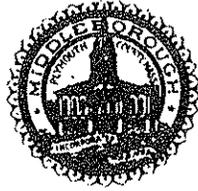


BOARD OF SELECTMEN
EARTH REMOVAL BY-LAW REGULATION – OUTSIDE CONSULTANTS

- SECTION 1. The Board of Selectmen (hereafter the Board) may employ outside consultants to assist the Board in carrying out its responsibilities under the Earth Removal By-Law. The Board may require an applicant for an earth removal permit under said By-Law to pay to the town reasonable fees for the employment by the Board of outside consultants to assist the Board with respect to its responsibilities under law and arising out of or in connection with an application for an earth removal permit or the grant of an earth removal permit.
- SECTION 2. Upon receipt by the Board of an application for an earth removal permit, the Board may send a bill to the applicant for the estimated cost of reasonable fees for employment by the Board of outside consultants. The Board may send a bill to the applicant for the cost of reasonable fees for employment by the Board of outside consultants if the amount in a bill for the estimated costs is not sufficient to pay for employment of outside consultants or if a bill for estimated costs has not been sent by the Board. The applicant shall pay all bills sent by the Board within thirty days of the date of the bill.
- SECTION 3. The Board shall notify the applicant in writing of the Board's selection of each consultant. The applicant shall have an administrative appeal from the selection of any consultant. The appeal shall be to the Board. The grounds for such appeal shall be limited to claims that a consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The required time limits for action upon an application by the Board shall be extended by the duration of an administrative appeal. In the event that no decision is made by the Board within one month following the filing of an appeal, the selection made by the Board shall stand. All appeals shall be in writing and filed with the Town Clerk not later than fourteen days after the date of the notice to applicant of the selection of a consultant.
- SECTION 4. The Treasurer shall establish a separate special account into which all fees received from applicants with respect to consultants shall be deposited. The special account including interest, if any, shall be expended at the direction of the Board without further appropriation provided that such funds shall be expended only in connection with carrying out the Board's responsibilities under law. Any excess amount in the account attributable to a specific project including accrued interest, if any, shall be paid to the applicant or to the applicant's successor in interest, if applicable, at the completion of the project. The Board shall provide a final report of the account attributable to the project to the applicant or to the applicant's successor in interest, if the successor in interest is entitled to receive any excess. The Board may require proof that an applicant's successor in interest is entitled to receive any excess amount before authorizing payment of any excess to a successor in interest.

AUTHORITY FOR REGULATION; General Laws, Chapter 122 of Acts of 2012

REGULATION ADOPTED BY THE BOARD OF SELECTMEN – September 10, 2012



Town of Middleborough

Massachusetts

BOARD OF SELECTMEN
APPLICATION FOR LICENSE (PLEASE TYPE OR PRINT CLEARLY)

DATE _____
NAME OF APPLICANT _____
ADDRESS OF APPLICANT _____
ASSESSORS MAP & LOT _____
DAYTIME TELEPHONE _____

NAME OF BUSINESS _____
OWNER OF PROPERTY TO BE LICENSED _____
ADDRESS OF PROPERTY TO BE LICENSED _____
ASSESSORS MAP & LOT _____

TYPE OF LICENSE REQUESTED (Check One)

2 nd Hand _____	WRPD _____
Class I Automobile Dealer License _____	Earth Removal Permit _____
Class II Automobile Dealer License _____	Liquor License _____
Class III Automobile Dealer License _____	Junk Dealer _____
Entertainment _____	Other _____

Anticipated Start Date for Business: _____
Days & Hours of Operation: _____

Has the applicant previously held a similar license in the Town of Middleborough or elsewhere?
If yes, explain:

Signature _____

DATE OF HEARING: _____

Please bring to the Treasurer/Collector's office @ the Town Hall Annex, 20 Center Street, 3rd floor to obtain confirmation/signature that no outstanding taxes/municipal charges exist.

Dear Treasurer/Collector:

Please inform this department as to whether or not the above listed property owner/applicant/petitioner owes the Town of Middleborough any outstanding taxes and/or municipal charges that remain unpaid for more than one year.

Does Property Owner/Applicant/Petitioner owe Taxes/Municipal Charges? _____

**TOWN OF MIDDLEBOROUGH
EARTH REMOVAL PERMIT
APPLICATION PACKAGE**

*** * * ***

BOARD OF SELECTMEN

*** * * ***

EFFECTIVE MAY 1, 2003

Revised February 2, 2009

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- A. Project Plan
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EXISTING PROCESS

General

Proponents of earth removal permits are required to submit an application form through the Board of Selectmen's office that outlines the applicant's: name, address, Owner of property; location of property by referencing the Assessor's map and page number; number of acres of the property; and number of cubic yards of material to be removed.

