

Appendix D

Track change documents showing notes, comments, and recommendations on:

1. Earth Removal – Table comparing sections in Zoning Bylaw and General Bylaw Chapter 245
2. Zoning Bylaw – Section 255-10 Definitions
3. Zoning Bylaw – Section 255-35 Water Supply Protection District
4. Zoning Bylaw – Section 255-84 Earth removal, extraction, and fill regulations
5. General Bylaws – Chapter 245 Earth Removal

Earth Removal – Language Alignment – PVPC Review, December 2021

Zoning Bylaw, Ch 255-35 Drinking Water Supply Protection District	Zoning Bylaw, Ch 255-84 Earth removal, extraction, and fill regulations	General Bylaw, Chapter 245 Earth Removal	310 CMR 22.21 Wellhead Protection Zoning and Nonzoning Controls	Notes
<p>D. Permitted Uses</p> <p>(8) Other earth removal, extraction, and/or fill activities and earth removal, excavation, and/or fill activities as defined in § 255-84 for which a permit from the Building Commissioner is not required due to the activity being part of an exempt development under § 255-84A(2), and the associated excavation/earth removal shall not be nearer than 10 feet from the seasonal high groundwater.</p>	<p>A. Permit Required</p> <p>(1) In any zoning district, removal or addition of sod, sand, loam, clay, gravel, metallic ores, bedrock, quarried stone, or kindred materials shall not be undertaken if such removal or addition results in a change in the contours of the land, except by an earth removal, excavation, and/or fill permit from the Building Commissioner.</p>	<p>Earth removal prohibited</p> <p>A. No person, firm, corporation, or other entity shall excavate and/or remove any earth from any lot in the Town of South Hadley, unless such activity is authorized by an earth removal permit issued by the Board.</p> <p>B. Earth removal is prohibited unless it is:</p> <ol style="list-style-type: none"> 1) necessary and incidental to a lawful end use for which all local and state permits required by law have been issued, or 2) exempt pursuant to Article 5¹ of this bylaw. 		<p>Going forward, may be worth thinking about Chapter 245 as creating the framework from which everything else on Earth Removal built to help avoid inconsistency and misalignment. Zoning could then reference Chapter 245 for detail.</p> <p>Would be good to clarify up top who does the permitting for what - Planning Board, Building Commissioner.</p>
	<p>(2) Exemptions.</p> <p>The aforementioned permit shall not be required when the removal, excavation and/or fill activity is incidental to and in connection with any of the following activities:</p> <p>(a) Construction of a structure on the premises for which a building permit has been issued, or incidental to the grading and development of contiguous property, and provided that such removal, excavation or addition is limited to the area within a distance not more than 100 feet from the building or improvements authorized under said permit.</p> <p>(b) Development of site improvements for a subdivision for which definitive plans have been approved, and endorsed by the Planning Board.</p>	<p>§ 245-7. Conditional exemptions.</p> <p>A. No earth removal permit shall be required for the following activities under this bylaw, provided the activities do not constitute a nuisance or danger to the public and conform to accepted engineering or agricultural practices:</p> <ol style="list-style-type: none"> (1) The Commissioner of Public Works and his/her agents and employees may perform earth removal activities in the performance of their public duties on any public way and on Town property. (2) Earth removal incidental to the permitted construction of foundations of buildings, walks, driveways, septic systems or swimming pools, and incidental to the installation of utilities, provided that the quantity of earth subject to removal does not exceed that displaced by the portions of construction and installation below finished grade. (3) Construction of a structure on the premises for which a building permit has been issued, or incidental to the grading and development of contiguous property, and provided that such removal, excavation or addition is limited to the area within a distance not more than 100 feet from the building or improvements authorized under said permit. (4) Earth removal incidental to an approved definitive subdivision plan, or an approved business or industrial development plan, in which the amount of earth subject to removal does not exceed 5,000 cubic yards in one calendar year, if the earth is transported off the lot. The 5,000 cubic yards shall not include earth removal which is incidental to the construction of foundations, walks, driveways, septic systems or swimming pools. (5) Earth removal incidental to landscaping, 		<p>Within Section 255-84 A(2)(b), better to more fully align with Chapter 245-7(4) or at least lean on and reference General Bylaw Chapter 245.</p> <p>Chapter 245-7(4) seems to allow for repeated removal of 5,000 cubic yards as long as not conducted in one calendar year. Particular reason for this language here?</p> <p>All of these should mention preservation of top soil, even for exemptions so that any given site retains capacity to grow vegetation and avoid chronic need for addition of fertilizers to re-vegetate site.</p> <p>Why were amendments proposed for Zoning Bylaw in this section not adopted?</p>

Zoning Bylaw, Ch 255-35 Drinking Water Supply Protection District	Zoning Bylaw, Ch 255-84 Earth removal, extraction, and fill regulations	General Bylaw, Chapter 245 Earth Removal	310 CMR 22.21 Wellhead Protection Zoning and Nonzoning Controls	Notes
		<p>and/or clearing, and in which the amount of earth subject to removal does not exceed 100 cubic yards per acre of land in one calendar year, if the earth is transported off the lot, and does not exceed 100 cubic yards per acre of land in one calendar year, if the earth is transported within the lot.</p> <p>B. The foregoing conditional exemptions shall be subject to inspection, determination, and enforcement by the Building Commissioner.</p> <p>C. The Building Commissioner shall issue a cease and desist order in any case in which the Building Commissioner determines that:</p> <ul style="list-style-type: none"> (1) The earth removal activity would not be necessary and incidental to an identified lawful principal use, a lawful structure, an approved subdivision road, or lawful utility installation; or (2) The earth removal activity would be excessive in scope or nature to the foregoing end use or structure; or (3) Would create unsafe conditions on or off the property; or (4) Would be a detriment or nuisance to nearby landowners or to the Town in general by reason of noise, dust, vibration, or other objectionable conditions. 		
	B. Classification of activities.			
	<p>Earth removal, excavation, and fill activities are classified as either:</p> <p>(1) Major earth removal, excavation, and/or fill activities. These activities involve the removal, excavation, and/or addition of 5,000 or more cubic yards of material for use on parcels of land other than the parcel(s) from which the materials were removed or extracted.</p> <p>(2) Other earth removal, excavation, and/or fill activities. These activities involve the removal, excavation and/or addition of materials not otherwise classified as major earth removal, excavation and/or fill activities.</p>			<p>Why not these classification of activities in Chapter 245?</p> <p>Also, within Section 255-84 of Zoning Bylaw, would be good to also classify “incidental” if already classifying these activities.</p> <p>From these classifications, could then create greater clarity in flow path of what permit needed/not needed.</p>
ZB Ch 255-35 E. Prohibited Uses			prohibit the siting of the following and uses within the Zone II and III	
Major earth removal, excavation and/or fill activities (as defined in§ 255-84, including mining of gravel, soil, loam, sand and/or other minerals. [Added 5-8-2019 ATM by Art. 23]			the removal of soil, loam, sand, gravel or any other mineral substances within four feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological	<p>Consider increasing distance to provide greater protections for groundwater sources.</p> <p>Also based on the state model, under what circumstances would you want to come to water table and then redeposit material? Might be good to elaborate here if such a circumstance is needed.</p>

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			Survey), unless the substances removed are redeposited within 45 days of removal on site to achieve a final grading greater than four feet above the historical high water mark, and except for excavations for the construction of building foundations or the installation of utility works, or wetland restoration work conducted in accordance with a valid Order of Condition issued pursuant to M.G.L. c. 131, § 40;	
ZB Ch 255-35 F. Restricted Uses		§ 245-8. Fill.		
<p>Excavation for removal of earth, loam, sand, gravel and other soils or mineral substances shall not extend closer than five feet above the historical high groundwater table (as determined from on-site monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, whichever is higher). A monitoring well shall be installed by the property owner to verify groundwater elevations. This subsection shall not apply to excavations incidental to permitted uses, including but not limited to providing for the installation or maintenance of structural foundations, freshwater ponds, utility conduits or on-site sewage disposal.</p> <p>(a) The access road(s) to extractive operation sites shall include a gate or other secure mechanism to restrict public access to the site.</p> <p>(b) Upon completion of earth removal operations, all altered areas shall be restored with topsoil and vegetative plantings. All fine materials, such as clays and silts, removed as part of the earth removal operation and leftover as by-products shall be disposed of off-site to prevent damage to aquifer recharge characteristics.</p>		<p>A statement may be required from a certified professional to verify the source and content of fill material if the earth removal permit is issued for the placement of fill. The analysis of the content of the fill material may be required so as to detect the presence and quantity of hazardous or substandard materials. This analysis shall be conducted by a certified professional hired by the Board at the expense of the applicant.</p>		<p>Best to align distances to historical high groundwater table through each of these. I see 4 feet, 5 feet, and 10 feet distance in various places. Even outside of WSPD might be good to use larger number to be protective of private water supplies as we understand from climate change science that we will likely have a higher frequency of large downpours, creating greater frequency of times where ground is saturated.</p> <p>Some Cape Cod communities using 10 feet above historical high groundwater table. Where did 10 feet come from in amendment to WSPD overlay?</p> <p>Quality of fill is critically important in DWSP overlay district. Should be reinforced.</p>
	C. Planning Board approval required; application requirements.	§ 245-9. Application.		
	<p>(1) Major earth removal, excavation, and/or fill activities. Prior to applying for a permit from the Building Commissioner, the applicant must apply for and receive a special permit from the Planning Board. Applications for such a special permit must include all items required for a special permit application and items required under this section.</p> <p>(2) Other earth removal, excavation, and/or fill activities. Prior to applying for a permit from the Building Commissioner, the applicant must receive approval of the plans for removal, excavation, and fill from the Planning Board. Applications must include all items required under this section of the Zoning Bylaw.</p>	<p>An application for an earth removal permit shall be in writing. The application shall contain an accurate description of the portion of land on which the excavation will take place, shall state fully the purpose of the excavation, shall include payment of fees established by the Board, and shall include plans drawn by a registered surveyor or engineer. The application shall contain the following information:</p> <p>#</p> <p>A. The precise location of the proposed excavation as part of the total land area of the subject property;</p> <p>B. The legal name and address of each owner of</p>		<p>These submission requirements are articulated so differently. Would be better to align so that greater clarity of what needed from applicants to make good decision.</p> <p>Section 255-84 uses “seasonal high water table” here while Section 255-35 uses “historical high groundwater table.” Technically these terms may mean the same thing, but worth investigation and clarification, especially given greater extremes in climate.</p>

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	<p>(3) Application requirements. Each application for Planning Board approval shall include the following items:</p> <p>(a) A map prepared at the expense of the applicant showing the property boundaries, the existing contours of the land, and the contours as they are proposed after completion of the operations. Such map or plan shall be accurately drawn on reproducible paper or cloth, the contour interval being two feet, and shall contain complete information to make the physical characteristics clear.</p> <p>(b) Application fee.</p> <p>(c) Pictures of the existing conditions of the site.</p> <p>(d) Description of proposed source of fill material to be added to the site and use of excavated materials.</p> <p>(e) An estimate of the cost to restore the site to its proposed finished condition.</p> <p>(f) Timetable for completion of the operations.</p> <p>(4) Supplemental application requirements. For major activities, the following items must also be included in the application:</p> <p>(a) A detailed cost estimate certified by a qualified engineer to restore the site to its proposed finished condition.</p> <p>(b) Description of the proposed financial security to cover the cost of restoring the site to its proposed finished condition.</p> <p>(c) Documentation of the elevation of the seasonal high ground water table.</p> <p>(5) No permit shall be issued until such plan has been filed with the Planning Board, the approval of said Planning Board recorded on the plan, and a copy of said approved plan submitted to the Building Commissioner.</p>	<p>the property for which the permit is requested;</p> <p>C. The name and address of the applicant and the address which shall be sufficient for any notice required under the bylaw;</p> <p>D. The property lines, names and addresses of all abutters, including those across any way, from the most recent tax list as certified by the Board of Assessors;</p> <p>E. Existing contours at two-foot intervals in the area from which material is to be excavated and in surrounding areas, together with the contours at two-foot intervals below which no excavation shall take place;</p> <p>F. Natural features, such as wetlands, the 100-year floodplain, ground cover, surface water and groundwater. Water table elevation shall be determined by test pits and soil borings satisfactory to the Board. A log of soil borings shall be included, taken to the depth of the proposed excavation, congruent with the size and geological makeup of the site;</p> <p>G. A topographical map showing drainage facilities, final grades, and proposed vegetation and trees;</p> <p>H. Dust, erosion, and sediment control plans for the site and trucks removing earth;</p> <p>I. The amount and cost of proposed restoration materials, and the source from which the applicant intends to obtain them;</p> <p>J. Estimated quantity of material to be removed and topsoil to be replaced and the method to be used, verified by a registered surveyor or professional engineer;</p> <p>K. The proposed form of bond and the name and address of the bond issuer;</p> <p>L. An estimate of the number of truck trips, location of truck routes, and hours of truck traffic;</p> <p>M. Designation on the required plan of any and all proposed phases and the number of cubic yards to be excavated in each, not to exceed 10 acres or 10 cubic yards, whichever is less;</p> <p>N. Restoration, reuse and/or revegetation plan; and</p> <p>O. Any other information which the Board may require.</p>		
	<p>D. Limitations on operations.</p> <p>No applicant shall carry on operations above or below such a grade as may be fixed by the Planning Board without, on each occasion, obtaining the permission of said board in writing, but a tolerance of six inches shall be permitted during or at the termination of operations. Further, operations must be carried out in accordance with the conditions of</p>			<p>Why were amendments proposed for this section not adopted?</p>

