

**SECTION 1. PURPOSE**

This bylaw sets forth the process for submission and review of Earth Alteration Applications before the Soil Conservation Bylaw. The purpose of the Earth Alteration Permit is to assure that proposed operations will be conducted in a manner that is consistent with land use objectives of the Town of Berkley.

**SECTION 2. DEFINITIONS****ABUTTER**

The term "abutter" as used in this bylaw shall mean all property owners of record sharing a common boundary line with the site and further include any other owner of record whose property is located within 300 feet of the site boundaries.

**ALTERATION**

The term "alteration" as used in this bylaw shall mean either:

1. The removal of earth from a site
2. The depositing (bringing in) earth to a site;
3. The physical changing of contours of earth, by more than two (2) feet, on a site.

**BOARD**

The term "Board" as used in this bylaw shall mean the Soil Conservation Board as established under Section 3 of this bylaw.

**EARTH**

The term "earth" as used in this bylaw shall include any non-organic material normally and naturally composing part of the world's surface, including, but not limited to soil, loam, sand, stone, gravel and peat, and unprocessed unconsolidated deposits, but excluding water.

**UNPROCESSED UNCONSOLIDATED DEPOSITS**

The term "unprocessed unconsolidated deposits" as used in this bylaw shall mean any non-organic material, normally and naturally composing the world's surface and found in the earth's subsurface, still in its natural and unchanged state.

**SECTION 3. MEMBERS**

A Soil Conservation Board is hereby established in the Town of Berkley for the purpose of regulating the alteration of earth from the land located within the Town and in enforcing the provisions of this Bylaw. Members of the Board shall consist of one member of the Planning Board and four (4) citizens at large, who shall be registered voters of the Town of Berkley, to be appointed by the Board of Selectmen. No person engaged in the business of altering earth shall serve on such Board. Appointed members shall serve one to serve for three years, one to serve for two years, and one to serve for one year and then annually one for three years. The Board shall elect a chairman and secretary. The secretary need not be a member of the Board and shall keep a true record of the proceedings of the Board which shall be public records.

**SECTION 4. PERMITS**

Except as herein provided, no earth shall be altered from any land within the Town until a written permit from the Board, stating the land to which it applies, has been issued after a public hearing, a notice of which setting forth the time, place and purpose of said meeting, and the land with reference to which application has been made, shall have been published in one or more newspapers in general circulation in the Town, at least fourteen (14) days prior to the day set for the hearing, and shall have been mailed Certified Mail, return receipt requested, to all abutters. All other provisions concerning the hearing shall be in conformance with Massachusetts General Laws, Chapter 40A, sections relative to the granting of special permits.

**SECTION 5. EXEMPTIONS**

A permit shall not be required for the alteration of earth in the course of excavation incidental to the construction of the foundation of buildings, walks, driveways, septic systems, nor swimming pools.

A permit shall not be required for the alteration of earth in the ordinary and customary agricultural, horticultural or floricultural use of land. (Note: Excavation in the building of farm ponds and excavations that will result in the lowering or raising of an existing elevation by more than two (2) feet shall not be deemed normal and customary within the meaning of the foregoing). A permit shall not be required for the excavation and/or earth alterations made or done to complete the construction of ways and the installation of drainage and municipal services pursuant to a definitive subdivision plan submitted to and approved by the Berkley Planning Board under the Subdivision Control Law. Note: however, a permit will be required for the excavation and/or earth alteration made or done to complete the construction of such ways or installation of drainage and municipal services whenever existing elevations will be altered either in lowering or raising by more than two (2) feet. Under such circumstances, an earth alteration permit will be required in addition to approval by the Planning Board. The Soil Conservation Board may also issue a permit without a hearing for any alteration or use within the Town or not more than one hundred (100) yards of earth for any other purpose which is not commercial.

#### **SECTION 6. *APPLICATIONS***

The application shall include the following information, and any other information the Board may require in its rules and regulations, and shall not be acted upon until all such information is provided.

- A. The location of the site upon which alteration is proposed, identified by both Berkley Assessor's Map and Lot number, and by street address and identified by the Registry of Deeds book and page references.
- B. The name and address of the Applicant.
- C. The name and address of the Owner.
- D. The name and address of the Operator.
- E. A certified list from the Assessor's Office of the names and addresses of all abutters, as published on the most recent Assessor's tax list.
- F. A site plan submitted to the Board in conformance with the rules and regulations of the Board.
- G. An estimated number of cubic yards of earth proposed for alteration based on field data from the engineering firm issuing the Site Plan.
- H. Under this bylaw the Board shall establish a filing fee, and the Board shall also establish a fee for the issuance of permits which shall be no more than sufficient in the opinion of the Board to reimburse the Town for the cost of applying and enforcing this bylaw; and the Board shall also establish a reasonable removal fee to be held for further appropriation at a future Town Meeting; and no permit shall be issued until such fees are paid. The fees collected under this bylaw shall, at intervals determined by the Board, be paid over to the Town Treasurer.
- I. Plan to show all relationship to any existing wetlands and/or Order of Conditions from the Conservation Commission for the entire project must accompany the application and at least one plan with a majority of the signatures from the Conservation Commission indicating this is the plan they have reviewed and approved.

#### **SECTION 7. *PERFORMANCE SPECIFICATIONS***

All work performed under an earth alteration permit granted under this bylaw shall be done in accordance with the following specifications which shall be deemed to be incorporated therein by reference:

- A. An earth alteration permit shall not be issued for alteration of earth within three hundred (300) feet of a public way or within two hundred and fifty (250) feet of a private way or within two hundred and fifty (250) feet of an abutter, unless the Board determines that such removal will not undermine the way or otherwise endanger the safety of public travel upon it, nor impair the convenience and welfare of the public or the amenities of living in the houses upon such way, nor injuriously affect the abutting owners, as further set out in Section 8 hereof.