The reasons for the permit request are to be outlined, along with proposed traffic route. Conservation Commission Order of Conditions are mentioned, along with identification of the engineer whom prepares the plan; the expected date of project start and completion and if this is a new application or renewal.

The earth removal application also requires listing of the abutter's property's name, address and assessor's map and page number. Included in Appendix A is a paper providing suggestions on how to be effective in dealing with Town Boards for your use.

Earth Removal Bylaw and Amendment

The Town's Earth Removal Bylaw (ERB) outlines definitions and the scope of the permitting process. The bylaw is provided in Appendix B. In order for a permit to be issued by the Board of Selectmen (BOS), an application must be filed and a public hearing conducted. Based on information provided, the Board of Selectmen may grant or deny an application. The ERB was passed by Special Town Meeting in May, 1970 and amended in 1992. The ERB amendment states that no 'other' work can be performed at the site, once the Earth Removal Permit Application has been submitted to the Board of Selectmen.

Exemptions are provided from the ERB based on the volume to be removed, or when a subdivision plan is reviewed and approved by the Town's Planning Board.

There is no time frame provided for when an ERB permit must be issued by the Board of Selectmen in regards to the process of application, final approval or denial.

Rules and Regulations

Rules, regulations and forms utilized by the Board of Selectmen or their Agent are provided in Appendix D that outlines site inspection review requirements and quarterly fees.

Permitting Process

The present permitting process takes into account various reviews and approvals that have been added by the BOS over the years. A review by the Conservation Commission for site conditions that could impact water resource areas is required.

Conservation Commission

The Conservation Commission is required by statutory law to review any proposed work within one hundred feet (100 feet) of any water resource area. The Town's Conservation Commission's agent should be contacted and appropriate documentation provided. An ERB permit will not be issued unless the required permit application is submitted and approved.

Farm Plan

A farm plan outlines the property agricultural needs and can be prepared professionally by a private, local, state or federal entities. It is recommended that the applicant contact the Cape Cod Cranberry Growers Association for guidance on preparing a farm plan for submittal with the Middleborough Earth Removal request or upon completion of the permitting and earth removal process to be submitted with the Certificate of Completion or to be made part of the applicant's final package.

Town Taxes and Municipal Financial Obligations

The Town, through the Board of Selectmen and Town Tax Collector request an update of tax debt, by a proponent, with the application process. Information regarding the status of any existing property tax or other legal obligations to the Town monies that may be owed on the property is required to be submitted.

APPLICATION PROCESS

General

The process for submittal of an application for an ERB permit is as follows:

1. Applicant receives an application package from the BOS and is advised that the complete process, if it includes Conservation Commission hearings, may take up to eight (8) weeks.

The application package is available through email, by the BOS's Secretary. Please contact the BOS office for email address.

2. Applicant is advised to prepare a civil engineering plan that meets with the ERB permitting and project plan requirements to the Conservation Commission, along with Notice of Intent or other required forms.

Conservation Commission hearings require notification of abutters.

ConCom may require at least twenty one (21) days from receipt of a notice to schedule a hearing (recheck this out with Rosemary). And fourteen (14) days after the hearing the Order of Conditions may be issued.

3. If there are not any Conservation Commission requirements, proceed to No. 5.
4. Upon completion of required Conservation Commission public hearings and issuance of any Order of Conditions or finding - proceed to No. 5
5. Submit six (6) completed or revised plans, Project Plan and Order of Conditions to the Board of Selectmen's office and request a public hearing, along with a check for three hundred dollars (\$ 300.00), made out to the Board of Selectmen – Town of Middleborough.
6. Abutters are required to be notified by registered mail by the proponent.
7. The Board of Selectmen will submit a form for sign off and review by the Town Tax Collector/Treasurer for a check on whether property taxes, water, sewer or other financial obligations are current.

The BOS will review the application for completeness and advise that a public hearing can be advertised. The applicant is responsible for costs associated with advertisements.

8. A public hearing will be scheduled conducted by the Board of Selectmen at a regularly or specially scheduled meeting.
9. The Board of Selectmen will complete the public hearing and provide an Order of Conditions, if acted upon favorably no later than three (3) weeks after hearing.

Checklist

The town's representative will conduct quarterly inspections of the project and utilizes a checklist. This project checklist is included in the Appendix of this Application Package.

