

### **INTRODUCTION AND PURPOSE**

The purpose of this Ashby Board of Health bylaw is to regulate major earth filling operations for the avoidance of nuisance conditions and the protection of public safety, welfare and human health, including the integrity of the natural resources, of the Town of Ashby.

### **APPLICABILITY**

The filling of any lot or lots as part of a single project or series of related projects with greater than 1,200 cubic yards in total of topsoil, borrow, rock, sod, loam, peat, humus, clay, sand or gravel ("earth material") within any twenty-four-month period is considered a major earth filling operation and shall be done only in accordance with this bylaw. Filling includes transporting earth material from one location (inside or outside of the Town) and depositing the earth material in another location in the Town. Filling does not include redistributing earth material within a single site. "Single site" is defined for the purposes of this bylaw as one tax parcel.

### **Exemptions**

The following are exempt from the provisions of this bylaw\_

1. Filling of any lot with 1,200 cubic yards or less of earth material within any twenty-four-month period is permitted without an earth fill permit (but may be subject to other requirements of law and other Town bylaws and regulations).
2. The construction of ways within subdivisions that have been approved by the Planning Board, provided that other site preparation filling within subdivisions is not exempt.
3. Utility construction in public and private ways or incidental to municipal operations and activities.

### **MAJOR EARTH FILLING PERMIT REQUIREMENTS**

The permit granting authority shall be the Board of Health.

**Application submission.** The applicant shall submit three copies of the permit application, any required soil management plan and any required site plan, to the Board of Health and shall at the same time submit one copy to the Building Inspector.

**Performance bonds.** Where deemed necessary by the Board of Health, a performance bond in the amount determined and on the terms specified by the Board shall be posted in the name of the Town assuring satisfactory performance in the fulfillment of the requirements of this bylaw and such other conditions as the Board may impose as conditions to the issuance of the major earth filling permit or any subsequent changes to such conditions. No such bond shall be released, nor shall the applicant be deemed to have complied with the conditions provided for herein, until the applicant has filed with the Board Of Health a written certification from the Massachusetts licensed site professional who approved the original soil management plan that said conditions and the soil management plan have been complied with, and a final, engineered record site plan showing that the finished grades are consistent with those proposed in the approved permit. The Board of Health shall act on a requested release of bond within 65 days after the applicant submits a written request for such release that includes the required information.

**Hearings.** Before granting or materially modifying a major earth filling permit, the Board of Health shall hold a public hearing within 30 days after receipt of a completed application and shall give due consideration to the location of the proposed earth filling, to the general character of the neighborhood

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surrounding such location, to the protection of water supplies and aquifers, to the safety of the public on the public ways in the vicinity, and to the potential for exposure to potentially hazardous materials or oils. The applicant shall obtain from the Town Clerk a list of abutters to the property on which fill will be placed. The list will include abutters across public and private ways. The applicant shall notify all abutters by certified mail, return receipt requested, of the time, date, location and purpose of the hearing. The letters shall be delivered at least seven days prior to said hearing. The applicant shall provide proof of the timely mailing at the hearing. If the applicant fails to provide satisfactory proof of notice to abutters at the hearing, the hearing shall be postponed.

**Other approvals.** If any proposed major earth filling for which a permit is required under this bylaw also requires an order of conditions from the Conservation Commission and/or a site plan review by the Planning Board and/or any approval by any other Town board or official, the Board of Health may grant a permit that is conditional on receipt of the other required approval(s).

**General permit terms.** If the applicant is not the owner of the property to be filled, the owner of the property shall also sign the application as an applicant and shall guarantee performance of the other applicant(s). Permits for major earth filling under this bylaw shall be transferable only to a person who agrees in writing to assume all of the obligations of the permit holder and who is approved as an assignee by the Board of Health. Permits shall be issued for a term not to exceed two years. A permit may be renewed upon reapplication.

**Approval deadlines.** The Board of Health shall act on completed applications within 45 days of the completion of the public hearing. If the Board of Health fails to act within such forty-five-day period, the application shall be deemed to be approved. The Board may act by granting a preliminary approval of the proposed filling operation conditional on receiving satisfactory additional information including but not limited to testing results on the material to be moved. No filling work may proceed until the additional information is received and approved by the Board and a final approval is provided. The Board may reject the permit application after consideration of the additional information.