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	<p>the Planning Board approval.</p> <p>(1) Prohibited area. No major earth removal, excavation, or fill activity shall be permitted in the area bounded as follows: on the south by Route 47, Pearl Street, and Route 116; on the east by Route 116 and the Granby Town Line; on the north by the Amherst and Hadley Town Lines; and on the west by Route 47 and the Hadley Town Line.</p> <p>(2) Finished grade. The finished grade for any major earth removal, excavation, and fill activity shall be no steeper than a 3:1 slope unless the Planning Board, based upon adequate engineering analysis and certification, determines that sufficient precautions for erosion and runoff are established to ensure the work is consistent with the purposes of the Zoning Bylaw.</p> <p>(3) Depth to water table. No excavation activity shall be nearer than five feet to the seasonal high water table.</p>			
	E. Extension of time limit.	§ 245-11. Term of permit.		
	<p>A permit issued for the removal or addition of materials shall state the time within which work is to be carried on and finished and the land is brought to the predetermined grade, but the Building Commissioner, with the approval of the Planning Board, and without consent of any surety, may extend the permit from time to time.</p>	<p>An earth removal permit shall be issued for a period of one year. The Board may, in its discretion, grant an extension of an earth removal permit for six months beyond the initial period, but no such extension shall be issued unless the applicant has conformed to all requirements of the original earth removal permit.</p>		Need to align for clarity.
	F. Surety requirement.	§ 245-12. Surety.		
	<p>The Planning Board may require a bond in a sufficient penal sum with sufficient surety or sureties conditioned on the performance of the requirements herein set forth and of the conditions of the permit.</p>	<p>The Board shall require as a condition to the granting of the earth removal permit that the applicant furnish a performance bond, or other security, satisfactory to the Board. The minimum amount of any financial security shall be sufficient to cover the estimated cost of reclamation, plus reasonable contingency. The security shall not be released until a Board-approved surveyor or engineer has filed with the Board an as-built plan and has also certified that the restoration has been completed in compliance with the earth removal permit and the plans.</p>		Elaboration in Chapter 245 is good. Better to lean on that or maybe repeat in Zoning Bylaw?

PVPC Notes and Recommendations December 2021

ARTICLE III

Definitions

§ 255-10. Terms defined.

As used in this bylaw, the following terms shall have the meanings indicated: ACCESSORY — A structure, building or use which:

- A. Is subordinate in function to and serves a principal building or principal use;
- B. Is subordinate in area or extent to the principal building or principal use served;
- C. Contributes to the comfort, convenience, or necessity of occupants or the principal building or use; and
- D. Is located on the same lot as the principal building or use.

AFFORDABLE HOUSING — Dwelling units restricted to rental or purchase by households with an annual income no greater than 80% of the median income for South Hadley, as calculated by the U.S. Department of Housing and Urban Development or any successor agency, adjusted for family size. Such units must be countable under MGL c. 40B as part of the Town's subsidized housing inventory.

ALTERATION — Any change or modification in the plan, construction, or structural support of a building, structure or use.

ALTERNATIVE ENERGY — Includes combined heat and power, electric and hydrogen-powered vehicles and associated technologies (including advanced batteries and recharging stations). [Added 5-9-2018 ATM by Art. 18]

APARTMENT — A dwelling unit in a multifamily dwelling or in a mixed-use building.

AQUIFER — A geologic formation composed of rock or sand and gravel that contains significant amounts of potentially recoverable **potable** water.

Comment [PG1]: Recommend eliminating this word as could get complicated if get into what does/does not qualify as potable. This word is not in MassDEP model.

AS-OF-RIGHT/BY-RIGHT SITING — Means that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to non-discretionary site plan review to determine conformance with local zoning bylaws as well as state and federal law. As-of-right development projects that are consistent with zoning bylaws and with state and federal law cannot be prohibited. **[Added 5-9-2018 ATM by Art. 17; amended 5-9-2018 ATM by Art. 18]**

ATTACHED — Connected to or united with.

ATTIC — The space between the ceiling of the top story of a building and its roof and not used for living, sleeping or eating quarters. The word "attic" shall exclude footage greater than 1/2 of the cubic footage enclosed in the story in the same building that is immediately below that area.

AUTOMOBILE GRAVEYARD: An establishment that is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or motor vehicle parts as defined in MGL c.140B, s.1.

AUTOMOTIVE REPAIR AND SERVICE — An establishment for the principal purpose of sale of motor vehicle fuel and/or related products, service and repair.

BASE NUMBER OF DWELLING UNITS — In connection with a flexible development, the number of dwelling units which could reasonably be permitted in compliance with the dimensional requirements of the underlying zoning district. See § 255-31.

BED-AND-BREAKFAST HOME — An owner-occupied single-family dwelling (including accessory structures located on the same parcel as the owner-occupied dwelling) which may rent rooming units for transient occupancy (without individual kitchen facilities and with an individual or shared bath/toilet facility, with at least one toilet, one bath/shower and one wash basin, separate from those required for the single-family dwelling) which share a common entrance with the single-family dwelling and transient occupants are provided at least one daily meal as part of their occupancy. The use of that portion of the dwelling devoted to transient occupancy shall be secondary to the use of the dwelling as a single-family residence and shall not change the character thereof. This term shall be interpreted as including "lodging houses" subject to the provisions of §§ 255-19 and 255-39.

BED-AND-BREAKFAST INN — An owner-occupied building or grouping of buildings which may rent rooming units for transient occupancy (without individual kitchen facilities and with an individual or shared bath/toilet facility, with at least one toilet, one bath/shower and one wash basin, separate from those required for the single-family dwelling) which share a common entrance for the building and transient occupants are provided at least one daily meal as part of their occupancy. The use of that portion of the building devoted to transient occupancy shall not change the character

thereof. This term shall be interpreted as including "lodging houses," subject to the provisions of §§ 255-19 and 255-39.

BUILDING — A combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature. The word "building" shall be construed, where the context requires, as though followed by the words "or part or parts thereof." Accordingly, a structure which does not meet the definition of a building by virtue of not having a roof but is attached to a building shall be considered to be part of the building and treated as a building for compliance with dimensional standards.

BUSINESS — The transacting or carrying on of a trade or commercial enterprise with a view to profit or for livelihood.

BUSINESS SERVICE — Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, including but not limited to the following: advertising and mailing; building maintenance; employment service; management and consulting services; protective services; equipment rental and leasing; commercial research, printing and duplication services, computer repair, etc.

CANNABINOID — Cannabinoid as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

CANNABINOID PROFILE — Cannabinoid profile as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

CEMETERY — A place or area of land, set apart for the burial of the dead, operated, managed and controlled under the provisions of Chapter 114 of the General Laws, or a burial place under the care and supervision of the Town or other public authority.

CLOSE ASSOCIATE — Close associate, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

[CMR: Code of Massachusetts Regulations.](#)

COMMERCIAL — Any use classified under the category "Business Uses" in the Use Table included as an attachment to this chapter.

COMMERCIAL KENNEL — A commercial establishment in which dogs three months old or older or other domesticated animals are housed or boarded overnight, all for a fee or other compensation. The following are not to be considered as commercial kennels for the purposes of the South Hadley Zoning Bylaw:

- A. A business which engages primarily in the care or treatment of such injured or ill animals and incidentally keeps such animals overnight to meet their care or treatment needs; and
- B. A business which trains domesticated animals, but does not keep any such animals on the premises overnight; and

C. A business which breeds or sells domesticated animals.

COMMISSION — Commission, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

COMPATIBLE — Capable of existing together in harmony.

CONDOMINIUM — A system of ownership of real estate, including commercial, industrial, and attached and detached residential dwelling units, established pursuant to the Condominium Act of the Commonwealth of Massachusetts, Chapter 183A of the Massachusetts General Laws, in which the apartments or dwelling units are individually owned and the land and common areas are owned in common. A condominium is not a use or a building type; rather, it is a form of ownership that can apply to any use or building type.

CONSERVATION RESTRICTION — A permanent restriction in the title to land of the type described in MGL c. 184, §§ 31 through 33. As used in this bylaw "conservation restriction" also includes an agricultural preservation restriction, a watershed preservation restriction, or a preservation restriction as defined in MGL c. 184, § 31.

CONSUMER — Consumer, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

CONTINUING-CARE RETIREMENT COMMUNITY — A structure or structures containing independent living units, health-care facilities, and other related services and amenities provided to three or more elderly persons by a person unrelated by consanguinity or affinity to the persons receiving such services.

CONTROLLING PERSON — Controlling person, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

CORNER LOT — A lot bounded on two sides by intersecting streets.

COVERAGE, BUILDING — The ratio of enclosed ground floor area of all buildings on a lot to the horizontally projected area of the lot, expressed as a percentage.

COVERAGE, IMPERVIOUS SURFACE — The percentage of the area of a lot that is impervious to water, including, but not limited to, areas covered by structures and paving, including paved recreational surfaces.

CRAFT MARIJUANA CULTIVATOR COOPERATIVE — Craft marijuana cultivator cooperative as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

CREMATORY — A building containing a furnace designed and intended to be used for cremating the dead and owned and controlled by a cemetery corporation or crematory corporation duly organized under the Massachusetts General Laws.

CULTIVATION BATCH — Cultivation batch as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

DENSITY — The number of dwelling units per acre of land.

DISTRICT — A specified portion of the Town, delineated on the Zoning Map, within which certain regulations and requirements or various combinationsthereof apply under the provisions of the bylaw.

DRIVE-IN SERVICE — An establishment that by design, physical facilities or services or by packaging procedures encourages or permits customers toreceive services, obtain goods, or be entertained while remaining in theirvehicles.

DRY WELL -- A subsurface pit with open-jointed lining or holes through which storm-water drainage from roofs, basement floors, foundations or other areas seep into the surrounding soil.

DWELLING — A building occupied exclusively as a residence for one or more families.

DWELLING UNIT — A room or group of rooms designed and equipped exclusively for use as living quarters for only one family, includingprovisions for living, sleeping, cooking, and eating. The term shall includemobile homes but shall not include house trailers or recreational vehicles.

DWELLING, MULTIFAMILY — A dwelling containing three or more dwellingunits. A single parcel containing detached or attached single-family and/ortwo-family dwellings is not a multifamily dwelling. (See § 255-27.)

DWELLING, SINGLE-FAMILY — A detached dwelling containing one dwelling unit.

DWELLING, SINGLE-FAMILY ATTACHED — A single-family residence on its own lot that shares one or more walls with an adjoining single-familyresidence.

DWELLING, TWO-FAMILY — A dwelling containing two dwelling units.

DWELLING, ZERO LOT LINE — See "zero lot line housing."

EXPERIENCED MARIJUANA ESTABLISHMENT OPERATOR — Experiencedmarijuana establishment operator as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

EXTENSION — The expansion or enlargement of a building, structure, or use.

FAMILY — One or more persons occupying a dwelling unit and living as a single housekeeping unit.