Project Plan

As part of the Application Package submittal, a project plan is required. The town's representative will review this proposed project schedule and work outline for compliance. The applicant can review with the town's representative and adjust if necessary - as site conditions warrant - with the expressed approval of the town's representative. Approval of any change to the project plan will be noted on the quarterly checklist.

APPENDIX A

PROJECT PLAN

APPENDIX A

PROJECT PLAN

The purpose of the project plan is to provide a written description of the property, Past activities, state permit requirements and how the project will move through construction. The project proponent is encouraged to 'paint a picture' of how the project will proceed over the requested permit time period. The following items must be included in the project plan.

1. Purpose of project
2. Description of site and prior work
3. Reasons for earth removal permit
4. Describe past earth removal activities and compliance issues that may have occurred.
5. How project will be constructed with phases and time lines provided
6. Time duration requested for permit
7. **Describe:**
 - a. The phases, associated time lines and anticipated (**volumes, yardage and daily truckloads**) to be removed each year.
 - b. Describe the buffer zones that are to be maintained from the site excavation or pond limits to the property lines, keeping in mind that a treed buffer zone is desired by the Board of 100 feet from individual property lines, and 200 feet from town roadways.
 - c. Any specific site conditions that require special attention.
 - d. Proposed dewatering system for the area should include the abutters who have overburden wells in the area (2000 feet in circumference).

Note that there may be a requirement of determining hydrological affects if abutters complain of insufficient waters in their wells.
 - e. If ponds -reservoirs - tailwater recovery systems are to be constructed, please utilize the Soil Conservation Service - Pond Specifications for Excavated Ponds, contained in the Appendix as guidelines.
 - f. Estimated volume of material to be excavated and removed from site.
 - g. Estimated volume and site location of materials to be kept on site
 - h. Maximum sloping
 - i. Show volume of pond required for bog size.

- j. Criteria for excavation of ponds and water storage areas
- k. Dust Control measures
- l. Erosion Control measures
- m. Final topsoil and plantings
- n. Is there proposed rock crushing?
- o. Is there proposed screening equipment?
- p. Is there additional equipment requested for the site?

8. Record Plans

Once the project is completed or permit times have been exhausted, the approved applicant is required to submit Completed record plans to receive the Town's Certificate of Completion and release any bond that has been secured for the project.

APPENDIX B
PLAN CHECK LIST

APPENDIX B

PLAN CHECKLIST

PLEASE COMPLETE CHECKLISTS FOR PLANS AND PROJECT PLAN AND INITIAL:

PLANS	Check	Initials
A. Cover page that shows:		
1. Name of project:	_____	_____
2. General directional and town locus:	_____	_____
3. Water Resource Protection District limits	_____	_____
4. Engineering Firm Name and address	_____	_____
5. Flood Map limits (if applicable)	_____	_____
6. Zoning District limits	_____	_____
B. Civil Drawing Sheet 1 - that show at a minimum:		
1. Existing streets	_____	_____
2. Property lines and names of adjacent properties/abutters	_____	_____
3. Existing tree lines	_____	_____
4. Existing and proposed topographical contours (5' foot minimum)	_____	_____
5. Town roadways	_____	_____
6. Proposed treed buffer zones between edges of excavation and abutters	_____	_____
7. Proposed buffer zones between property excavation and town street(s)	_____	_____
8. Distances of proposed reservoir or excavations from property lines of abutters.	_____	_____
9. Location and type of proposed excavation and work	_____	_____
10. Locations of stockpiling of materials	_____	_____
11. Proposed reservoir volume, slopes and bottom elevations	_____	_____
12. Site of proposed dewatering pond, discharge and overflow structure	_____	_____
13. Any proposed buildings, structures or utilities	_____	_____
14. Roadway systems and gates, and proposed paving areas	_____	_____
15. Proposed areas of agricultural uses	_____	_____
16. Indications of phased operations	_____	_____
17. Areas to be seeded	_____	_____
18. Existing and proposed slopes with limits of final grading	_____	_____
19. Locations of ditches	_____	_____
20. Wetlands and water resource areas	_____	_____
21. Elevations of water (high, low) as applicable	_____	_____
22. Drainage patterns with directional arrows showing flow	_____	_____
23. Fencing	_____	_____
24. Professional Engineers Civil stamp	_____	_____

25. Date of preparation _____
Other information as appropriate to good engineering design _____

C. Civil Drawing Sheet Number 2 (as applicable)

- 1. Pond specifications with erosion controls _____
- 2. Erosion controls _____
- 3. Side Flow Profile _____

