

## **Carver Governing Document**

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.

## **Carver Governing Document**

**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

## **Carver Governing Document**

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.

## **Carver Governing Document**

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.

## **Carver Governing Document**

### **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

## Carver Governing Document

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

## Carver Governing Document

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