- A. A family shall not exceed four persons not related by blood or marriage.
- B. Notwithstanding the above, a family shall be deemed to include a group residence, limited, further defined as a premises licensed, regulated,or operated by the Commonwealth of Massachusetts or operated bya vendor under contract with the commonwealth for the residential living, care, or supervision in any single dwelling unit of five or morementally ill or mentally retarded persons or persons with disabilities.

FENCE — An artificially constructed barrier of any material or combination of materials erected or grown to enclose, screen or separate areas.

FERTILIZERS -- Any substance containing one or more recognized plant nutrients that is used for its plant nutrient content and which is designed for use, or claimed by its manufacturer to have value, in promoting plant growth. Fertilizers do not include unmanipulated animal and vegetable manures, lime, limestone, wood ashes, and gypsum.

FIFTY-FIVE-AND-OVER COMMUNITY — A residential development which is developed and managed to require that at least 80% of the residents are 55 years of age or over.

FINISHED MARIJUANA — Finished marijuana as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

FLAG LOT — A lot not meeting minimum frontage requirements and where access to the existing public way is by a narrow, private access strip.

FLEA MARKET — A building or open area in which stalls or sales areas are set aside, and rented or otherwise provided, and which are intended for use by various unrelated individuals to sell articles that may be either homemade, homegrown, handcrafted, old, obsolete, or antique and may include selling goods at retail by individuals or businesses who or which are generally engaged in retail trade. Flea markets may be conventional, permanent profit-seeking businesses and require all local permits and licenses.

FLEXIBLE DEVELOPMENT — A process and type of residential development, whether or not by subdivision, which is designed to maximize the preservation of open space and visual assets that are significant to the community. See § 255-31.

FLOOR AREA — The sum of the areas of habitable or commercially usable space on all floors of a structure, including the interior floor area of all rooms (including bathrooms and kitchens), closets, pantries, hallways that are part of a dwelling unit or inside a commercial building, including habitable finished basements but excluding cellars or unfinished basements.

FRONTAGE — The length of a front lot line adjacent to a street; provided, however, that the minimum frontage required by this bylaw shall be satisfied by a continuous, uninterrupted segment of such frontage.

FRONTAGE, FLAG LOT — The length of the flag lot front lot line parallel to and a distance back from the existing public way front lot line where the required minimum continuous uninterrupted segment of such frontage can be satisfied.

GASOLINE FILLING STATION — Establishment for principal purpose of sale of motor vehicle fuel and convenience products.

GAS-TO-ENERGY FACILITY — A facility which processes the gas resulting from decomposition of nearby landfill waste into electricity.

GROUNDWATER — All water found beneath the surface of the ground.

HAZARDOUS MATERIAL — Material including, but not limited to, any material, in whatever form, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health,

safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. The term shall not include oil.

HAZARDOUS WASTE — A waste which is hazardous to human health or the environment. Hazardous wastes have been designated by the regulations of the Massachusetts Hazardous Waste Management Act, MGL c. 21C.

HEIGHT — The vertical distance between the highest point of the roof of a building and the average finished grade of land on which the building is located. For purposes of this bylaw, the term "height" shall not apply to chimneys, steeples, flag or radio poles, antennas, aerators, required bulkheads, elevator penthouses, or other equipment appurtenances necessitated by the permitted use to which a building is put. In addition, the term "height" shall not apply to solar energy collectors and equipment used for the mounting or operation of such collectors; provided, however, that such collectors or equipment shall not impair solar access of other building or other solar installations.

HEMP — Hemp as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

HOME OCCUPATION — An occupation, trade, or profession, including a not-for-profit organization, which results in a product or service for compensation which is: (1) customarily carried on in a dwelling unit; (2) pursued by a person residing in the dwelling unit; and (3) incidental and secondary to the use of the dwelling unit for residential purposes. Such home occupations may include but are not limited to the following: office or studio of a building contractor, physician or surgeon, dentist, artist, lawyer, handicraft person, architect, professional engineer, realtor or real estate broker, insurance agent or broker, psychologist or counselor, notary public, teacher of scholastic subjects, accountant, hairdresser, beauty parlor operator, or teacher of piano. There are multiple categories or types of home occupations, which are shown on the Use Table included as an attachment to this chapter and described and regulated by § 255-22.

HOSPITAL — An institution where only sick and disabled persons are given medical, surgical or convalescent care.

HOST COMMUNITY — Host community, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

HOTEL — An establishment providing lodging on a short-term basis, usually less than one week; dining rooms, function rooms and other support services may be included. Access to the individual sleeping rooms is usually through a lobby and interior corridors.

HOUSE TRAILER — A portable structure used for temporary living or sleeping purposes and which is equipped with wheels or similar devices used for the purpose of transporting said structure from place to place.

IMPERVIOUS SURFACES — Materials or structures on or above ground that do not allow precipitation to infiltrate the underlying soil.

Comment [PG2]: If term is not to include oil, then need to define oil/ petroleum separately.

Maybe instead use following from Brewster, MA, which brings it together:

HAZARDOUS OR TOXIC MATERIALS — Any substance or mixture of physical, chemical or any infectious characteristics posing a significant, actual or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Brewster. Hazardous or toxic materials include, without limitation, organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, solvents and thinners and products such as pesticides, herbicides in quantities greater than normal household use; and all substances defined as hazardous or toxic under MGL c. 21C and MGL c. 21E, using the Massachusetts Oil and Hazardous Substance List (310 CMR 40.0000), and 310 CMR 30.000.

Another example from Easthampton:
Hazardous waste: A waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may:
a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or
b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
Hazardous wastes have been designated by the U.S. Environmental Protection Agency under 40 CFR Part 250 and the Hazardous Waste Management Act, Massachusetts General Laws Chapter 21.

Comment [PG3]: This other definition from Brewster may be useful here, but need to align with section 255-35:

HAZARDOUS MATERIAL OR WASTE, HOUSEHOLD QUANTITY OF — Any or all of the following:
A. Two hundred seventy-five gallons or less of oil on site at any time to be used for heating of a structure or to supply an emergency generator; and
B. Twenty-five gallons (or the dry weight equivalent) or less of other hazardous materials on site at any time, including oil not used for heating or to supply an emergency generator; and
C. quantity of hazardous waste at the very small quantity generator level as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.353.

INDEPENDENT TESTING LABORATORY — Independent testing laboratory, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

INDUSTRIAL — Any use classified under the category "Industrial Uses" in the Use Table included as an attachment to this chapter.

INSTITUTIONAL BUILDING — A building not used either as a principal accessory use to a commercial, industrial or residential use; generally used for a municipal, educational or religious purpose. **[Added 5-9-2018 ATM by Art. 17]**

JUNK — Articles such as old iron, brass, copper, tin, lead or other base metals, plastic, cordage, old bags, rags, wastepaper, paper clippings, scraps, clips, rubber, glass, empty bottles, empty cans and all other articles discarded and no longer used as a manufactured article, composed of one or more of the materials mentioned but which may be converted into some other product by means of some manufacturing process.

[JUNKYARD -- An establishment that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, as defined in MGL c.140B, s.1.](#)

LABORATORY AGENT — Laboratory agent, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

LANDSCAPING — The arrangement of landforms and vegetative cover for aesthetic effect.

LEACHABLE MATERIALS — Materials including but not limited to solid wastes, sludge and pesticide and fertilizer wastes capable of releasing water-borne contaminants to the environment.

LICENSEE — Licensee, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

LOADING SPACE — Off-street space logically and conveniently located for bulk pickups and deliveries by truck, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space.

LODGING HOUSE — A residence where lodgings are let to five or more persons not within the second degree of kinship to the person conducting the house and which does not contain a public dining room or cooking facilities in any rented sleeping room.

LOT — A parcel of land which is or may be occupied by a principal building and its accessory buildings, together with such open yard areas as are required under the provisions of this bylaw. To be used for building purposes, such lot must have frontage on a street as defined below, excepting only a preexisting lot exempted by the provisions of MGL c. 40A, § 6. A lot line is a boundary of a lot.

LOT COVERAGE — Same as "building coverage."

MANUFACTURE — Manufacture, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

MANUFACTURING — The fabricating, assembly, conversion, altering, finishing or other process treatment of materials, substances, parts or products.

MANUFACTURING FACILITIES — Facilities used primarily for heavy or light industry or the manufacture or assembly of a product, including processing, blending, fabrication, assembly, treatment and packaging.**[Added 5-9-2018 ATM by Art. 18]**

MARIJUANA (aka MARIHUANA) — Marijuana (aka marihuana) as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

MARIJUANA ACCESSORIES — Marijuana accessories as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

MARIJUANA CULTIVATOR — Marijuana cultivator as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

MARIJUANA ESTABLISHMENT — Marijuana establishment as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

MARIJUANA PRODUCT MANUFACTURER — Marijuana product manufacturer as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

MARIJUANA PRODUCTS — Marijuana products, as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

MARIJUANA RETAILER — Marijuana retailer as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

MARIJUANA TESTING FACILITY — Marijuana testing facility as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

MASTER PLAN — The South Hadley Master Plan adopted by the South Hadley Planning Board and Town Meeting, as amended.

MEDICAL MARIJUANA CULTIVATION AND PROCESSING FACILITY (MMCPF) — A MMTC which acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, or sells marijuana, products containing marijuana, related supplies, or educational material to MMOSD sites. Such facilities do not sell or dispense products on site to consumers, patients, or personal caregivers, but sell or transfer such products to one or more MMOSD sites for such selling or dispensing. The cultivation and processing of medical marijuana in accordance with these regulations is considered to be a manufacturing use and is not agriculturally exempt from zoning.

MEDICAL MARIJUANA OFF-SITE DISPENSARY (MMOSD) — A medical marijuana facility/registered marijuana dispensary that is located off-site from the cultivation/processing facility and only distributes/dispenses the processed marijuana, related supplies and educational materials to registered qualifying patients or their personal caregivers.

MEDICAL MARIJUANA TREATMENT CENTER (MMTC) — A not-for-profit entity registered and approved by the MA Department of Public Health in accordance with 105 CMR 725.000, and pursuant to all other applicable state laws and regulations, also to be known as a "registered marijuana dispensary (RMD)," that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. The cultivation and processing of medical marijuana in accordance with these regulations is considered to be a manufacturing use and is not agriculturally exempt from zoning.

MICROBREWERY — A facility, licensed under the relevant state and federal statutes, with a capacity of not more than 15,000 barrels (a barrel being equivalent to 31 gallons a year), for the production and packaging of malt, wine, or hard cider beverages for retail or wholesale distribution, on or off the premises, and which may include a tap room where beverages produced on the premises may be sold and consumed. May include other accessory uses such as, but not limited to, a restaurant and/or outdoor dining, entertainment, etc. The term "microbrewery" is to be interpreted as referring to similar facilities such as, but not limited to, "distillery." A microbrewery shall be considered to be a "General manufacturing use which is not commonly considered hazardous or noxious." Retail sales associated with the operation of a microbrewery and events held in association with the tap room shall be accessory and incidental to the operation of the tap room. **[Added 5-10-2017 ATM by Art. 24]**

MIXED-USE BUILDING — A building containing a combination of residential and nonresidential uses.

MIXED-USE DEVELOPMENT — Any combination of residential, commercial, and/or industrial uses on the same lot at the time of initial approval.

MOBILE HOME — A structure designed as a dwelling unit for location on a permanent foundation, and containing sleeping accommodations and sanitary and kitchen facilities with plumbing and electrical connections provided for attachment to outside systems, which is designed to be transported after fabrication on its own wheels to a site for use.

MOTEL — An establishment providing lodging on a short-term basis, usually less than one week, where access to the individual sleeping rooms is usually directly from parking spaces or by an exterior walkway.

MUNICIPAL PROPERTIES — As used in this chapter, "municipal properties" shall be interpreted to mean any land or property owned in fee by either

the Town of South Hadley (including semi-autonomous entities such as the South Hadley Electric Light Department), South Hadley Fire District No. 1, or South Hadley Fire District No. 2. **[Added 5-9-2018 ATM by Art. 17]**

MYCOTOXIN — Mycotoxin as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

NONCONFORMING USE — A use of a building, structure or lot in a manner not in accordance with the use or dimensional regulations of the district in which it is situated.