APPENDIX C

EARTH REMOVAL BYLAW (S)

APPENDIX D

INSPECTION CHECKLIST

EARTH REMOVAL PERMIT
INSPECTION CHECKLIST

PROJECT NAME:

PROJECT #:

PAYMENT RECEIVED:

EXP. DATE:

YES _____ NO _____

CHECK # _____

LOCATION:

(CIRCLE YES OR NO)

1. Knowledge of Town Hall observed Holidays: **Yes No** Comments: _____

2. Topsoil stockpile: **Yes No** Comments: _____

3. Bond or surety in place: **Yes No** Comments: _____

4. Standard highway signs in place: **Yes No** Comments: _____

5. No refining or screening: **Yes No** Comments: _____

6. Provisions for dust control adequate: **Yes No** Comments: _____

7. Depth and slope compliance: **Yes No** Comments: _____

8. Drainage compliance: **Yes No** Comments: _____

9. Warning signs along property line meet requirements:
Yes No Comments: _____

10. Special conditions (Specified Below): **Yes No** Comments: _____
(ex: berm, 5 acre maximum, tree cutting, buffer, truck signs or assigned route, etc.)

General comments and observations: _____

Inspector's Signature

APPENDIX E
TYPICAL ORDER OF CONDITIONS

APPENDIX E

TYPICAL ORDER OF CONDITIONS

Board of Selectmen Conditions

1. Construction of the _____ shall be as outlined in the Project Plan required under **Section C - Permit Conditions** of this permit, and approved by the Town's Agent.
2. Existing tree lines, natural land topography and vegetative buffer zones shall be maintained, a minimum of one hundred feet (100 ft.) from all property lines. In the absence of treelines on the property(ies), then the natural vegetated buffer shall be maintained for the same distances and trees planted.
3. A dewatering system, if required will be outlined in the Project Plan. Monitoring wells may be required to determine groundwater levels that could impact adjacent residential overburden and bedrock wells. Note condition 31, under **Section C - Permit Conditions**.

If neighboring overburden wells are determined to be potentially affected by the dewatering operation, work will cease, monitoring wells shall be installed, and an evaluation made from a qualified hydrologist on the dewatering operation, prior to commencement of work. The Town's Agent shall determine if work shall continue, after consultation with the Board of Selectmen.
4. The applicant has prepared OR WILL PREPARE a Farm Plan that meets standards set forth from the United States government' s - Natural Resource Conservation District (NCRS) and the Massachusetts Department of Food and Agriculture.
5. Blasting on site is discouraged. Special permission shall be provided by the Board of Selectmen, prior to permitting application to the town Fire Department.

General Conditions

1. The Permittee shall submit to the Board of Selectmen's Agent and the Conservation Commission Agent a written **Project Plan** that will outline the planned activities and goals for each quarter of the Phase 1 construction work for each year of the permit. A Construction Sequence plan has been submitted for review by the Board of Selectmen's Agent for review and concurrence. The following sections are applicable under this permit:
 - a. General Conditions
 - b. Standard Conditions and Site Requirements
 - c. Special Conditions
 - d. Inspection Fees and Bonding

a, **General Conditions**

1. All Phase 1 work consisting of regrading shall be completed and any required plantings shall be 'growing' prior to any application for a future earth removal permit. No cutting, clearing or grubbing of areas not included under this phase of the work shall be done for any future work.

If any aforesaid described work is done in unpermitted areas, prior to submittal of an earth removal permit then future earth removal requests may be forfeited. The Town of Middleborough's Earth Removal Bylaw, as amended should be reviewed by the project proponent.

2. This permit is valid for **three (3) years** OR for a lesser time approved by the Board of Selectmen at the time of application and hearing - and may be renewed for up to one (1) year thereafter at the discretion of the Board of Selectmen.

3. Hours of operation are limited from 7:30 A.M. to 4:30 P.M. Operation is allowed Monday through Friday. Motors of earth removal equipment, including trucks hauling material to and from the site, are not to be started or run until before 7:30 A.M and after 4:30 pm.

4. No operation is allowed on Saturday, Sunday or Town Hall observed holidays, which are as follows:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
Presidents Day	Veteran's Day
Patriots Day	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	

5. All excavated areas not part of the bogs will be topsoiled and planted per the specification on the plan or at the direction of the Board of Selectmen or through their Agent. All top and subsoil shall be stripped from the operation area and stockpiled for use in restoring the area after the removal operation has ceased. minimum of four inches of topsoil must be put back in place.