**Permit Application Content Requirements.** Each application for a major earth filling permit shall include a written statement describing the proposed regulated activity, together with the following information:

A description of the origin of the fill material, including the address(es) from where the fill material will be derived; and a discussion of the past and present uses of that property(s), a determination of whether the material to be used as fill was in its original native state on the property prior to its excavation for transport to the proposed fill site, or whether the material was re-worked on the property or brought to property as fill from another site; and a discussion of and whether the current and historical uses of the source property(s), and/or the observed characteristics of the fill, provide a basis to suspect that the fill may contain contamination. Without limiting the conclusions that the Board of Health may draw from this information, if the material was not native, original, undisturbed soil on the source excavation site (e.g. was used as fill on the excavation site), the presumption will be that the fill may contain contamination.

No solid or hazardous waste, refuse, junk, industrial waste, volatile, explosive or flammable materials, garbage, building materials, construction and demolition debris, glass, metal, toxic, infectious, radioactive, corrosive, or reactive material or waste may be used as fill in the Town. The application shall include an affirmative statement that any these materials will not be used as fill.

If the fill will be derived from a property or properties that have any Massachusetts Contingency Plan Release Tracking Numbers assigned to the property address or addresses, those Release Tracking Numbers must be identified in the permit application, and a discussion must be presented about how the contaminants associated with the Release Tracking Numbers potentially relate to the fill to be taken from that property or properties.

**Soil management plan.** If the Board of Health concludes that the soil may contain contamination, a Soil Management Plan shall be submitted by the applicant. The soil management plan shall be signed by a

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Massachusetts licensed site professional (LSP). The LSP shall specifically state that "The subject plan meets the requirements of the Ashby Board of Health Earth Filling Bylaw and any other applicable federal or state law or regulation pertaining to the transport, use and/or disposal of earth and other materials for fill."

The plan shall reiterate the information regarding the origin of the material, as described above,

The soil management plan must contain sufficient detail to document that the requirements of this Earth Filling Bylaw will be met. The plan shall specifically require that Massachusetts BWSC bills of lading will be used for the transport and acceptance of earth materials for fill.

The soil management plan will present:

- Complete descriptions of pre-fill environmental conditions, including chemical analysis of pre-fill surface soil samples if required, and sample locations;
- Procedures for verification of fill material origin and acceptance;
- Recordkeeping practices;
- Site security, fill operation inspection and site control;
- Transport routes, times and days of operation, locations of equipment parking and storage and duration of fill activities;
- Qualifications of applicant personnel responsible for adhering to the soil management plan and this bylaw;
- Erosion, dust, and stormwater controls and inspection and maintenance thereof. Dust control may not be performed by application of oils or chlorides;
- Potential effects of the filling on groundwater recharge;
- Quality assurance/quality control procedures;
- Emergency response and notification procedures, including telephone numbers and contact individuals/firms;
- Total proposed earth material fill volume;
- Daily personnel procedures and operation management procedures, including types, numbers, locations and hours of operation of any processing equipment on site;
- Environmental monitoring plan to maintain protection of human health, public safety, welfare and the environment during and following fill operations; and
- Cover material, revegetation, erosion and pollution control, and monitoring and maintenance plan.

The Board of Health shall approve the Soil Management Plan before closing the hearing and deciding whether to grant the permit. If there are deficiencies in the Soil Management Plan, the hearing will be continued.

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**Site Plan.** A site plan prepared by a Massachusetts registered land surveyor or professional engineer shall be provided with the permit application. The site plan shall depict the following information, at a minimum:

- Existing conditions, including grades, man-made features, elevations, property boundaries, dimensions, owners of abutting land, access points, water bodies and watercourses, wetlands, and environmental sample locations;
- Process diagrams indicating fill sequence, transport routes, and security measures;
- Drainage, water flow and sedimentation control before and after the proposed filling and stormwater and erosion control and groundwater recharge structures and features to be utilized during fill operations;
- Final grade plans depicting proposed finish fill elevations, slopes, permanent stormwater and erosion control and groundwater recharge structures and features, the methods of final stabilization of fill material and the proposed cover material and cover vegetation;
- Unless otherwise determined by the Board of Health, map scales shall be no more than 60 feet to the inch and elevation contour intervals shall not exceed two feet. Elevation contours are required only for areas of proposed fill, 100 feet beyond the perimeter of the fill areas and along abutting property lines. Appropriate permanent benchmarks with elevations marked thereon and referenced to the National Geodetic Vertical Datum (NGVD) shall be placed in the field and shown on the plans.