OFFICE — A workplace used for the transaction of business or nonprofit functions, excluding as principal uses manufacturing, retail construction, and warehousing and including but not limited to professional offices and offices that support or manage on-site or off-site manufacturing, retailing, construction, and warehousing, as well as research laboratories and other facilities in which research activities are conducted. An office that is operated as part of another primary use on the Use Table shall be considered accessory to that primary use and not a separate use.¹

PARK — A tract of land designated and used by the public for active and passive recreation and maintained as public property.

PARKING SPACE (OFF-STREET) — Shall consist of an area for parking an automobile with room for opening doors on both sides, together with properly related access to a street and sufficient maneuvering room, but shall be located totally outside of any street or alley right-of-way.

PERSONAL SERVICE ESTABLISHMENT — Any building wherein the primary occupation is the repair, care of, maintenance or customizing of personal properties that are worn or carried about the person or are a physical component of the person. Personal service establishments shall include, but not be limited to: barber shops; beauty shops; pet grooming establishments; laundering, cleaning and other garment servicing establishments; tailors; dressmaking shops; shoe cleaning or repair shops; eyeglass shops; health clubs; and other similar places of business, but not including offices of physicians, dentists and veterinarians, or any other recognized professional.

PETROLEUM PRODUCT — Petroleum or petroleum byproduct, including, but not limited to: fuel oil; gasoline; diesel; kerosene; aviation jet fuel; aviation gasoline; lubricating oils; oily sludge; oil refuse; oil mixed with other wastes; crude oils; or other liquid hydrocarbons regardless of specific gravity. Petroleum product shall not include liquefied petroleum gas, including, but not limited to, liquefied natural gas, propane or butane.

PLAYGROUND — An active recreational area with a variety of facilities, including equipment for younger children as well as court and field games.

PRIMARY AQUIFER RECHARGE AREA — Areas which are underlain by surficial geological deposits including glaciofluvial or lacustrine stratified drift deposits or alluvium or swamp deposits, and in which the prevailing direction of groundwater flow is toward the area of influence of water supply wells.

PRINCIPAL BUILDING — The building in which the principal use on the premises takes place.

PRINCIPAL USE — The primary use to which the premises are devoted, and the main purpose for which the premises exist.

1. Editor's Note: The Use Table is included as an attachment to this chapter.

PROCESS — Process, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

PROCESSING — Processing, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

PRODUCTION BATCH — Production batch, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws.**[Added 1-10-2018 STM by Art. 5]**

PROFESSIONAL ENGINEER — A person employed in a practice of engineering as defined in MGL c. 112, § 81D.

PROFESSIONAL SERVICE — An establishment primarily engaged in rendering services by professional persons on a fee or contract basis, including, but not limited to, the following: accounting, auditing, and bookkeeping; medical, dental or health; planning, engineering and architectural; education and science; attorneys and notary publics; finance, insurance and real estate (FIRE); travel agencies; etc.

PROJECT PROPONENT — The applicant, property owner, installation developer, operator and management entity, jointly and severally, of a project. Each of the responsible parties shall be responsible for adhering to the requirements set forth in this chapter.**[Added 5-9-2018 ATM by Art. 17]**

PROTECTED OPEN SPACE — Land that is permanently protected from development by a conservation restriction, dedication as parkland, or an equivalent form of perpetual legal restriction on development.

RATED NAMEPLATE CAPACITY — The maximum rated output of electric power production of a photovoltaic system in direct current (DC).**[Added 5-9-2018 ATM by Art. 17]**

RECREATIONAL VEHICLE — A vehicle or vehicular attachment designed for temporary sleeping or living quarters, which is not a dwelling and which may include a pick-up camper, travel trailer, or tent trailer.

RENEWABLE ENERGY — Includes solar-photovoltaic (PV) and thermal, wind, biomass power conversion or thermal technologies (including R&D related to, or the manufacture of, wood pellets), ultra-low emissions high-efficiency wood pellet boilers and furnaces, low-impact hydro-electric and kinetic, ocean thermal/wave/tidal, geothermal, landfill gas, fuel cells that use renewable energy, advanced biofuels.**[Added 5-9-2018 ATM by Art. 18]**

RESEARCH AND DEVELOPMENT FACILITIES — Facilities are used primarily for research, development and/or testing of innovative information, concepts, methods, processes, materials, or products. This can include the design, development, and testing of biological, chemical, electrical, magnetic, mechanical, and/or optical components in advance of product manufacturing. The accessory development, fabrication, and light manufacturing of prototypes, or specialized machinery and devices integral

to research or testing may be associated with these uses. **[Added 5-9-2018 ATM by Art. 18]**

RESIDENTIAL DEVELOPMENT SIGNS — Part of a landscape element of an approved townhouse, multifamily, and/or flexible development which identifies said townhouse, multifamily, and/or flexible development. **[Added 5-9-2018 ATM by Art. 19]**

RESIDENTIAL SUBDIVISION — A subdivision as defined in Chapter 41, Massachusetts General Laws which was approved by the Planning Board and is used exclusively for residential purposes. Plans endorsed pursuant to Chapter 41, Section 81P, Massachusetts General Laws are not deemed to be subdivisions. **[Added 5-9-2018 ATM by Art. 17]**

RESIDUAL SOLVENT — Residual solvent, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

RESTAURANT — A commercial establishment in which the primary activity consists of the preparation and serving of food for consumption on the premises or as take-out, including a bar or pub or other establishment that sells food and alcoholic beverages for on-premises consumption, excluding catering businesses and retail uses that sell prepared food.

RESTORATION — The reconstruction or repair of a building or structure to its original plan, size and use.

RETAIL; RETAIL SALES — An establishment selling goods directly to the general public for personal and household consumption, including but not limited to an appliance store, bakery, delicatessen, drugstore, florist, grocer, hardware store, liquor store, newsstand, shoe store, stationery store, convenience store, and variety store, excluding a restaurant.

SANITARIUM — An institution for the recuperation or treatment of persons suffering from physical or mental disorders.

SCENIC VIEWS — Views significant to the cultural and environmental heritage of South Hadley, including, but not limited to, views of the Mount Holyoke Range, Mount Tom, and the Connecticut River.

SCHOOL — A building devoted to instruction or education in primary, secondary, high school, or post-high school grades.

SEASONAL HIGH WATER TABLE: The depth from the mineral soil surface to the upper most soil horizon that contains 2 percent or more distinct or prominent redoximorphic features that increase in percentage with increasing depth as determined by a licensed Hydrogeologist, Soils Scientist, Wetlands Scientist, Civil or Environmental Engineer or other qualified professional approved by the Planning Board or the shallowest depth measured from ground surface to free water that stands in an unlined or screened borehole for at least a period of seven consecutive days.

SECONDARY AQUIFER RECHARGE AREA — Areas which are underlain by surficial geologic deposits, including till or bedrock, and in which the prevailing direction of surface water flow is toward public water supply wells or potential sites for such wells.

SECONDARY CONTAINMENT -- A structure such as a berm or dike with an impervious surface which is adequate to hold at least 110 percent of the volume of the largest regulated-substances container that will be stored there.

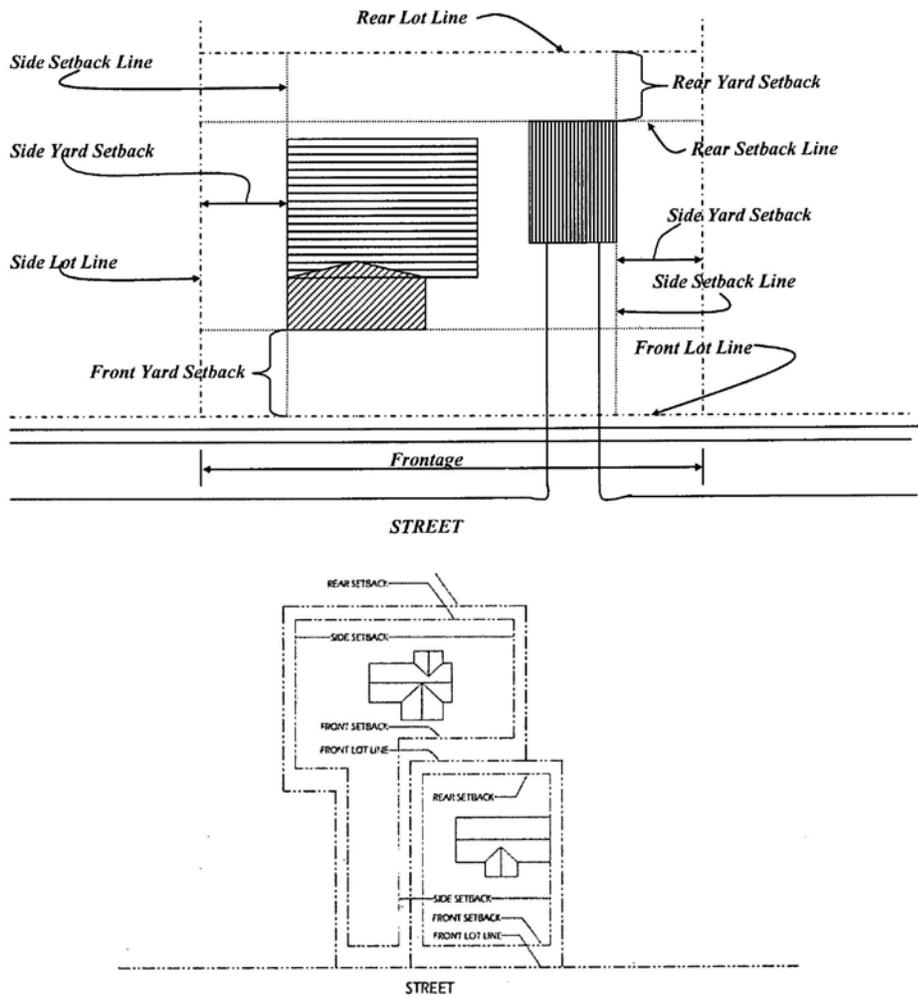
SECONDHAND — Having been used or owned by some person other than the dealer offering the same for sale and which may be used without alteration.

SERVICE — The performance of any act for the benefit of another with a view to profit or for a livelihood.

Comment [PG4]: Definition pulled from NH DES model, which includes the following note: Adapted from the definition under Env-Wq 1502.49, NHDES Alteration of Terrain rules. "Water table" refers to a saturated zone in the soil. Estimates of the seasonal highest water table for a soil are based mainly on observations of the water table at selected sites or on physical characteristics of the soil that are considered to be evidence of a saturated zone, typically, gray redoximorphic depletions. (USDA, NRCS TSSH Part 617) Alternatively, it may be measured by creating a borehole and measuring the difference in the elevation of the land surface to standing water over a defined period of time.

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SETBACK — The minimum required unoccupied space or distance between a lot line and any part of a principal or accessory building nearest such lot line, such unoccupied space or area extending the entire distance across the lot. Front, side and rear setback lines are identified in accordance with the diagram below:



SETBACK — The minimum required unoccupied space or distance between a lot line and any part of a principal or accessory building nearest such lot line, such unoccupied space or area extending the entire distance across the lot. Front, side and rear setback lines are identified in accordance with the diagram below:

SIGN —

- A. Any word, letter, symbol, drawing, picture, design, name, identification, description, display, illustration, or device, including billboards, or any combination of one or more of the

foregoing, which identifies or calls attention to the premises, person, activity, or business, but not the trade

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name of products unless such products involve over 75% of the total sales of an establishment.

B. Any structure or device intended or erected for the above-described purpose shall be considered a sign for purposes of this bylaw. The area of a sign shall be determined by measuring the smallest rectangle which encompasses the outermost components of the sign, exclusive of any supporting structure.

SIGNIFICANT TREE — A tree with a diameter of 18 inches or more as measured 4.5 feet above the ground.

