4.8.5 Earth Removal

A. Intent. It is the intention of this §4.8.5 to protect the public safety and property values; avoid the pollution of water resources by preventing excessive erosion; control noise and protect neighboring residential properties and public ways from any adverse impacts which may be caused by this use; to provide for the restoration of the land for its reuse at the termination of the extractive activity; and to protect the aesthetic quality of the area. These regulations are designed to ensure that land will be useable for residential, nonresidential, or agricultural purposes following the removal of the earth materials.

B. Applicability
   1. The removal of 1,000 cubic yards or more of earth materials (soil, loam, peat, sand, gravel, or stone) from a parcel or contiguous parcels in common ownership in any 12-month period requires a special permit.
   2. The removal of less than 1,000 cubic yards of earth materials from a parcel or contiguous parcels in common ownership is allowed upon the approval of a site plan by the Planning Board, except as provided in paragraph C. Approval of earth removal in this manner is only permitted once; if additional materials are proposed to be removed at a later date, a special permit is required at that time.
   3. The use of an exhausted earth removal site for earth processing or storage of earth materials from another site requires a special permit.

C. Exemptions. A special permit is not required in the following situations:
   1. For moving earth within the limits of a parcel or contiguous parcels in common ownership~~, provided that no such moving shall take place across or within a street~~. For the purposes of section 4.8.5, properties separated by a public way are not considered contiguous.
   2. When earth removal is at the site of, incidental to, and in connection with the excavation and grading necessary for the construction of a principal or accessory structure permitted by the Zoning Bylaw. However, earth removal of 500 cubic yards or more will require approval of a site plan by the Planning Board.
      a. For the purpose of Earth Removal, the definition of "structure" within §4.8.5 shall not include: pole, sign, fence, wall, any small constructs (less than 100 sq.ft.), or any part of the above.
         i. Any garages, sheds, barns or similar structures between 100 to 1000 sq.ft. can be exempt from this definition at the discretion of the Special Permit Granting Authority.
   3. For earth removal that is necessary for the construction of infrastructure within an approved subdivision.
   4. For earth removal pursuant to an Order of Conditions issued under the Wetlands Protection Act (MGL c 131 §40) when such removal is incidental to a permitted use.
   5. For earth removal operations that are accessory to agricultural uses, pursuant to MGL c. 40A §3.
   6. For earth removal operations that were in existence on April 13, 1987 (date of adoption of the original earth removal provisions).

D. Operational Standards

1. No excavation shall be permitted below the grade of a road bounding the property at any point nearer than 150' to such road.
2. No excavation below the natural grade of any property boundary shall be permitted nearer than 50 feet to such boundary. If an abutting property is conducting an earth removal operation, a buffer transition with a slope of 3 to 1 on the shared property line may be granted by written agreement of the involved parties and an approval of the modification of the applicable existing earth removal permit by the Special Permit Granting Authority.
3. No slope created by the removal operation shall be finished at a grade in excess of two feet horizontal to one-foot vertical (2:1).
4. All excavated areas shall, upon completion of the operation or within two years of the issuance of the permit, be covered with not less than four inches of loam suitable for seeding, brought to the finish grade and seeded in a manner complying with Mass DOT standards.
5. Within the Flood Plain Overlay District, excavation of earth products shall be prohibited if such excavation will lower the level of the water table or will interfere with the natural flow pattern or reduce the flood storage capacity of a stream.
6. For Earth Removal projects requiring a special permit, no excavation shall be made at less than 10 feet above the annual high water table, as established from test pits, soil borings, and monitoring wells which are installed and gauged quarterly.
7. All topsoil and subsoil stripped from operation areas shall be stockpiled, seeded with an erosion control seed mixture, and used in restoring the area.
8. Trucking routes and methods shall be specified by the Board which shall seek the advice of the Chief of Police with regard thereto.
9. All access roads leading to public ways shall be treated with suitable material to reduce dust and mud for a distance of 200 feet back from the public way.
10. Standard Massachusetts accepted road signs warning of "Trucks Entering" shall be placed on the road on each side of the entrance, in locations approved by the Ware Department of Public Works and Ware Police Department.
11. The boundaries of the area of operation must be clearly marked by the applicant and maintained at all times.
12. Operators shall immediately clean up any spillage on public ways, and are responsible for repairs to any public ways damaged as a result of the trucking traffic serving the earth removal operation.
13. Any shelters or buildings erected on the premises for use by personnel or storage of equipment shall be screened from public view and shall be removed from the premises within 60 days after they are no longer needed for work upon that site.