### STANDARDS FOR FILLING

**Permitted fill materials.** No solid or hazardous waste, refuse, junk, industrial waste, volatile, explosive or flammable materials, garbage, building materials, construction and demolition debris, glass, metal, toxic, infectious, flammable, radioactive, corrosive, or reactive material or waste may be used as fill in the Town. All fill materials shall include only clean sand, gravel, silt, clay, stone, quarried rock or other subsurface products free from solid waste, with an aggregate size of six inches or less. None of the fill material shall have any concentration of oil or hazardous material, toxic substance or infectious biological material greater than federal criteria or Massachusetts RCS-1 concentrations. None of the fill material shall have concentrations materially greater than pre-fill conditions prevailing in the area to be filled. "Materially greater" is defined for this bylaw as a factor of two times. The fill material shall also be free from organic wastes and debris such as trees, stumps, and garbage. The fill material shall be free of building materials and construction and demolition debris and shall contain 15% or less of total organic carbon by lab analysis.

**Site preparation.** The area to be filled shall be cleared of stockpiled or otherwise disposed of organic and inorganic materials, such as fallen trees and brush, tree stumps, rubbish, junk, building/construction/demolition materials, and any other accumulated debris. Topsoil shall also be removed from the area to be filled prior to filling. The topsoil shall be retained on-site for re-use during restoration of the filled area, and shall not be transported off the site. Sedimentation controls shall be installed around the topsoil pile. The area to be prepared for filling shall be clearly depicted on the Site Plan submitted with the application.

**Fencing and gates.** Temporary fencing, where deemed appropriate by the Board of Health for the protection of the general public during fill operations, shall be at least six feet high with suitable gates to exclude unauthorized persons from the site.

**Groundwater recharge and drainage.** Provision shall be made for promoting groundwater recharge, for preventing increased runoff from the site and for safe drainage of water, for preventing excessive water accumulation, and for preventing wind or water erosion from carrying material onto adjoining properties.

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Provision shall also be made to prevent surface water runoff from affecting neighboring properties, roadways, or environmental receptors.

**Covering of loads.** Provisions shall be made for covering loads in vehicles traveling on public roadways in Ashby.

**Buffer strips.** The Board of Health may require that a twenty-foot buffer strip shall be maintained at all boundaries of the property. Said buffer zones shall not be disturbed.

**Screening of processing equipment.** The visibility, sound, and airborne particulates from processing equipment shall be screened from adjacent premises through the design and location of such equipment and through use of natural vegetation, planting, overburden piles, and surge piles as screening. Potential noise and particulate impacts on abutters shall be considered by the Board of Health in deciding whether to grant the permit, and/or in establishing conditions attached to the permit.

**Final cover.** All filled areas shall receive a final cover consisting of a minimum of four inches of organic topsoil and shall be seeded and mulched to stabilize the cover and underlying fill material.

**Finish elevations and grading.** The Board of Health may specify finished grades, elevations and contour intervals which filling will conform to. Final fill material grades shall conform in contour, slope, and elevation to the natural topography of the surrounding area or preexisting contours as evidenced by the application site plan, historical maps and/or photographs. Final grading shall incorporate stabilization measures and slopes of no more than 15% and shall not result in erosion, structural failure of fill materials, ponding of water, or excessive stormwater drainage onto abutting properties. The permit holder shall be responsible for remedying any of these situations should they occur.

**Additional conditions.** The Board of Health may set reasonable conditions in addition to the above, including but not limited to duration of the permit, hours of the day or days of the week during which filling may take place, maximum load sizes, truck routes to be used to access the site, and grasses, shrubs and trees to be planted.

**Permit terms; inspection; suspension and revocation.** No permit shall be issued under the provisions of this bylaw to extend for a term of more than two years. Prior to filling and at any time during a permitted filling activity, inspection of the premises may be made by the Board of Health, the Building Inspector, or their agents to determine whether or not the provisions of the Town bylaws and any permit are being complied with. If the Board of Health determines that the provisions of the bylaw or the provisions of any permit are being violated, the Board may issue temporary cease and desist order, which shall remain in effect until terminated in writing by the Board. If, after notice to the permit holder(s) and a public hearing, the Board determines that the conditions of any major earth filling permit are not being complied with, the Board may revoke the permit, after which the operation shall be discontinued and the area restored in accordance with the orders of the Board.