SOLAR PHOTOVOLTAIC INSTALLATION — An active solar energy system that converts solar energy directly into electricity. **[Added 5-9-2018 ATM by Art. 17]**

SOLAR PHOTOVOLTAIC INSTALLATION, CANOPY-MOUNTED — A solar photovoltaic system that is structurally mounted on a canopy over a parking area. **[Added 5-9-2018 ATM by Art. 17]**

SOLAR PHOTOVOLTAIC INSTALLATION, GROUND-MOUNTED — A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted. **[Added 5-9-2018 ATM by Art. 17]**

SOLAR PHOTOVOLTAIC INSTALLATION, LARGE-SCALE — A solar photovoltaic system that has a rated nameplate capacity greater than 250 KW DC. **[Added 5-9-2018 ATM by Art. 17]**

SOLAR PHOTOVOLTAIC INSTALLATION, MEDIUM-SCALE — A solar photovoltaic system that has a rated nameplate capacity of more than 10 KW DC but not more than 250 KW DC. **[Added 5-9-2018 ATM by Art. 17]**

SOLAR PHOTOVOLTAIC INSTALLATION, ROOF-MOUNTED — A solar photovoltaic system that is structurally mounted on the roof of a building. **[Added 5-9-2018 ATM by Art. 17]**

SOLAR PHOTOVOLTAIC INSTALLATION, SMALL-SCALE — A solar photovoltaic system that has a rated nameplate capacity of 10 KW DC or less. **[Added 5-9-2018 ATM by Art. 17]**

SPECIAL MUNICIPAL ACCOUNT — Application review fees imposed on a developer to cover the costs incurred by the Planning Board and/or Zoning Board of Appeals for the employment of outside professional expertise and/or consultants due to the nature of a proposed project or a project's potential impact.

STORY — The horizontal portion through a building between floor and ceiling. The word "story" shall not include the portion of the basement or cellar of a building above grade, provided that such portion is not more than 1/2 of the floor-to-ceiling height of said basement or cellar. The word "story" shall not include "attic" as defined herein.

STREET — A way, whether public or private, set aside for the passage of persons, animals or vehicles, and which is:

- A. A public way accepted by the Town or a way which the Town Clerk certifies is maintained and used as a public way; or
- B. A way shown on a plan approved and endorsed by the Planning Board in accordance with Chapter 41 of the Massachusetts General Laws (Subdivision Control Law); or
- C. A way in existence when said Subdivision Control Law became effective in South Hadley having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and having sufficient and adequate municipal services to serve such land and the buildings erected or to be erected thereon.

STREET LINE — The dividing line between a street and a lot, and in case of a public way, the street line established by the public authority laying out said way upon which the lot abuts.

STRUCTURE — A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, tower, fence, sign, pole, mast, or the like. The word "structure" shall be construed, where the context allows, as though followed by the words "or part or parts thereof."

SUBDIVISION — The division of a lot, tract or parcel of land into two or more lots, sites, or divisions of land, in such a manner as to require provisions for a street for the purpose as provided in Chapter 41 of the Massachusetts General Laws (Subdivision Control Law). The word "subdivision" shall include "resubdivision" in relation to the processes of subdividing or to land already subdivided, when appropriate to the context.

SUBDIVISION REGULATIONS — The Rules and Regulations Governing the Subdivision of Land in the Town of South Hadley, Massachusetts, promulgated by the South Hadley Planning Board, as amended from time to time.²

SWIMMING POOL — A facility used for swimming, diving or water sports which may be either:

- A. A below-ground artificial or semi-artificial receptacle or container of a pool of water located below surrounding grade and having a depth of at least 24 inches, as measured from the lowest point in the pool a vertical distance to the ground level; or
- B. An above-ground artificial or semi-artificial receptacle or container of a pool of water located above surface grade with a diameter of 15 feet or greater at the outside dimension and a capacity to hold water at a depth of 24 inches or more.

TERPENOID — Terpenoid as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

² Editor's Note: See Ch. 360, Subdivision Regulations.

TRUCKING TERMINAL — A business which services or repairs commercial trucks which are not owned by the business.

UNREASONABLY IMPRACTICABLE — Unreasonably impracticable, in regards to recreational marijuana, as defined in Chapter 94G, Massachusetts General Laws. **[Added 1-10-2018 STM by Art. 5]**

USE — The purpose for which land or a building or structure is arranged, designed, intended or erected, or for which land or a building or structure is or may be occupied.

VEHICLE — Includes the following: cars, trucks, vans, recreational vehicles, and mobile construction equipment.

WATERSHED — Lands lying adjacent to watercourses and surface waterbodies which create the catchment or drainage of such watercourses and bodies. —

WETLAND — A freshwater wetland as defined in the Massachusetts Wetlands Act, MGL c. 131, § 40.

WHOLESALE SALES AND WAREHOUSING — A business in which materials, goods, or equipment are stored and/or held and transported for distribution, including mini-storage and self-storage facilities.

YARD — The area of land on a lot not occupied by a principal or accessory building.

ZERO LOT LINE HOUSING — A form of development in which each single-family residence is on a separate lot and has no setback from one side lot line.

ZONE I – The protective radius required around a public water supply well or Wellfield. For Public Water System wells with approved yields of 100,000 gpd or greater, the protective radius is 400 feet.

ZONE II - That area of an aquifer that contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at approved yield, with no recharge from precipitation). It is bounded by the groundwater divides that result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases, Zone II shall extend upgradient to its point of intersection with prevailing hydrogeologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary). The Zone II must include the entire Zone I area.

ZONE III – That land area beyond the area of Zone II from which Surface Water and groundwater drain into Zone II. The surface drainage area as determined by topography is commonly coincident with the groundwater drainage area and will be used to delineate Zone III. In some locations, where surface and groundwater drainage is not coincident, Zone III shall consist of both the surface drainage and the groundwater drainage areas.

Comment [PG5]: Add if decide to revise language in 255-35 C.

ZONING ENFORCEMENT OFFICER — The person or persons designated to enforce these Zoning Bylaws and Massachusetts General Laws Chapter 40A; who shall be the Building Commissioner and any individual employed as a bylaw enforcement officer for the purpose of enforcing bylaws, regulations and relevant statutes.

§ 255-15. Overlay districts.

The following Overlay Districts are herein established over one or more of the districts created in § 255-11:

A. **Water Supply Protection Overlay District.**

(1) The purpose of this overlay district is to promote the health, safety and welfare of the community by protecting and preserving the surface and groundwater resources of the Town and the region from any use of land or buildings which may reduce the quality and quantity of its water resources.

(2) **§ 255-35** Requirements for this district are enumerated in of the Zoning Bylaw and are supplemental to any requirements or restrictions of the underlying zoning districts.

B. Adult Entertainment Use Overlay District.

(1) Purpose. The purpose of this overlay district is to prevent the deleterious effects that adult entertainment uses have on the community and adjacent areas; to prevent the secondary effects associated with such uses; to protect the health, safety, and general welfare of the present and future inhabitants of the Town; and to provide for regulation of such uses without suppressing any speech or expression activities protected by the First Amendment. Requirements for this district are enumerated in § 255-42 of the Zoning Bylaw and are supplemental to any requirements or restrictions of the underlying zoning districts.

(2) Boundaries. Boundaries of the Adult Use Entertainment Overlay District are depicted on a map on file in the office of the Planning Board, Building Commissioner, and Town Clerk. Said overlay district shall include only the following properties as identified on the 2004 Assessor's Map:

Map 8, Parcel 73; Street Address: 500 New Ludlow Road

Map 7, Parcel 98; Street Address: 2084 Memorial Drive

C. South Hadley Falls Overlay District. The purpose of this overlay district is to encourage redevelopment of South Hadley Falls in a manner consistent with its historic urban pattern.

D. South Hadley Falls Smart Growth District. The purposes of this district are as stated in § 255-23. **[Added 5-9-2018 ATM by Art. 20]**

E. Newton Street Smart Growth District. The purposes of this district are as stated in § 255-23. **[Added 5-9-2018 ATM by Art. 21]**

From 255-31 Flexible Development Section

(4) **Water Supply Protection District**. The Planning Board may grant a special permit to allow a **flexible development in the Water Supply Protection District** where the following conditions are satisfied:

(a) Protection of water supply. The Planning Board determines that the density and design of the development will provide adequate protection for the water supply. To this end, the number of dwelling units shall be determined by the preliminary plan method stated in Subsection H(3)(a). The maximum density bonuses which may be permitted in the Water Supply Protection District pursuant to Subsection I above shall not exceed 1/2 the amount permitted outside the Water Supply Protection District.

(b) Sewage disposal. The Board of Health grants approval for a common septic disposal system where public sewer is not available. The Planning Board may, but is not required to, permit the area occupied by such system to be included in the common open space if the Planning Board determines that inclusion of such an area in the common open space is consistent with the purposes of this section and the purposes of the common open space.

§ 255-35. Water Supply Protection District.

A. **Purposes.** The purpose of the Water Supply Protection District is to promote the health, safety and welfare of the community by protecting and preserving the surface and groundwater resources of the Town and the region from any use of land or buildings which may reduce the quality and quantity of its water resources.

B. **Scope of authority.** The Water Supply Protection District is an overlay district and shall be superimposed on the other districts established by this bylaw. All regulations of the Town of South Hadley Zoning Bylaw applicable to such underlying districts shall remain in effect, except that where the Water Supply Protection District imposes additional regulations, such regulations shall prevail.

C. District delineation.¹⁷

(1) The Water Supply Protection District is herein established to include all lands within the Town of South Hadley lying within the primary and secondary recharge areas of groundwater aquifers, including the Zone I, Zone II, and Zone III, and watershed areas of reservoirs which now or may in the future provide public water supply. The map entitled "South Hadley Water Supply Protection Area District" on file with the Town Clerk, delineates the boundaries of the district.

(2) Where the bounds delineated are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where they should properly be located.

(3) Where the boundary line of the Water Supply Protection District divides a lot or parcel, the requirements established by this overlay district shall apply to the entire lot or parcel.

¹⁷Editor's Note: See the Water Supply Protection Overlay District Map included as an attachment to this chapter.

Comment [PG6]: Why did not make additions proposed for A. and B. here at TM?

Comment [PG7]: Breadth of this language here is good, but seems important to tie to Zone I, Zone II, and Zone III as well since these are delineations used by state.

Example from Brewster, MA, may be helpful here. They define Recharge Areas broadly and then define parts as follows:
RECHARGE AREAS — Areas that collect precipitation or surface water and carry it or have it pumped to aquifers. Recharge areas may include areas designated as Zone I, Zone II or Zone III.

ZONE I — The immediate land area around a well. It is defined as a four-hundred-foot protective radius for wells greater than 100,000 gpd and a radius of 100 to 400 feet for wells less than 100,000 gpd, depending upon the pumping rate. The Zone I must be owned by the water supplier or controlled through a conservation restriction. Only water supplier activities are allowed in the Zone I.

ZONE II — The DEP-approved area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated as defined in 310 CMR 22.00. The Zone II includes the Zone I.

ZONE III — The land area beyond the area of Zone II from which surface water and groundwater drain into Zone II. Zone III boundaries are determined by identifying the topographic surface water drainage divides. The surface water drainage area commonly coincides with the groundwater drainage; however, in areas where they are not coincident, the Zone III encompasses both the surface and groundwater drainage area.

Comment [PG8]: Establish consistency in how refer to this. In most other cases referred to as, "Water Supply Protection District."

Comment [PG9]: Seems that this language may open up possibility that can dispute rationale for boundaries of district. May be better to substitute with following language, though good to check with Counsel on what would work best here:

If the location of the Water Supply Protection District boundary in relation to a particular parcel is in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question.

D. Permitted uses. The following uses are permitted within the Water Supply Protection District, provided that they comply with all applicable restrictions in this bylaw, including but not limited to Subsections E through H:

- (1) Single-family residences, provided that where not serviced by public sewer, lot size shall be 10,000 square feet of lot area per bedroom or 40,000 square feet, whichever is greater. For cluster development, minimum lot size may be calculated on a net density for an entire development, which includes individual lots and common open space of varying size. Where serviced by public sewerage, minimum residential lot size shall comply with the residential requirement of the underlying district.
- (2) Residential accessory uses, including garages, driveways, private roads, utility rights-of-way, and on-site wastewater disposal systems.
- (3) Agricultural uses such as farming, grazing and horticulture.
- (4) Forestry and nursery uses.
- (5) Outdoor recreational uses, including fishing, boating and play areas, and foot, bicycle, and/or horse paths.
- (6) Conservation of water, plants and wildlife.
- (7) Wildlife management areas.
- (8) normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
- (9) construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels
- (8) Other earth removal, extraction, and/or fill activities and earth removal, excavation, and/or fill activities as defined in § 255-84 for which a permit from the Building Commissioner is not required due to the activity being part of an exempt development under § 255-84A(2), and the associated excavation/earth removal shall not be nearer than 10 feet from the seasonal high groundwater.