6. The permit holder is not permitted to spot excavate to remove better material here and there on the site.

7. Excessive erosion is to be controlled as determined by the Board of Selectmen's Agent or the Town's Conservation Commission's Agent.

8. No refining or screening of material is allowed on the permitted property except the screening of sand and loam to be used for on-site cranberry bogs, gravel for on-site roadways and loam for final on-site grading and seeding.

Any utilized screening plant shall be no larger than 150 to 200 yards per hour.

The permit holder shall provide a written description, time frame and proposed volume of material to be screened for approval by the Town's Agent.

9. The permit holder is allowed use of an onsite screening facility for processing and sorting out of materials for removal from the site.

b. Standard Conditions and Site Requirements

1. Standard highway signs warning of heavy trucks entering the street shall be erected as directed by the Board of Selectmen or their Agent and be in place prior to commencement of removal operations.

2. The Board of Selectmen, Conservation Commission, Town Manager or their Agents shall be free to inspect the premises at any time during normal working hours with or without prior notice to the permit holder.

3. The permit holder shall adhere to all State laws pertaining to covering loads and weight loads.

4. Any spillage on public ways or private property shall be cleaned up immediately by the permit holder or its agent.

5. The Board of Selectmen may, following a public hearing, revoke the permit, modify or revise the conditions of the permit and/or impose a fine if they find that the permittee, or any agent of the permittee violates any condition of this permit.

6. The Town Manager is authorized to act as the Board of Selectmen's Agent in the administration and enforcement of this permit.

7. All loaded vehicles must be covered to prevent dust and contents from spilling or blowing from the property.

8. The haul road and loading area must be watered regularly to keep dust from blowing from the property. Gravel may be required to be added to the haul road by the Board of Selectmen's Agent to assist in dust control.

9. This permit is not transferable, except by vote of the Board of Selectmen. Notice of a pending sale or transfer must be provided to the board. The Board of Selectmen may, in its discretion, hold a public hearing to consider the transfer of this permit to the prospective buyer of the property.

10. During operations, where the excavation working face will have a depth of more than 15 feet with a slope in excess of 1:1, a fence at least three (3) feet high shall be erected to limit access to that excavation.

11. No area shall be excavated so as to cause accumulation of freestanding water, except in conjunction with a storage pond for cranberry bogs as shown on the record plans. Permanent drainage shall be provided as needed in accordance with good conservation practices. Drainage shall not lead directly into or from streams or ponds, except as shown in the plans.

12. No excavation shall be closer than 200 feet to an existing public way unless specifically permitted by the Board of Selectmen at a publicly scheduled hearing. Natural vegetation shall be left and maintained on the undisturbed land for screening and noise reduction purposes.

13. Bog pumps will be powered electrically, or in the alternative, mufflers will be installed on pumps to reduce noise.

14. Gates will be installed on the haul road to prevent unauthorized access to the property.

15. Two by Three foot signs will be erected every 500' along the property line. The signs will display the permit number, the name and phone number of the permit holder's agent and the name and phone number of the Board of Selectmen's Agent, together with the words "NO TRESPASSING-EARTH REMOVAL IN PROGRESS".

16. All trucks hauling from the site must display a sign on the rear of the truck in an area that will be unobstructed and clearly in view displaying the words "TOWN OF MIDDLEBOROUGH PERMIT # 03 - ____".

17. A copy of this Earth Removal Order of Conditions shall be filed with the Registry of Deeds by the Permit holder as a notice to all that these conditions restrict work on the lot under the permit.

18. A Certificate of Compliance will be issued by the Board of Selectmen when the project is completed. The Certificate of Compliance will operate to release the lot from the conditions of the permit and terminate the permit. The Certificate of Compliance must also be filed with the Registry of Deeds by the permit holder.

19. Monitoring well(s) for water levels, if required, are to be measured every seven (7) days, and the results kept in a daily log.

20. The Plan shall be modified to include the general location (no survey required) of the monitoring well.

21. No standing trees are to be cut, trimmed or removed from the site, except for those areas shown on the approved plan. Violation shall result in a fine being imposed, in accordance with Earth Removal Bylaw §6, and/or revocation of the Permit.

If any tree needs to be trimmed, cut or removed, prior approval shall be provided by the Board of Selectmen's Agent.

22. No rock crushing is authorized. Any proposed rock crushing may be authorized by the Board of Selectmen following a public hearing on a request for an Earth Removal Permit modification.

23. Excessive noise levels, as determined by the Board of Selectmen's Agent, shall result in onsite equipment modification within one (1) week of notification.