**Inspections, certifications, reports and tests.** While considering an application and/or as a condition of issuing a permit, the Board of Health may require such borings and test pits, inspections, monitoring, certifications, reports and tests by licensed site professionals, engineers, laboratories and/or other qualified persons as are deemed by the Board to be needed to evaluate the application and/or to monitor performance under a permit and/or to establish compliance with the conditions of a permit and this bylaw. It shall be a condition of all permits that the applicant pay for all such borings and test pits, inspections, monitoring, certifications, reports and tests and that they be conducted by persons approved in advance by the Board. To the extent that soil and groundwater investigation and sampling are required, the work must be supervised by a Massachusetts Licensed Site Professional (LSP), and the LSP must sign all documents and certify that he or she has supervised the sampling procedures and reviewed the results. The LSP must also identify any analytical results that could reasonably be interpreted to indicate that the fill or groundwater is contaminated, or is materially different, as defined above, from pre-filling conditions. If uncertainty exists, the LSP, considering his or her duty to hold paramount the public health, when

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interpreting "reasonable uncertainty", shall err on the side concluding that potential impacts may exist, but may identify mitigating circumstances or uncertainties in the accompanying discussion.

Failure of any applicant or permit holder to complete any portion of sampling, monitoring, testing and/or investigation, or to carry out any step or to submit any information required by the Board of Health shall be grounds for denial of a permit and/or for issuance of a cease and desist order and/or for revocation of the permit.

### DOCUMENTATION REQUIREMENTS

**Permit required to commence filling operations.** No fill operations are to commence until a letter indicating the granting of a permit and, if required, receipt and acceptance of the soil management plan and the site plan has been issued to the applicant by the Board of Health

**Bills of lading and LSP letters.** Each permit holder shall file a bill of lading with the Town Clerk for each load of fill placed within the Town. Each bill of lading document shall be accompanied by a signed and dated letter from an LSP which specifies:

- The point of origin of the material and the receiving location for the material;
- That the material is not otherwise prohibited from use as fill material in accordance with this bylaw or other applicable federal or state laws, regulations, standards or guidelines; and
- That the LSP has compared analytical results of testing of the fill materials to the existing, pre-fill conditions at the fill location and determined:
- That the concentration of the substances in the materials intended for use as fill are not materially greater, as defined in this bylaw, than existing, pre-fill conditions for that location; and
- That the fill material complies with all requirements of this bylaw.

**Weekly documentation requirements.** Copies of bill of lading documents and required LSP letters covering all fill placed during each week of filling operations are to be provided to the Town Clerk by the end of business on the fifth business day following each week of active operation. Failure to provide these records on a weekly basis may result in suspension or revocation of the permit.

### Variances.

The Board of Health will consider requests for variances to specific requirements of this bylaw. The applicant must demonstrate that the requested variance does not compromise the purpose of the bylaw. Every request for a variance from this regulation shall be made in writing to the Board of Health within 15 days of a determination by the Board and shall state the specific variance sought and the reason for the request. The Board will notify the applicant of a date for a hearing to consider the variance within 45 days of receiving said request. The person requesting the variance shall also be responsible for notifying all abutters of the variance request as well as the time and place of the hearing to consider the variance. The Board of Health shall make a determination on the variance request within 45 days following the variance hearing.

### Severability.

Each section of this regulation shall be construed as separate, and to the end that if any section, item, sentence, clause or phrase shall be held invalid for any reason, the remainder of these rules and regulations shall continue in full force and effect.

### Enforcement

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The Board of Health, its agents, officers and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties for the administration and review of this regulation, and may make or cause to make such examinations, surveys or samplings as the Board deems necessary.

The Board shall have the authority to enforce this regulation and orders and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions.

Any person who violates any provision of this regulation or orders or permits issued hereunder shall be subject to a fine of not more than \$15 per cubic yard of material brought to a property. The number of cubic yards of material shall be determined by the Board or its agent in its reasonable estimation.

**Effective date.**

These regulations shall become effective immediately upon adoption by the Board of Health

**Other laws or regulations.**

This bylaw shall not be construed to authorize the use of any land or structure for any purpose that is prohibited by any other provision of the General Laws or by any other bylaw, rule or regulation of the Town, nor shall compliance with any such provision authorize the use of any land in any manner inconsistent with this bylaw, except as required by the General Laws.

**Fees.**

The Board of Health shall establish fees for permits under this bylaw.

  
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