[Amended 5-8-2019 ATM by Art. 23]

(109) Wireless communications facilities when approved pursuant to §§ 255-19 and 255-40, subject to the conditions of the Planning Board as set forth in the special permit decision.

E. Prohibited uses. In addition to those uses prohibited in the Use Regulations Schedule, the following uses are also prohibited within the Water Supply Protection District:

- (1) Business and industrial uses, not agricultural, which generate, treat, store, or dispose of hazardous wastes that are subject to MGL c.21C and 310 CMR 30.00, including but not limited to metal plating, chemical manufacturing, wood preserving, furniture stripping, dry cleaning and auto body repair, which generate, use, treat, process, store or dispose of hazardous wastes, except for the following:
 - (a) Very small quantity generators of hazardous waste, as defined by 310 CMR 30.00, which existed at the time of adoption of this bylaw and which generate less than 20 kilograms or

Comment [PG10]: This should be listed in prohibitions below with exception rather than listing here as permitted use. Note too that:

This "other earth removal category" based on 255-84 B(2) seems to open up possibility that subdivision site improvements (exempt below) could remove up to 4,999 cubic yards, equivalent to nearly 312 large dump truck loads, before triggering Major Earth Removal.

Exemptions are limited to excavation and/or fill activity that is incidental to and in connection with: construction of a structure and not more than 100 feet from the building, and site improvements for a subdivision for which definitive plans have been approved

Comment [PG11]: Use Regulations Schedule also prohibits:
Mobile Home Parks
Landing Strips for private use of owner
Public-Private Recreation
Town Buildings
Federal and State Government Buildings
Open Air Parking for 25 vehicles or fewer
Public Parking Areas and Garages
New and secondhand car dealers
Wholesale sales and warehousing
Telephone exchange buildings
Amusement parks, bowling alleys, roller skating rinks
Motels-hotels
Open air theaters
Restaurants
Adult entertainment
Flea markets
Commercial kennels
General manufacturing uses not commonly considered hazardous or noxious
Other manufacturing uses commonly considered hazardous or noxious

Comment [PG12]: Definition has changed in 310 CMR. I recommend prohibiting unless existing use.

30.353: Very Small Quantity Generators
(1) A generator is a Very Small Quantity Generator if that generator:
(a) Does not generate in a calendar month a total of 100 kilograms or more of hazardous waste, regulated recyclable material, or combination of hazardous waste and regulated recyclable material; and
(b) Does not accumulate, at any one time, any hazardous waste, regulated recyclable material, or combination of hazardous waste and regulated recyclable material in quantities exceeding 1,000 kilograms; and

Comment [PG13]: TM Article had proposed removing second half of language under this element. Why not removed?

six gallons of hazardous waste per month may be allowed by special permit in accordance with Article IX of this bylaw; and provided that...

- (b) Household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390;
- (c) Waste oil retention facilities required by MGL c. 21, § 52A the operations for which existed at the time of adoption of this bylaw and
- (d) Treatment works approved by the Massachusetts Department of Environmental Protection and designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground and surface waters.

(2) Petroleum, fuel oil, and heating oil bulk stations and terminals including, but not limited to, those listed under North American Industry Classification System (NAICS) Codes 424710 and 454311, except for liquefied petroleum gas.

(3) Business or industrial uses, not agricultural, which dispose of process wastewaters on-site.

(4) Trucking terminals, bus terminals, car washes, motor vehicle gasoline sales, automotive and boat service and repair shops, commercial fuel oil storage and sales.

(5) Solid waste landfills, dumps, auto recycling, auto mobile graveyards, junk and salvage yards, landfilling or storage of sludge and septage, with the exception of the disposal of brush or stumps.

(6) Storage of liquid petroleum products of any kind, except for the following:

(a) Storage which is incidental to:

1] incidental to normal household use and outdoor maintenance where stored in 5-gallon or less approved portable containers

2] used for the heating of a structure, provided such storage is in a free standing container located within a building or in a free standing container with protection adequate to contain a spill 110% the size of the total capacity of the container and is otherwise in compliance with the Massachusetts Fire Safety Code (527 CMR);

2] waste oil retention facilities required by MGL c. 21, § 52A;

3] emergency generators required by statute, rule or regulation; or

4] treatment works approved by the Massachusetts Department of Environmental Protection designed in accordance with 314CMR 5.00 for the treatment of contaminated ground or surface waters; provided that such storage shall be in a free standing aboveground container within a structure or within the basement of a structure, within a diked, impermeable area sufficient to contain the volume of the tank plus 10% to prevent spills or leaks from reaching groundwater, and provided that the storage tank and piping must comply with all applicable provisions of 527 CMR 1.00, the Massachusetts Board of Fire Prevention regulations.

(b) Replacement of storage tanks or systems for the keeping, dispensing or storing of gasoline, which existed at the time of adoption of this bylaw, provided that:

[1] All such replacement storage tanks or systems shall be located underground as required by Massachusetts Board of Fire Prevention regulations 527 CMR 14;

[2] All such storage systems be protected by one of the secondary containment systems specified in

Comment [PG14]: Need to research good standard here for containment and in case of a spill of hazardous material as there is for petroleum below. Perhaps good standard in 310 CMR 30.

Enviro Law & Policy Center also recommends: Standards that give local authorities the best information with which to manage threats to water supply, by:

- Requiring registration of potential pollution sources;
- Requiring groundwater monitoring wells;
- Requiring daily inspections for leaks or breaks; and
- Requiring that all spill incidents involving liquid or chemical material be reported immediately.

Comment [PG15]: I recommend putting below as prohibition unless existing use (6b below) instead of exception here. From MGL: "Every automobile service station, marina serving powered watercraft and reta...

Comment [PG16]: MassDEP prohibition.

Comment [PG17]: Use Regulations Schedule refers to as: "gasoline filling stations"; "automotive repair and services" "Marinas";

Comment [PG18]: TM had proposed deleting this last bit.

Comment [PG19]: Language from MassDEP model is as follows: Storage of liquid hazardous materials and/or liquid petroleum products unless such storage is

Comment [PG20]: Do you want to get to ensuring residential use has containment? Some communities on Cape seem to be advancing no underground storage and requiring containment. Requirements at tim...

Comment [PG21]: Duplicates above exemption in 1.c. But more importantly, why have this if prohibited in (3) above uses that would generate waste oil?

Comment [PG22]: Duplicates above exemption in 1.d., but provides more detail here. Mention here assumes processing involves petroleum products and above assumes hazardous waste. May be best to

Comment [PG23]: These citations are off. While 527 CMR exists, cannot find these specific sections referenced. Need to update.

Comment [PG24]: Need some research on what is best way of avoiding groundwater contamination with changes in extreme weather events. Above or below ground tanks? How ensure that tanks do not

Massachusetts Board of Fire Prevention regulations **527CMR 9.08(3)**;

[3] The head of the respective Fire Department may deny an application for tank replacement, or approve it subject to conditions, if he or she determines that it constitutes a danger to public or private water supplies in accordance with 527 CMR 9.26(4)(d). Replacement of all other storage tanks for liquid petroleum products other than gasoline must be above ground in accordance with Subsection E(5)(a).

(7) Outdoor storage of salt, deicing materials, pesticides or herbicides.

(8) Dumping or disposal on the ground, in water bodies, or in residential septic systems of any toxic chemical, including but not limited to septic system cleaners which contain toxic chemicals such as methylene chloride and 1-1-1 trichlorethane, or other household hazardous wastes. (See the list of prohibited chemicals at the Board of Health or Town Clerk's office.)

(9) storage of animal manures, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff and leachate;

(10) storage of commercial fertilizers unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate

(11) Any floor drainage systems in existing facilities, in industrial or commercial hazardous material and/or hazardous waste process areas or storage areas, which discharge to the ground without a DEP permit or authorization. Any existing facility with such a drainage system shall be required to either seal the floor drain (in accordance with the state plumbing code, 248 CMR 10.00: Uniform State Plumbing Code), connect the drain to a municipal sewer system (with all appropriate permits and pre-treatment), or connect the drain to a holding tank meeting the requirements of all appropriate DEP regulations and policies.

(12) Stockpiling and disposal of snow or ice removed from highways and streets located outside of the Water Supply Protection District that contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.

(13) Wastewater treatment works subject to 314 CMR 5.00 (those treatment works which discharge over 15,000 gallons per day to the ground), except the following:

(a) The replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s);

(b) The replacement of an existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s);

(c) Treatment works designed for the treatment of contaminated ground or surface waters subject to 314 CMR 5.00.

(14) Major earth removal, excavation and/or fill activities (as defined in § 255-84, including mining of gravel, soil, loam, sand and/or other minerals. **[Added 5-8-2019 ATM by Art. 23]**)

F. Restricted uses. The following uses are restricted within the Water Supply Protection District:

(1) Excavation for removal of earth, loam, sand, gravel and other soils or mineral substances shall not extend closer than five feet above the historical high groundwater table (as determined from on-site monitoring wells and historical water table fluctuation data

Comment [PG25]: You could go even further, requiring tertiary treatment if going to allow for storage of petroleum and hazardous materials:

All hazardous materials and petroleum products must be stored either in a free-standing container within a building, or in a free standing container above ground level with protection to contain a spill. A tertiary containment system, with the outer containment designed and operated to contain the container or tank's total storage volume plus an additional 10% must be used.

Comment [PG26]: Amendment proposed for TM was to include fertilizers here. Maybe blend with 10 below so that not just "commercial" fertilizers and so that more directive of how all these elements need to be stored.

Comment [PG27]: These are additional elements in 310 CMR prohibitions and MassDEP model bylaw. Note that you have some of these in Restricted Uses below. Better to include here.

Comment [PG28]: There is a lot of in between with "incidental" earth removal being permitted above, prohibition here of major earth removal, and restricted use below. May be best to sew up this gap. Major earth removal trigger is 5,000 or more cubic yards of material = 312 very large dump truck loads by my calculation.

Comment [PG29]: TM article also proposed back stop addition here: **(11) Any use prohibited by 310 CMR 22.21(2)(a) which is not expressly prohibited in the above provisions 255-35E(1) through (10).**

Comment [PG30]: What does it mean for these uses to be restricted? There is no definition in Zoning Bylaw that I can find. These seem more like performance standards. Several of these are listed as prohibitions in 310CMR 22.21, but set up with an "unless" for the standards. Those are indicated in blue highlight below
I recommend eliminating this section and folding blue highlighted elements into prohibitions or permitted uses above. Would help to provide clarity and consolidate information on specific uses.

Comment [PG31]: See above amendment from 2019 that sets this at 10 feet. Best to align.
TM article had proposed removal of all of 1 here and substituting with other language. Why did change not get made? Other language proposed here:

compiled by the United States Geological Survey, whichever is higher). A monitoring well shall be installed by the property owner to verify groundwater elevations. This subsection shall not apply to excavations incidental to permitted uses, including but not limited to providing for the installation or maintenance of structural foundations, freshwater ponds, utility conduits or on-site sewage disposal.

(a) The access road(s) to extractive operation sites shall include a gate or other secure mechanism to restrict public access to the site.

(b) Upon completion of earth removal operations, all altered areas shall be restored with topsoil and vegetative plantings. All fine materials, such as clays and silts, removed as part of the earth removal operation and leftover as by-products shall be disposed of off-site to prevent damage to aquifer recharge characteristics.

(2) Sodium chloride for ice control shall be used at the minimum salt to-sand ratio which is consistent with the public highway safety requirements, and its use shall be eliminated on roads which may be closed to the public in winter.

(3) The storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads shall be covered and located on a paved surface, with berms, within a structure designed to prevent the generation and escape of contaminated run-off leachate.

(4) Fertilizers, pesticides, herbicides, lawn care chemicals or other leachable materials for agricultural and/or commercial applicator use shall be used in conformance with the Massachusetts Pesticide Control Act, MGL c. 132B, regulations promulgated by the Massachusetts Pesticide Bureau (333 CMR 1 through 14), and the manufacturer's label instructions. All other reasonable precautions to minimize adverse impacts on surface and groundwater should be used.