24. De-watering operation plans shall be provided in the Project Plan. De-watering may be limited during the Summer months. Siltation barriers will be provided as required by the Board of Selectmen's Agent.

c. Special Conditions

1. _____
2. _____
3. _____
4. _____

d. Inspection Fees and Bonding

Inspection Fees

1. An initial review to confirm compliance with permit conditions and restrictions must be performed by the Board of Selectmen's Agent before the commencement of any earth removal activities.

The fee for this review is **\$ 600.00, due** and payable at the time the permit holder notifies the Board of Selectmen's Agent that all requirements of the permit which must be done prior to commencement of work have been accomplished, and the permit holder is ready for the Agent to perform the initial review.

2. Quarterly reviews must be performed by the Board of Selectmen's Agent every three months following commencement of earth removal work. These reviews will include a field review and plan review to determine on-going compliance with the permit.

a. The fee for each such review is **\$ 600.00, due** and payable to the Town three months after the commencement of earth removal on the lot and every three months thereafter for the duration of the permitted project.

b. This report, along with **the Project Plan** will be made available to the public at the Town Manager's Office, upon request.

c. The Board's Agent will include with the quarterly review a written assessment and update of actual activities and goals that were provided under **the Project Plan**.

d. The Boards' Agent will determine **if the Project Plan** is meeting the proposed activities and goals. If **the Project Plan** activities and goals are not met for three (3) consecutive quarters, the project permit shall be suspended and a hearing with the Board of Selectmen shall be held to determine if the permit shall be reissued.

Bond Requirements

1. A bond, or acceptable alternative surety, in the amount of **\$50,000.00** will be required to indemnify the Town for damage to private or Town property and for use by the Town for site closure in the event of abandonment of the project.

APPENDIX F
APPLICATION FORM

APPLICATION FORM

The project proponent must submit the following information as part of the package for the Board of Selectmen. Incomplete packages will not be accepted by the Board's administrative staff.

It is suggested that the application package be completed by a registered civil engineer.

1. Set of Plans with completed checklist
2. Application Information and Project Plan .
3. Additional submittals as identified in the application information .
4. Conservation Commission Order of Conditions
5. **Application Fee of three hundred dollars (\$ 300.00)**

TOWN OF MIDDLEBOROUGH
EARTH REMOVAL APPLICATION
and renewal form

1. General Information

Name of Applicant: _____

Address of Applicant: _____

Town or City: _____

Owner of Property: _____

Location of Property: _____ Street

Assessor's Parcel and Map Numbers Map _____ Parcel _____

Map _____ Parcel _____

Map _____ Parcel _____

2. Permit Status

New Application or Renewal: _____

Request for an Extension of Time for existing permit. _____

Existing Permit Number: _____

Parcel(s) Acreage: _____

Estimated Number of Cubic Yards to be Removed: _____

Requested Time Frame of Permit _____

Brief Project Description and Reasons for Request:

3. Project Plan

Has a Project Plan being submitted with this Application?

An Application for an Earth Removal Permit will not be accepted by the Board of Selectmen for a public hearing, unless submitted with this application.

4. Planning Information

a. **Proposed Traffic Route** from site to unloading of materials.

b. Has a plan and Notice of Applicability (NOA) or Intent (NOI) been submitted to the Town of Middleborough's Conservation Commission? _____

c. Has Order of Conditions by Conservation Commission been issued: If so what is project number and date of conditions : _____

d. Provide a copy of the Order of Conditions so they may be attached to the permit.

e. Is there a Department of Environmental Protection – Water Management Act Registration or Permit for this property? _____

Permit No. _____ Registration No. _____

f. Has a Farm Plan been completed? _____ Please provide a copy.

g. Expected Date of Project Completion: _____

5. Engineering General Information

Engineering Firm Name: _____

Engineer's Contact/Name : _____

Street: _____

Town/City _____

Phone Number: _____

7. Financial Obligations

Do you owe any property taxes, water, sewer or any other financial obligation to the Town of Middleborough that is not current?

_____yes _____no

8. Authorization of Applicant

a. Have you authorized the engineer to speak on your behalf regarding project questions that may come up prior to the public hearing?

_____ yes _____ no

b. I have reviewed this Application Package and attached information and deem it to be correct.