E. Application

In addition to the submission requirements of §7.2 for a special permit, applications for a special permit under this §4.8.5 shall be accompanied by plans and

specifications prepared by a Registered Professional Engineer, Registered Land Surveyor, or Professional Geologist as follows:

1. A plan of the area from which removal is proposed plus a strip 150 feet wide surrounding said area, showing all man-made features, lot lines, zoning boundaries, vegetative cover, wetlands, rivers, streams, soil characteristics, and existing topography at two-foot contour intervals;
2. A plan of the area showing the finished grade and treatment of the site after the proposed completion of the excavation;
3. An analysis of the impact of the proposed earth removal on existing site features, particularly groundwater elevation, and any existing surface water, wetlands and vegetative cover; and
4. The estimated quantity of materials to be removed and topsoil to be stripped and replaced, and the treatment of the site during operations to reduce dust and mud.
5. If processing of earth materials is proposed to be done on the site, the area for such processing shall be shown on the plan.

F. Decision

1. The SPGA shall take into consideration the following in reaching its decision:
   a) The health, safety and general welfare of the inhabitants of the Town;
   b) The removal will not be detrimental or injurious to abutters or the neighborhood, either by the alteration of existing topography or by a substantial change in the use of the streets in the neighborhood; and
   c) The effect on natural resources, including but not limited to the recharge of the water table or condition of the surface water.
   d) The removal will not violate section 4.3.24 of this zoning bylaw in regard to vibration and noise.
2. The SPGA may impose conditions pertaining to:
   a) methods of removal,
   b) type and location of structures and fencing,
   c) hours of operation to be set by the SPGA on a case by case and/or zoning district basis,
   d) area, location and depth of excavation and steepness of slopes,
   e) drainage,
   f) disposition of boulders and stumps,
   g) restoration and planting,
   h) an updated topography map of the project site showing the current grade with volume calculations shall be sent to the SPGA every 5 years or as determined otherwise by the SPGA,
   i) The SPGA may request as a condition that the applicant furnish a performance bond, of cash certified check or a surety company to the Town as obligee in a penal sum to be fixed by said SPGA as it shall deem sufficient to cover the cost of the performance of all the conditions, limitations, and safeguards may be imposed by said SPGA in connection with the removal of the particular earth substances for which the permit has been issued,

i. The bond, check or cash deposit shall be held by the Town Treasurer until all conditions of the permit have been met to the satisfaction of the SPGA. If after (18) eighteen months from the issuance of the permit, or extension thereof, all conditions as required in the permit have not been met (especially grading and seeding), the SPGA shall cause the monies to restore the site to its natural state,

j) sufficient security and covenants to ensure compliance with the special permit, which shall not be released until the surveyor or engineer has filed with the SPGA an as-built plan and certification that the site has been restored in compliance with the special permit and the plans, and

k) other such conditions as it deems necessary to comply with the intent of this §4.8.5.

3. A special permit granted under this §4.8.5 may be issued for a period not exceeding one year in duration. Owners of earth removal operations may apply annually for an extension of said permit for a period not exceeding one year. Said application shall be accompanied by an annual report to include the volume of material removed in the previous year, as shown on trucking documents (e.g. bill of lading) or other reliable source, and activities related to restoration, including photographs of the site sufficient to show such activities. In addition, if any modifications to the approved plans are proposed, new plans in compliance with this §4.8.5 shall be submitted.