(5) Fertilizers, pesticides, herbicides, lawn care chemicals and other leachable materials for non-agricultural and non-commercial applicator use shall be used in accordance with the Lawn Care Regulations of the Massachusetts Pesticide Board 333 CMR 10.03as amended, according to the manufacturer's label instructions and all other necessary precautions to minimize adverse impacts on surface and groundwater.

(6) On-site sewage disposal systems shall not be installed without additional measures imposed by the Board of Health. (See Board of Health regulations.)

Comment [PG32]: Consolidate?

(7) The **storage of commercial fertilizers** and soil conditioners shall be within structures that prevent the generation and escape of contaminated run-off or leachate.

Comment [PG33]: Listed in 310CMR as prohibition, unless...

(8) To the extent feasible, all new permanent **animal manure storage** areas shall be covered and/or contained to prevent the generation and escape of contaminated run-off or leachate.

Comment [PG34]: Listed in 310 CMR as prohibition, unless...

(9) **All liquid hazardous materials**, as defined in MGL c. 21E, must be stored either in a freestanding container within a building or in a freestanding container above ground with protection to contain a spill the size of the container's total storage capacity.

Comment [PG35]: Listed in 310CMR as prohibition, unless...

Comment [PG36]: TM article addition of word "covered" proposed.

F. Performance Standards

Comment [PG37]: TM article proposed following language:

1. Prior to any land disturbing activities, all inactive wells on the property not in use or properly maintained at the time the plan is submitted, shall be considered abandoned and must be sealed in accordance with Board of Health regulations.

(10) If it is determined that 310 CMR 22.21(2)(b) imposes performance standards more stringent on land uses or activities than expressly stated in the above 255-35F(1) through (9), said 310 CMR 22.21(2)(b) performance standard shall be deemed to also apply to land uses and activities in the Water Supply Protection District even though said performance standard or restriction is not specified herein.

2. Any earth removal activity allowed in the Water Supply Protection District must retain all topsoil on site in order to best hold stormwater in this top layer of organic material, as well as ensure that any given site retains its capacity to grow vegetation, avoiding the chronic need for fertilizers to re-vegetate site.

Comment [PG38]: Need to make sure that there are such provisions.

3. New Hampshire DES model has some good standards for storage of smaller quantities of hazardous substances and petroleum that could be included here. See: <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/wd-06-41.pdf>

Consider adding performance standards section here that fold in some of the recommendations from Weston & Sampson's March 17, 2021 Memorandum:

Comment [PG39]: How worried are you about home fuel deliveries? Likely that can't require they occur over impervious surfaces, but what about containment? Would be worth some research to understand best practices and spill control. Perhaps even some conversation with those companies making deliveries.

1. Adequate measures for erosion, sediment control, and runoff related to potential fluid and fuel spillage in construction equipment storage and maintenance areas, which should be located as far as possible from the Property boundary closest to the Well Field.

2. Monitoring of construction equipment and worker vehicles for leaks should be completed daily during the site development activities. Oil-absorbing mats should be placed under equipment during periods of prolonged non-use (e.g., weekends) and storage. Repair of equipment or machinery should be performed as far as possible from the Property boundary closest to the Well Field. If on-site vehicle washing is necessary, it should be completed in an area as far away as possible from the Property boundary closest to the Well Field. Capture and off-site disposal of all rinse water should be completed as soon as possible. Off-site equipment washing and maintenance should be considered a preferred approach.

3. In the event of a spill, the on-site supervisor should be notified and required to assess the incident and initiate proper containment and response procedures immediately upon notification. Primary notification of a spill should be made to the local Fire Department and Police Department. Secondary notification should be made to a certified cleanup contractor if deemed necessary by Fire and/or Police Department. The third level of notification (within 1 hour) be made to the MassDEP or the Applicant's Licensed Site Professional (LSP). The Applicant should be required to record any spill or release including the quantity and type of material, date of the spill, circumstances leading to the release, location of spill, response actions and personnel, documentation of notifications and corrective measures implemented to prevent reoccurrence.

4. Postconstruction activities should include the distribution of educational materials to the future residents regarding the proper use and maintenance of septic systems and disposal prohibitions. The materials should include an explanation of where their water supply comes from and the significance of their residences being located in a Zone II WHPA.

5. The Town may wish to have the Applicant incorporate adequate BMPs for operation and maintenance of the stormwater infrastructure relative to the seasonal removal and off-site disposal or recycling of accumulated road salt and related sediment.

Other performance standards of note from Environmental Law and Policy Center document entitled, "Land Use Tools to Protect Groundwater Overlay Districts," include:

Revegetation and landscaping of any location within the Water Supply Protection District must make use of native plants. Native plants typically require less irrigation once established and longer root systems tend to help maximize soil permeability and aid in groundwater recharge.

No person shall discharge, or permit the discharge of, any regulated substance, hazardous waste or petroleum product, whether treated or untreated, to soils, air, groundwater, or surface water in any recharge area or protection zone, that may have a deleterious effect upon the groundwater in the Water Supply Protection District.

G. Drainage.

(1) For commercial and industrial uses, to the extent feasible, run-off from the impervious surfaces shall be recharged on the site by being diverted toward areas covered with vegetation for surface infiltration. Such run-off shall not be discharged directly to rivers, streams or other surface water bodies. Dry wells shall be used only where other methods are infeasible, and shall be preceded by oil, grease and sediment traps to facilitate removal of contamination.

(2) All recharge areas shall be permanently maintained in full working order by the owner(s).

H. Special permit uses.

(1) Uses allowed by special permit. The following uses may be allowed by special permit obtained from the Planning Board:

(a) Commercial, industrial, governmental or educational uses which are allowed in the underlying district, and which are not prohibited in Subsection E.

(b) Any enlargement, intensification, change of use or alteration of an existing commercial or industrial use.

(c) The rendering impervious of more than 15% or 2,500 square feet of any lot, provided that a system for artificial recharge of precipitation to groundwater is developed, which shall not result in degradation of groundwater. (See Subsection G above.)

(2) Requirements for special permit in the Water Supply Protection District.

(a) The applicant shall file six copies of a plan prepared by a qualified professional with the special permit granting authority. In addition to those rules and regulations contained

Comment [PG40]: The following –pulled from Environmental Law & Policy Center document could be articulated as a requirement or added here (but important to see if conflict with BOH regulations):
Septic systems can pose a contamination danger in groundwater recharge areas. As such the following are required for septic systems within the Water Supply Protection District
•Systems must be inspected and maintained at least every ___ years; (3 years is a good number)
• On site disposal is limited to 110 gallons per day per 10,000 square feet of lot area.

Comment [PG41]: Would also be important to inform about how lawn care chemicals can impact drinking water supply.

Comment [PG42]: Add at top here that all commercial and industrial uses in the Water Supply Protection District must undergo stormwater management permit review even if disturbance less than threshold you have in your Stormwater Management Bylaw/Regulations.

Comment [PG43]: This is an easy off-ramp from meeting requirements. Recommend removing this. Perhaps indicate if not feasible, need to meet requirements through capture and reuse or off-site mitigation (if you have such a program).

Comment [PG44]: Revise to indicate that runoff from a non-metal roof can be recharged directly where soils are conducive, but recharge of storm flow from other surfaces associated with commercial and industrial areas must be preceded by oil, grease, and sediment traps with emergency shut off valves. Driveways and parking areas for such facilities must be bermed so that flow can be directed to pretreatment before recharge.

Comment [PG45]: Changes in this section that I did not note that proposed in TM article.

in the special permit application (Form SP¹⁹), the plan shall include:

- [1] Drainage recharge features ~~that are protective of groundwater sources and provisions to prevent loss of recharge.~~
- [2] Provisions to control soil erosion and sedimentation, soil compaction, and to prevent seepage from sewer pipes.

(b) In addition, the applicant shall provide, at a minimum, the following information where pertinent:

[1] A complete list of chemicals, pesticides, fuels and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use.

[2] Those businesses using or storing such hazardous materials shall file a hazardous materials management plan with the Planning Board, Fire Chief and Board of Health, which shall include:

[a] Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage.

[b] Accidental damage, corrosion, leakage or vandalism, including spill containment and clean-up procedures.

[c] Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces.

[d] Evidence of compliance with the regulations of the Massachusetts Hazardous Waste Management Act, 310 CMR 30, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection.

(3) Additional procedures for special permits in the Water Supply Protection District:

(a) The special permit granting authority shall follow all special permit procedures contained in Article IX of this bylaw. In addition, the special permit granting authority shall distribute copies of all application materials to the Board of Health, the Conservation Commission and the Water Commissioners, each of which shall review the application and, following a vote, shall submit recommendations and comments to the special permit granting authority. Failure of boards to make recommendations within 35 days of distribution of the applications shall be deemed to be lack of opposition.

Comment [PG46]: Seems important to set a limit here that is consistent with what you end up including in prohibitions.

19. Editor's Note: A copy of Form SP is included as an attachment to this chapter.

(b) The special permit granting authority may grant the required special permit only upon finding that the proposed use meets the following standards and those specified in Article IX of this bylaw. The proposed use must:

[1] In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Water Supply Protection District; and

[2] Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation and other water-related natural characteristics of the site to be developed.

(c) The special permit granting authority shall not grant a special permit under this section unless the petitioner's application materials include, in the Board's opinion, sufficiently detailed, definite and credible information to support positive findings in relation to the standards given in this section.

I. Nonconforming use.

Nonconforming uses which were lawfully existing, begun or in receipt of a building or special permit prior to the first publication of notice of public hearing for this bylaw may be continued. Such nonconforming uses may be extended or altered, as specified in MGL c. 40A, § 6, provided that there is a finding by the Planning Board that such change does not increase the danger of surface or groundwater pollution from such use.

PVPC Notes and Recommendations December 2021

ARTICLE VIII

General Provisions

§ 255-84. Earth removal, extraction, and fill regulations.

A. Permit required; exemptions.

(1) In any zoning district, removal or addition of sod, sand, loam, clay, gravel, metallic ores, bedrock, quarried stone, or kindred materials shall not be undertaken if such removal or addition results in a change in the contours of the land, except by an earth removal, excavation, and/or fill permit from the Building Commissioner.

Comment [PG1]: Sod is a strange element here.

Might be good to talk about removal or addition of geologic material, such as...

(2) Exemptions. The aforementioned permit shall not be required when the removal, excavation and/or fill activity is incidental to and in connection with any of the following activities (see also General Bylaw, Chapter 245, Article 1 Removal Incidental to Construction Activities):

(a) Construction of a structure on the premises for which a building permit has been issued, or incidental to the grading and development of contiguous property, and provided that such removal, excavation or addition is limited to the area within a distance not more than 100 feet from the building or improvements authorized under said permit.

(b) Development of site improvements for a subdivision for which definitive plans have been approved, and endorsed by the Planning Board.

Comment [PG2]: Why did amendments proposed here from Article 16 at Special Town Meeting in 2019 not get adopted?

§ 255-84 SOUTH HADLEY CODE § 255-84

B. Classification of activities. Earth removal, excavation, and fill activities are classified as either:

- (1) Major earth removal, excavation, and/or fill activities. These activities involve the removal, excavation, and/or addition of 5,000 or more cubic yards of material for use on parcels of land other than the parcel(s) from which the materials were removed or extracted.
- (2) Other earth removal, excavation, and/or fill activities. These activities involve the removal, excavation and/or addition of materials not otherwise classified as major earth removal, excavation and/or fill activities.

C. Planning Board approval required; application requirements.

- (1) Major earth removal, excavation, and/or fill activities. Prior to applying for a permit from the Building Commissioner, the applicant must apply for and receive a special permit from the Planning Board. Applications for such a special permit must include all items required for a special permit application and items required under this section.
- (2) Other earth removal, excavation, and/or fill activities. Prior to applying for a permit from the Building Commissioner, the applicant must receive approval of the plans for removal, excavation, and fill from the Planning Board. Applications must include all items required under this section of the Zoning Bylaw.
- (3) Application requirements. Each application for Planning Board approval shall include the following items:
 - (a) A map prepared at the expense of the applicant showing the property boundaries, the existing contours of the land, and the contours as they are proposed after completion of the operations. Such map or plan shall be accurately drawn on reproducible paper or cloth, the contour interval being two feet, and shall contain complete information to make the physical characteristics clear.
 - (b) Application fee.
 - (c) Pictures of the existing conditions of the site.
 - (d) Description of proposed source of fill material to be added to the site and use of excavated materials.
 - (e) An estimate of the cost to restore the site to its proposed finished condition.
 - (f) Timetable for completion of the operations.