- B. All trees are to be cut and removed in compliance with all local, state and federal laws and regulations.
- C. All loam and topsoil must be scraped and stockpiled on the site for use in later landscaping. Upon completion of all earth alteration, the loam or topsoil must be spread back over the entire area and the re-graded area must then be seeded with an acceptable material and maintained until the grass heights have reached the two (2) inch minimum. No loam or topsoil may be removed from the site, except when necessary for or incidental to the construction of a road, or other permanent facility which changes the character or use of the land: but in such case the Board shall require evidence of good faith in the intent of the applicant to complete such road or other facility, and shall make such evidence part of its records.
- D. All public ways utilized for earth alteration operations must be paved to minimize dust and mud. All access roads leading to public ways shall be paved for a distance of not less than one hundred fifty (150) feet back from the public way. Any spillage on public ways, within one thousand (1,000) feet of the access road, shall be cleaned by the operator on a daily basis following working hours.
- E. Earth must be altered to contours set forth in the approved Site Plan.
- F. Unless the site conditions or specific needs set out in the permit application expressly requires alteration of drainage patterns, the land shall be left so that natural storm drainage shall leave the property at the original natural drainage points; and so that the total discharge at peak flow is not increased; and so that the hydrograph of any post development stream is not more than that of the predevelopment stream.
- G. Any earth alteration in the vicinity of or within wetland areas governed by Massachusetts General Laws Chapter 131 or other wetland related laws, shall also be subject to orders of conditions from the Conservation Commission. Whether such proposed earth alteration projects fall within the jurisdiction of the Conservation Commission shall be determined by the Conservation Commission and applicable local, state and federal laws and regulations.
- H. The Board shall also establish rules and regulations relative to all other design or alteration standards that it deems necessary and these rules and regulations will be attached to the permit as additional conditions as outlined in section 8 hereof.

#### **SECTION 8. CONDITIONS**

In issuing a permit, the Board may impose reasonable conditions, which shall be written upon and shall constitute part of the permit, requiring the restoration of the land within a designated period, by grading, leveling, or filling and by replacing sufficient topsoil for planting cover to the end that no substantial injury to health, safety, convenience, welfare, natural beauty, and economic prosperity of the neighborhood, town, and the inhabitants will be caused by the acts authorized by such permit, all as set out by this bylaw. Conditions may in like manner be imposed to provide adequate protection for the neighborhood, the aquifer, and the Town from nuisances that may arise from the course of such removal. If such alteration is carried on in such a way as to injuriously affect the welfare of the town, by an increase in the amount of products removed or otherwise, and the Town is not adequately protected by the conditions imposed by the permit, the Board may impose additional restrictions. The Board may, and in the case of the alteration for commercial purposes, such as soil stripping and gravel operations, shall require a bond or other security to enforce the performance of conditions listed in this paragraph, and may also revoke or suspend a permit if the conditions are not complied with.

#### **SECTION 9. REASONS FOR DENIAL**

No permit shall be issued if any of the following conditions exist and cannot be rectified through the use of reasonable conditions as provided by Section 8 to the satisfaction of the Soil Conservation Board:

- A. Any vehicular traffic of a type or quantity so as to adversely affect the immediate neighborhood.

B. Any conditions dangerous to premises and residents in the neighborhood through fire, explosion, emission of wastes or other causes.

C. Any creation of noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisances or serious hazards so as to adversely affect the immediate neighborhood.

**SECTION 10. DURATION OF PERMIT**

A permit issued under this bylaw shall expire upon completion of the earth alteration and subsequent re-grading for which the permit was issued, and in any event no longer than one year from the issued date. If it appears that the operations for which such permit was issued have been carried on continuously; and in good faith, but have not been completed and that all conditions presently applicable have been complied with, the permit may be renewed for an additional year without a hearing. The expiration or revocation of the permit shall not affect the obligation of the holder thereof to comply with the conditions attached to the permit, or release him or the surety on his bond from the obligations thereof or require the return of any deposit made by him until such conditions have been complied with.

**SECTION 11. ENFORCEMENT**

If the Board shall find that there has been a violation of this bylaw, the Board shall send by registered mail to the offender a written warning. If such violation continues, then any penalties authorized by the Massachusetts General Laws may be imposed. The penalty for earth alteration in violation of this bylaw shall be a fine of not more than three hundred (\$300) dollars for the first offense after such warning; any subsequent violation shall result in permit revocation and/or any other remedy available at law or in equity. Each day on which earth removal takes place shall constitute a separate offense for the person removing the same. If the offender holds a permit issued under this bylaw, such permit shall be revoked.

**SECTION 12. ENDANGERMENT TO PUBLIC HEALTH OR SAFETY**

When the Board finds that any excavation hitherto made for the purpose of earth removal is maintained in such a way as to endanger the public health or safety or to constitute a nuisance, the Board shall request the Board of Health to take such steps as are authorized by law to protect the public health and safety, or to cause such nuisance to be abated.

**SECTION 13. EXISTING OPERATIONS**

Whenever the Board shall find that the alteration of any earth has previously been undertaken in a particular location, and was in continuous operation at the time when notice of the warrant for the Town Meeting at which this bylaw was adopted was given, a permit for the further continuance of such operation within the same territorial limits shall be issued subject to conditions in the same manner as other permits.

**SECTION 14. SEVERABILITY**

The invalidity of any part of this bylaw shall not affect the validity of the remaining parts or in any way act thereon.