Signature of Applicant

Printed Name of Applicant

Date _____

Phone Number: _____

EARTH REMOVAL BY-LAW

ARTICLE 4: Voted by a majority vote to amend the Town's earth removal by-law adopted under Article 7 of the 1970 Special Town Meeting of May 28th, by deleting it in its entirety and substituting therefore the following:

TOWN OF MIDDLEBOROUGH EARTH REMOVAL BY-LAW

Section 1: DEFINITIONS

- A. The term "earth" shall mean all forms of soil, including, but limited to, loam, sand, gravel, clay, peat, hardpan or rock.
- B. The term "removal" shall mean stripping, excavating or blasting earth from one lot and carrying it away from said lot.
- C. The term "lot" shall mean a single parcel of land lying in a single body and separated from contiguous land by property liens, street lines, or Town lines.
- D. The term "property line" shall mean a line separating land in one ownership from land in a different ownership, or from other land in the same ownership. A municipal boundary shall be a property line.
- E. The term "owner" shall mean the owner of the land from which earth is sought to be removed.
- F. The term "Board" shall mean the Board of Selectmen of the Town of Middleborough.

Section 2: SCOPE

This By-law shall apply to all earth removal activities in the Town of Middleborough, except as otherwise limited herein.

Section 3: PERMITS REQUIRED

No earth shall be removed from any lot in the Town of Middleborough unless a permit shall have first been obtained by the owner from the Board pursuant to this By-law, except as otherwise provided herein. All permits granted by the Board shall be subject to conditions which will guarantee, to the satisfaction of the Board, proper and reasonable surface drainage during and after operations and reasonable re-use of available topsoil. The Board shall adopt regulations including, but limited to, exhibits, fees and bond requirements. The Board may impose permit conditions or restrictions on any permit in the best interest of the Town. The conditions or restrictions related to a permit, including the expiration date, shall be clearly set forth on the permit. No such permit shall be issued until an application therefore has been filed with the Board and the Board has held a public hearing on the application. Notice of the filing of an application and the date and time of the public hearing thereon shall be advertised, at the expense of the applicant, in a newspaper in general circulation in the Town, seven days at least before such hearing and by written notice to the Planning Board, the Conservation Commission and the abutters. Following the hearing, the Board may grant, grant in part, or deny the application.

Section 4: EXEMPTIONS

The following are exempted from the provisions of this By-law:

- a.) Any earth removal operations involving 25 cubic yards or less per lot per year.
- b.) Any earth removal operations involving 800 cubic yards or less per acre on lots of 4 acres or less occurring in conjunction with work subject to a valid Building Permit.
- c.) Any earth removal operations in compliance with the requirements of a subdivision plan approved by the Town's Planning Board.

Section 5: LENGTH OF PERMIT

A permit may be issued for a period of up to three (3) years. At the Board's discretion a permit may be extended for up to one (1) year beyond the initial permit period. If an Earth Removal project is not completed following the initial period plus any extension period, the applicant must reapply to the Board for a new permit to complete the project. The applicant must meet all By-law and regulation requirements in effect at the time of reapplication for a new permit. Current valid permits which are in effect prior to August 1, 1992, may continue in operation for up to three (3) years from the adoption of this By-law subject to all conditions and restriction of the permit and Article 7 of the May 28, 1970 Town Meeting By-law requirements without applying for annual renewal. Such existing earth removal project shall be subject to the provisions of this By-law after three years from the adoption of this By-law.

A copy of the earth Removal Order of Conditions must be filed with the Registry of Deeds, at the applicants expense, as a notice to all that the conditions restrict work on the lot under the Permit.

A Certificate of Completion must be issued by the Board of Selectmen at the completion of the project attesting that the project was completed in accordance with the approved plans. Issuance of the Certificate of Completion operates to terminate the permit. The Certificate of Completion must also be filed with the Registry of Deeds at the applicants expense.

Section 6: ENFORCEMENT

The Board of Selectmen shall be responsible for the administration and enforcement of this By-law. A violation of a condition or restriction of the permit shall be a violation of the By-law. The Town Manager shall be the Agent of the Board for enforcement purposes and may issue a written cease and desist order requiring the immediate cessation of all work on the permitted property if the Town Manager believes a violation of any condition or restriction of the permit has occurred. In the absence of the Town Manager the Board of Selectmen may designate another Agent. The Written order shall specify the alleged violation. A copy of the order will be given to the Board members as soon as possible after it is issued. The Board of Selectmen shall, within three (3) weeks of the issuance of the cease and desist order, hold a public hearing to review the facts and to determine whether a violation has occurred. If a violation is found, the Board, in its discretion, may revoke, revise or modify the conditions or restriction of the permit. The penalty for violation of this By-law shall be a fine of up to \$50 for the first offense, \$100 for the second offense and \$200 for each offense after the second offense. Each day of operation in violation of the By-law shall be treated as a separate offense.