§ 255-84 ZONING § 255-85

(4) Supplemental application requirements. For major activities, the following items must also be included in the application:

- (a) A detailed cost estimate certified by a qualified engineer to restore the site to its proposed finished condition.
- (b) Description of the proposed financial security to cover the cost of restoring the site to its proposed finished condition.
- (c) Documentation of the elevation of the seasonal high ground water table.

Comment [PG3]: Add to definitions.

(5) No permit shall be issued until such plan has been filed with the Planning Board, the approval of said Planning Board recorded on the plan, and a copy of said approved plan submitted to the Building Commissioner.

D. Limitations on operations. No applicant shall carry on operations above or below such a grade as may be fixed by the Planning Board without, on each occasion, obtaining the permission of said board in writing, but a tolerance of six inches shall be permitted during or at the termination of operations. Further, operations must be carried out in accordance with the conditions of the Planning Board approval.

Comment [PG4]: As above, why were amendments proposed here not adopted?

(1) Prohibited area. No major earth removal, excavation, or fill activity shall be permitted in the area bounded as follows: on the south by Route 47, Pearl Street, and Route 116; on the east by Route 116 and the Granby Town Line; on the north by the Amherst and Hadley Town Lines; and on the west by Route 47 and the Hadley Town Line.

Comment [PG5]: As above, why were amendments proposed here not adopted?

(2) Finished grade. The finished grade for any major earth removal, excavation, and fill activity shall be no steeper than a 3:1 slope unless the Planning Board, based upon adequate engineering analysis and certification, determines that sufficient precautions for erosion and runoff are established to ensure the work is consistent with the purposes of the Zoning Bylaw.

(3) Depth to water table. No excavation activity shall be nearer than five feet to the seasonal high water table.

Comment [PG6]: May be best to make consistent with amendment to 10 feet in the drinking water supply protection area so that protective of private drinking water wells.

Proposed amendment here would have done that.

E. Extension of time limit. A permit issued for the removal or addition of materials shall state the time within which work is to be carried on and finished and the land is brought to the predetermined grade, but the Building Commissioner, with the approval of the Planning Board, and without consent of any surety, may extend the permit from time to time.

F. Surety requirement. The Planning Board may require a bond in a sufficient penal sum with sufficient surety or sureties conditioned on the performance of the requirements herein set forth and of the conditions of the permit.

PVPC Notes and Recommendations December 2021

Chapter 245

EARTH REMOVAL

ARTICLE I

Removal Incidental to Construction Activities [Adopted 11-20-2019 STM by Art. 6]

§ 245-1. Purpose and objectives.

The purpose of this bylaw is to regulate earth removal incidental to construction activities in the Town of South Hadley.

A. In pursuit of this purpose, the objectives of this bylaw include the following:

- (1) To permit reasonable removal of earth for agriculture, residential, business, and industrial uses, while also protecting the value of the land within the Town and without imposing undue risk to the general public.
- (2) To limit earth removal from any agricultural, commercial, residential or commercial development to a reasonable and essential amount which is incidental to the primary principal end use.
- (3) To require that earth removal operations are conducted in a manner that will cause the least stress and harm to the Town's natural resources.
- (4) To prevent detriment to adjacent neighborhoods and abutting parcels from earth removal activities.
- (5) To prevent cumulative damage to landscape, aquifer, topography, and related valuable and nonrenewable natural resources, while not unreasonably interfering with necessary, desirable, or creative land uses.

§ 245-2. Authority.

This bylaw is adopted pursuant to the authority granted under MGL c. 40, § 21, Clause 17, and shall be effective Town-wide.

§ 245-3. Definitions.

AGRICULTURAL EXCAVATION — The process of removing earth or other materials that are necessary and incidental to prepare a site for specific agricultural use.

BOARD — The South Hadley Planning Board.

EARTH — All material normally and naturally composing part of the earth's surface and immediate subsurface, excluding water, including but not limited to, soil, clay, gravel, hard pan, loam, rock, peat and sand.

EARTH REMOVAL PERMIT — A written permit issued by the Board pursuant to this bylaw allowing earth removal subject to conditions.

INCIDENTAL — Meeting all of the following criteria:

A. Is minor in significance to the primary use of a premises;

B. Is commonly established as customarily associated with the primary use of a premises;

§ 245-3 SOUTH HADLEY CODE § 245-7

- C. Is necessary to carry out the primary use of the premises; and
- D. Is minor in its net effect to that of the principal use, based on the amount of material to be removed and the time period over which it is to be removed.

PREMISES — One lot or all abutting lots or parcels which are, or are proposed to be, in the same ownership or use, together with all buildings and structures thereon.

REMOVE/REMOVAL — The severance of any earth from its natural location, whether or not such earth is moved from the lot to another location on the same lot or off the lot, by any means, including, but not limited to, stripping, excavating, mining or blasting.

RESTORATION — After an earth removal activity is completed, returning the land contours to a safe and usable condition, restoring drainage patterns, and planting appropriate vegetation.

§ 245-4. Applicability.

This bylaw shall be in addition to any other permits or approvals required by the Town of South Hadley. Nothing in this bylaw shall prevent the application of the South Hadley Zoning Bylaws.

§ 245-5. Grandfathering.

This bylaw shall not apply to properly permitted sand and gravel operations lawfully in existence on the effective date of this bylaw. Entities operating pursuant to an earth removal special permit under the South Hadley Zoning Bylaw as of the effective date hereof and seeking renewal of an earth removal special permit then in existence shall not be subject to this bylaw.

§ 245-6. Earth removal prohibited.

- A. No person, firm, corporation, or other entity shall excavate and/or remove any earth from any lot in the Town of South Hadley, unless such activity is authorized by an earth removal permit issued by the Board.
- B. Earth removal is prohibited unless it is: 1) necessary and incidental to a lawful end use for which all local and state permits required by law have been issued, or 2) exempt pursuant to Article 5 of this bylaw.

§ 245-7. Conditional exemptions.

- A. No earth removal permit shall be required for the following activities under this bylaw, provided the activities do not constitute a nuisance or danger to the public and conform to accepted engineering or agricultural practices:

- (1) The Commissioner of Public Works and his/her agents and employees may perform earth removal activities in the performance of their public duties on any public way and on Town property.
- (2) Earth removal incidental to the permitted construction of foundations of

1. Editor's Note: So in original.

§ 245-7 EARTH REMOVAL § 245-9

buildings, walks, driveways, septic systems or swimming pools, and incidental to the installation of utilities, provided that the quantity of earth subject to removal does not exceed that displaced by the portions of construction and installation below finished grade.

(3) Construction of a structure on the premises for which a building permit has been issued, or incidental to the grading and development of contiguous property, and provided that such removal, excavation or addition is limited to the area within a distance not more than 100 feet from the building or improvements authorized under said permit.

(4) Earth removal incidental to an approved definitive subdivision plan, or an approved business or industrial development plan, in which the amount of earth subject to removal does not exceed 5,000 cubic yards in one calendar year, if the earth is transported off the lot. The 5,000 cubic yards shall not include earth removal which is incidental to the construction of foundations, walks, driveways, septic systems or swimming pools.

(5) Earth removal incidental to landscaping, and/or clearing, and in which the amount of earth subject to removal does not exceed 100 cubic yards per acre of land in one calendar year, if the earth is transported off the lot, and does not exceed 100 cubic yards per acre of land in one calendar year, if the earth is transported within the lot.

B. The foregoing conditional exemptions shall be subject to inspection, determination, and enforcement by the Building Commissioner.

C. The Building Commissioner shall issue a cease and desist order in any case in which the Building Commissioner determines that:

(1) The earth removal activity would not be necessary and incidental to an identified lawful principal use, a lawful structure, an approved subdivision road, or lawful utility installation; or

(2) The earth removal activity would be excessive in scope or nature to the foregoing end use or structure; or

(3) Would create unsafe conditions on or off the property; or

(4) Would be a detriment or nuisance to nearby landowners or to the Town in general by reason of noise, dust, vibration, or other objectionable conditions.

§ 245-8. Fill.

A statement may be required from a certified professional to verify the source and content of fill material if the earth removal permit is issued for the placement of fill. The analysis of the content of the fill material may be required so as to detect the presence and quantity of hazardous or substandard materials. This analysis shall be conducted by a certified professional hired by the Board at the expense of the applicant.

§ 245-9. Application.

An application for an earth removal permit shall be in writing. The application shall

Comment [PG1]: This entire entry here seems to enable a lot of earth removal. Is this quantity typical of subdivision projects? Also, seems important to require that topsoil remain on site to better enable growth of vegetation and avoid repeated need for fertilizers, etc.

§ 245-9 SOUTH HADLEY CODE § 245-10

contain an accurate description of the portion of land on which the excavation will take place, shall state fully the purpose of the excavation, shall include payment of fees established by the Board, and shall include plans drawn by a registered surveyor or engineer. The application shall contain the following information:

- A. The precise location of the proposed excavation as part of the total land area of the subject property;
- B. The legal name and address of each owner of the property for which the permit is requested;
- C. The name and address of the applicant and the address which shall be sufficient for any notice required under the bylaw;
- D. The property lines, names and addresses of all abutters, including those across any way, from the most recent tax list as certified by the Board of Assessors;
- E. Existing contours at two-foot intervals in the area from which material is to be excavated and in surrounding areas, together with the contours at two-foot intervals below which no excavation shall take place;
- F. Natural features, such as wetlands, the 100-year floodplain, ground cover, surface water and groundwater. Water table elevation shall be determined by test pits and soil borings satisfactory to the Board. A log of soil borings shall be included, taken to the depth of the proposed excavation, congruent with the size and geological makeup of the site;
- G. A topographical map showing drainage facilities, final grades, and proposed vegetation and trees;
- H. Dust, erosion, and sediment control plans for the site and trucks removing earth;
- I. The amount and cost of proposed restoration materials, and the source from which the applicant intends to obtain them;
- J. Estimated quantity of material to be removed and topsoil to be replaced and the method to be used, verified by a registered surveyor or professional engineer;
- K. The proposed form of bond and the name and address of the bond issuer;
- L. An estimate of the number of truck trips, location of truck routes, and hours of truck traffic;
- M. Designation on the required plan of any and all proposed phases and the number of cubic yards to be excavated in each, not to exceed 10 acres or 10 cubic yards, whichever is less;
- N. Restoration, reuse and/or revegetation plan; and
- O. Any other information which the Board may require.

§ 245-10. Hearing and decision.

An earth removal permit shall be granted only by an affirmative vote of a majority of

§ 245-10 EARTH REMOVAL § 245-15

the Board. Following receipt of an application for a permit for removal of earth from any land and determination by the Board or its designated agent that the application is complete, the Board shall appoint a time and place for a public hearing, not later than 45 days after the receipt of the completed application, notice of which shall be given to the applicant. The Board's decision shall be issued within 45 days of the close of the hearing.

§ 245-11. Term of permit.

An earth removal permit shall be issued for a period of one year. The Board may, in its discretion, grant an extension of an earth removal permit for six months beyond the initial period, but no such extension shall be issued unless the applicant has conformed to all requirements of the original earth removal permit.

§ 245-12. Surety.

The Board shall require as a condition to the granting of the earth removal permit that the applicant furnish a performance bond, or other security, satisfactory to the Board. The minimum amount of any financial security shall be sufficient to cover the estimated cost of reclamation, plus reasonable contingency. The security shall not be released until a Board-approved surveyor or engineer has filed with the Board an as-built plan and has also certified that the restoration has been completed in compliance with the earth removal permit and the plans.

§ 245-13. Enforcement and penalties.

- A. The Board or its designee shall enforce this bylaw and may pursue all available remedies for violations or take any other action relative thereto.
- B. In accordance with MGL c. 40, § 21, Clause 17, penalties for violation of this bylaw shall be: \$50 for the first offense, \$100 for the second offense, and \$200 for each subsequent offense. Each day in which a violation occurs shall constitute a separate offense.

§ 245-14. Revocation of permit.

The Board may revoke any earth removal permit which it has issued for good cause, provided that it shall in writing offer to the permit holder an opportunity for a hearing within seven days after the revocation.

§ 245-15. Severability.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision or phrase thereof.