

ZWG 3 – Ledge Protection:

Moved, that the Town vote to amend its Zoning Bylaws, Chapter 300, Article 300-11, Land Alteration, as follows:

That in Section 300-11.4A – Application, Review & Decision be amended by inserting the following underlined text as follows:

11.4A. No land alteration activities described herein shall begin prior to the issuance of a Building Permit by the Town, written approval by the Planning Board or Conservation Commission, **or** the issuance of a Clearing Activities Special Permit per §300-11.2 **above**, Other Land Alteration Activities Special Permit per §300-11.3, and/or a Stormwater Bylaw Permit per General Bylaws, Part II, Chapter 223 from those respective boards if required.

That Section 300-11.3, Other Land Alteration Activities, be deleted and new language be inserted as follows:

Earth removal means the extraction of materials, including soil, loam, sand, gravel, or stone. It also includes the alteration or removal of Exposed Ledge Face. Exposed Ledge Face means any portion of rock formation lying above pre-construction grade at any given point.

These materials shall not be removed from any lot within the Town unless such removal will constitute an exempt operation as hereinafter provided or is subject to a valid Building Permit, Special Permit or Stormwater Bylaw Permit.

A. The following activities are exempt:

- (1) The transfer of material from one part of the Lot to another part of the same Lot.
- (2) The removal of material from land in use by the Town or other governmental agency.
- (3) Where earth removal was necessarily excavated in connection with the lawful construction of a building, sewer system, other utilities, or a driveway, provided that the quantity of material removed does not exceed that actually displaced by the portion **of the building, sewer system, utility or driveway** below finished grade.

B. All other land alteration activities that involve Exposed Ledge Face removal as it pertains to a Structure must obtain an Other Land Alteration Activities Special Permit from the Planning Board. For illustrative purposes, this includes the excavation and construction of a Structure accessory to the principal use of the lot such as, but not limited to, fences, sheds, barns, patios, athletic courts, and pools.

This amendment to Land Alteration bylaw passed at ATM in May 2021 is the promised phase two, which addresses Exposed Ledge removal. Exposed ledge is a unique and defining feature of Cohasset, and over the last two decades this topic of protecting ledge has been discussed as it relates to land use on both developed lots and undeveloped parcels. This issue has been increasingly discussed at the Planning Board as expansion of development on existing Lots or development of more marginal Parcels, which were previously considered unbuildable or undesirable, are undergoing change.

The proposed article adds the definition of Exposed Ledge Face as “any portion of rock formation lying above pre-construction grade at any given point”. The bylaw further goes on to regulate the removal of Exposed Ledge Face when it comes to Structures, which is defined as “a combination of materials combined at a fixed location to give support or shelter, such as a: bridge, fence, swimming pool, tennis court”. The proposed bylaw, amends Section 11.3 Other Land Alteration Activities, to make removal of Exposed Ledge Face for Structures subject to a special permit by the Planning Board.

Removal of sub-surface ledge (non-exposed ledge face) is often necessary for the construction of lawful buildings. Fundamental land owner rights related to ability to develop utilizing “by-right” uses in the zoning bylaws often conflict with attempts to regulate topographical changes. The working group is cognizant of MGL 40, Section 21-17 which protects land owner rights to remove soil, loam, sand or gravel which are “subject to a permit or license issued under the authority of the Town or by the appropriate licensing board of such Town or Zoning Board of Appeals”. Based on further research, it is important to note that the Zoning Bylaw Working Group has identified a few communities who have successfully regulated aspects of ledge removal and whose bylaws have been approved by the State Attorney General. Blasting is not regulated here, insofar as it is not a topic for zoning, and is regulated by the Fire Department under other State rules.

The Zoning Bylaw Working Group recommends the amendment of Article 11 and supports the attempt to balance the regulation of the removal of Exposed Ledge Face with reasonable development, all while protecting the unique nature of Cohasset’s topography.