Section 7: GENERAL PROVISIONS

An earth removal permit issued under this By-law shall not authorize a use which is not permitted under applicable provisions of the Town of Middleborough Zone By-law. No earth removal permit shall authorize screening or other processing of earth materials in a Residential Zone. This shall not be construed to prohibit screening of earth on a lot which is the subject of an earth removal permit, in a Residential Zone, for use on the same lot to provide gravel for roadways, loam for final grading and/or sand for bogs.

Section 8: SEVERABILITY CLAUSE

The provisions of this By-law are severable; and if any provision or application of such provision to any person or circumstances is held invalid or unconstitutional, this shall not affect the remaining provisions.

**Article 4 of 11/9/92 Special Town Meeting
Approved by Attorney General on 2/18/93**

ARTICLE 25: To see if the Town will vote to amend Section 3. Of its Earth Removal By-law, by adding the following paragraph:

After an Earth Removal Permit Application has been submitted, no tree removal, utility installation, ditching, grading or construction of roads, no grading of land, no excavation except for purposes of soil testing, no dredging or filling, and no construction of buildings or structures shall be initiated on any part of that area in which the proposed earth removal will take place until the application has been received and approved and an Order of Conditions issued as provided for by this By-law, and that all activity, as described above, shall continue to be prohibited throughout the duration of the Earth Removal Permit except for what is permitted and referenced on the approved plan. This paragraph shall not apply to land in active agricultural use including normal maintenance of cranberry bogs.

Adopted at Fall 1996 STM

EARTH REMOVAL RULES & REGULATIONS

Initial Review:

An Initial Review to conform compliance with permit conditions and restrictions must be performed by the Board's Agent before the commencement of any earth removal activities. The fee for this review is due and payable at the time the permit holder notifies the Board's Agent that all requirements of the permit which must be done prior to the commencement of work have been accomplished, and the permit holder is ready for the agent to perform the Initial Review.

Quarterly Review:

Quarterly Reviews must be performed by the Board's Agent following commencement of earth removal work. These reviews will include a field review and plan review to determine on-going compliance with the permit. The fee for each such review is due and payable to the Town three months after the commencement of earth removal on the lot and every three months thereafter for the duration of the permitted project.

Required Reviews and Fees:

The fee for each review (both Initial and Quarterly) is based on the size of the earth removal project as follows:

<u>SIZE OF PROJECT</u>	<u># OF HOURS</u>	<u>HOURLY RATE</u>	<u>FEE</u>
Up to 250,000 c.yds.	10	\$40	\$ 400
250,000-500,000 c.yds.	15	\$40	\$ 600
500,000-750,000 c.yds.	20	\$40	\$ 800
Over 750,000 c.yds.	40	\$40	\$1600

Permit Duration and Commencement of Removal:

The Board of Selectmen may issue a permit for up to three years duration. If the earth removal work and site restoration is not completed within the initial permit period, the Selectmen may vote to extend the permit for one additional year, not to exceed a total of four years. If the Permit expires, either because the three year period ends without completion of the project and the Selectmen do not extend the permit, or, in the event of a one-year extension, the full four year period ends without completion of the project, the Permit Holder/Applicant just reapply to the Board, in the same manner as an Initial Application for a permit to complete the project. A public hearing will be held on the application, and notices to abutters will be required. The applicant must meet all By-law and regulation requirements in effect at the time of reapplication for a new permit.

If the permit period expires and work is not completed and the Permit Holder/Applicant does not reapply or is denied a permit on reapplication, the Board may elect to call any performance bond and use the proceeds to restore the area to a safe conditions, replace topsoil and seed the area.

Following the Initial Review by the Board's Agent, the Agent will file a written report with the Board of Selectmen. If the Agent reports that all permit conditions and restrictions which must be performed prior to commencement of removal have been

accomplished, the Board's Agent will notify the Board of the authorized date of Initial Removal. Said date will become the date of the commencement of earth removal for purposes of determining the duration of the Permit.

If actual earth removal does not commence within six months of the signing of the Earth Removal Order of Conditions by the Selectmen, the date of commencement of earth removal for purposes of determining the duration of the permit will revert to the date of the signing of the Earth Removal Order of Conditions.

COMPLAINT REVIEW FORM

Standard Conditions:

Special Conditions:

Maintenance of:

- Buffers
- Signs
- Fences
- Slopes
- Dust Control
- Erosion Control

Complaints, if any, including date:

- Corrective action, if any, on complaints

Phone Contact to Abutters:

Construction in Compliance with Plan: