILITY

If any provision, paragraph, sentence, or clause of this by-law shall be held invalid for any reason, all other provisions shall continue in full force and effect.

9.7.11 TRANSITIONAL PROVISIONS

Residential property owners shall have 60 days from the effective date of the bylaw to comply with its provisions provided good cause is shown for the failure to comply with the bylaw during that period.

9.8. STRETCH ENERGY CODE

1. Definitions:

a. International Energy Conservation Code (IECC) –The International Energy Conservation Code (IECC) is a building energy code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency, and is updated on a three-year cycle. The baseline energy conservation requirements of the MA State Building Code are the IECC with Massachusetts amendments, as approved by the Board of Building Regulations and Standards.

b. Stretch Energy Code- Codified by the Board of Building Regulation and Standards as 780 CMR Appendix 115.AA of the Massachusetts Building Code, the Stretch Energy Code is an appendix to the Massachusetts building code, based on further amendments to the International Energy Code (IECC) to improve the energy efficiency of buildings built to this code.

2. Purpose: The purpose of 780 CMR 115.AA is to provide a more energy efficient alternative to the Base Energy Code applicable to relevant sections of the building code for both new construction and existing buildings.

3. Applicability: This code applies to residential and commercial buildings. Buildings not included in this scope shall comply with 780 CMR 13, 34, 51, as applicable.

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4. Stretch Energy Code: The Stretch Energy Code, as codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115 AA, including any future editions, amendments or modifications, is herein incorporated by reference into the Town of Carver General Bylaws. The Stretch Code is enforceable by the building commissioner, or take any action relative thereto.

CHAPTER 10 MISCELLANEOUS PROVISIONS

10.1. ANNUAL TOWN REPORT

All town meeting proceedings and results of all elections shall be included in the Annual Town Report.

10.2. VALUATION LIST

Valuation lists for the Town of Carver shall be published every five (5) years unless otherwise voted by the Town.