New England Legal FOUNDATION

WHITE PAPER

Shifting Sands of the Dover Amendment: The Crucial Role of Sand in Massachusetts Agriculture and the Quest for Legal Clarity

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INTRODUCTION

Sand is a fundamental resource in agriculture. Widely used in hydroponics and aquaponics, it provides ideal drainage and serves as a protective cover for seeds. In irrigation practices, sand plays a key role in the construction of sand dams and filters. When spread around plant bases, it serves as an effective pest deterrent. In livestock farming, sand is favored for bedding due to its limited ability to harbor bacteria. Beyond these uses, it's integral to greenhouse construction and sports turf management, finding applications in topdressing, aeration, and the upkeep of golf courses.

In Massachusetts, sand is crucial to another industry: cranberry production. The cranberry industry plays a vital role in Massachusetts' economy, being one of the state's largest agricultural products.[2] Spanning approximately 13,500 acres across more than 400 farms, the industry contributes around $1 billion annually to the economy and provides thousands of jobs.[3] Its impact extends beyond production and sales into agri-tourism, processing, manufacturing, research, and conservation efforts. Despite facing challenges such as market fluctuations and environmental regulations, the industry remains integral to the state's agricultural and economic landscape.

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[2] *See generally* Chris Sweeney, *The Cranberry Boom in Massachusetts, By the Numbers*, BOSTON MAGAZINE (Oct. 27, 2015), https://www.bostonmagazine.com/news/2015/10/27/cranberries/.
[3] *Id.*

Sand plays an important role in cranberry production in Massachusetts. As explained in *Fielding v. Old Tuck Cranberry Corp.*[4]:

> Sand has been used to cultivate cranberry bogs since the early 1800s, at least. There are different techniques for applying sand to cranberry bogs, and different benefits that result from its application. To reclaim a bog which has fallen into disuse or disrepair, cranberry growers often need to excavate the existing topsoil and then apply approximately six to eight inches of fresh, suitable sand on the bed of the bog. Growers proceed similarly when building a new bog, planting a new variety of cranberry, or when fixing poor drainage or flooding issues on a cranberry bog. Sand also serves as a medium for vine growth with new plantings. For this purpose, growers apply approximately one-half inch of sand after the second season, and if needed after the first season, to anchor the cranberry runners, to promote proper rooting, and to encourage the growth of upright stems. Additionally, growers long have used a sanding technique where they apply approximately one-half inch to one inch of sand to the bog every two to five years. This technique, sometimes called maintenance sanding, helps with pest and weed control, improves soil aeration, provides protection against drought and frost, and protects cranberry vines from damage during harvest. Applying too

[4] 14 LCR 292 (2006).

> much sand can harm a cranberry bog by compressing the subsoil, which can leave a bog's bed out of grade. Sanding also often reduces the crop yield for that particular year.[5]

But in recent years, there has been opposition to the earth removal of sand by Massachusetts' cranberry producers for use in bog production and maintenance at the town level.[6] While facially the use of sand in cranberry production is protected by the Dover Amendment's prohibition "of any [] ordinance or by-law [that] prohibit[s], unreasonably regulate[s], or require[s] a special permit for the use of land for the primary purpose of commercial agriculture,"[7] there is a legal question as to whether towns in the Commonwealth can require cranberry companies to acquire earth removal permits for a given use of sand, especially if that use is the later sale of the sand.

This white paper aims to provide a comprehensive overview of the current state of the law surrounding sand—including its removal, agricultural use, and sale—in the Commonwealth. First, an examination of the statutory law surrounding earth removal in Massachusetts will demonstrate town zoning boards can require permits for certain earth removal activities. Second, an examination of extant case law will demonstrate how Dover Amendment cases involving

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[5] *Id.* at 295.
[6] *See, e.g.*, Frank Mulligan and Kathryn Gallerani, *Moving heaven and earth to stop earth removal in Carver, Plymouth and Wareham*, WICKED LOCAL, (Sept. 6, 2021), https://www.wickedlocal.com/story/courier-sentinel/2021/09/06/protesters-decry-earth-removal-carver-plymouth-and-wareham/5747233001/.
[7] G.L. ch. 40A, § 3.

proposed earth removal pursuant to the "commercial agriculture" exemption are generally decided in the Commonwealth. Finally, this white paper will argue that—given the current state of the law in Massachusetts—agricultural companies should be able to sell sand without needing to acquire an additional earth removal permit from a town zoning board.

CONTROLLING STATUTORY LAW IN MASSACHUSETTS

a. Massachusetts State Constitution

The Massachusetts State Constitution does not contain a provision explicitly mentioning earth removal or mineral rights. In fact, the only language in the constitution that deals with minerals in any capacity is in Articles of Amendment XCVII, which states, in part, that ". . . the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose."[8] This amendment superseded an earlier amendment, XLIX.[9]

b. G.L. Pt. I, Title VII, c. 40A

In general, Chapter 40A ("The Zoning Act") of the Massachusetts General Laws governs zoning in the Commonwealth.[10] Section 1A of the Zoning Act defines zoning in Massachusetts as "ordinances and by-laws, adopted by cities and towns to regulate the use of land, buildings

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[8] MASS. CONST. amend. art. XCVII.
[9] *Id.*
[10] G.L. Pt. I, Title VII, c. 40A, § 1.

and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants."[11]

Under the scope of this legislation, cities and towns have the autonomy to establish zoning ordinances and bylaws tailored to their unique needs, provided they conform to the broader principles of state law. These regulations shape the character of communities, guide growth and development, and protect valuable natural resources. They do so by setting specific requirements for different types of land use, from residential and commercial to agricultural and industrial. This can include details like building height and size, setbacks from property lines, density of development, parking requirements, and even the specific types of businesses that may operate in certain areas.[12]

The Zoning Act gives towns and cities in Massachusetts a great deal of power to shape and control industries within their borders.

c. The Dover Amendment

Section 3 of the Massachusetts Zoning Act, G. L. c. 40A, establishes several protected uses of a property owner's land. Also known as the Dover Amendment, § 3 provides protection for certain agricultural uses. The law restricts local zoning ordinances or bylaws from

[11] *Id.* at § 1A.
[12] *Id.*

unreasonably regulating or requiring a special permit for the use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture. Specifically, it provides:

> No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, *nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture*, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture . . .[13]

This provision is designed to support and encourage agriculture in Massachusetts by preventing local governments from using zoning laws to restrict farming operations. Agriculture is defined at G.L. ch. 128, § 1A as "includ[ing] farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities . . ."[14]

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[13] G.L. ch. 40A, § 3 (emphasis added).
[14] G.L. ch. 128, § 1A

The Dover Amendment has proved to be a powerful tool for litigants attempting to fight back against onerous zoning regulation in the Commonwealth. Recently, in *Tracer Lane II Realty, LLC v. City of Waltham*,[15] the Dover Amendment was successfully used to shield a private developer from the overreach of the city of Waltham. There, the Massachusetts Land Court held that Waltham's prohibition against the use of a road to reach a solar energy project was in violation of the Dover Amendment's prohibition of "unreasonabl[e] regula[tion]."[16] While *Tracer Lane* focuses on solar installations, the protection afforded agricultural use under the Dover amendment is similarly wide-ranging.

EARTH REMOVAL CASE LAW

a. Overview and Standard of Review.

Cases directly involving the removal, sale, and agricultural use of sand in Massachusetts are not forthcoming. Widening the scope, cases that involve whether or not a certain action falls under the commercial agricultural protections of the Dover Amendment are more common. Many of these decisions pit a developer against a town zoning board and its bylaws, with the developer claiming the challenged use should be considered agricultural (or incidental to an

[15] 2021 Mass. LCR LEXIS 29 (2021).
[16] *Id.* at *19.

agricultural use) under the provisions of the Dover Amendment.[17] These cases are usually brought pursuant to G. L. c. 40A, § 17, which provides, in part, that:

> Any person aggrieved by a decision of the board of appeals or any special permit granting authority or by the failure of the board of appeals to take final action concerning any appeal, application or petition within the required time or by the failure of any special permit granting authority to take final action concerning any application for a special permit within the required time, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the land court department, the superior court department in which the land concerned is situated . . .[18]

Notably, reviews of a Zoning Board of Appeal's ("ZBA") decision in Massachusetts "involves a 'peculiar' combination of de novo and deferential analyses."[19] "Although fact finding in the Superior Court is *de novo*, a judge must review with deference legal conclusions within the authority of the board."[20] This unusual hybrid of deferential and non-deferential review gives the decisions of zoning boards a large degree of power in Massachusetts.

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[17] *See, e.g.*, Ward v. Rand, 25 LCR 463 (2017); *see also* Coggin v. City of Westfield, 17 LCR 592 (2009).
[18] G. L. c. 40A, § 17
[19] Wendy's Old Fashioned Hamburgers of N.Y., Inc. v. Bd. of Appeal of Billerica, 454 Mass. 374, 381 (2009) (quoting Pendergast v. Board of Appeals of Barnstable, 331 Mass. 555, 558 (1954).
[20] Wendy's Old Fashioned Hamburgers, 454 Mass. at 381.

b. Whether or not a permit is required in earth removal cases normally hinges on whether the proposed earth removal can be contextualized as "incidental" to the agricultural use under the Dover Amendment.

While it appears the question of whether or not the removal and selling of sand produced during cranberry production falls under the provisions of the Dover Amendment's "commercial agriculture" exemption is a novel one, there are several Massachusetts cases involving earth removal running afoul of town bylaws that are informative.

In *Henry v. Board of Appeals*,[21] the Supreme Judicial Court of Massachusetts found that the plaintiff's plan to remove several hundred thousand cubic yards of gravel to create a Christmas tree farm was not protected under the Dover Amendment because "[t]he plaintiff's activity meets neither aspect of an incidental use. The proposed gravel removal project is a major undertaking lasting three or four years prior to the establishment of the Christmas tree farm. That project cannot be said to be minor relative to a proposed agricultural use nor is it minor in relation to the present operation."[22] In other words, the fact that the earth removal in question was of such a large scale moved it outside the protections of the Dover Amendment as it was no longer incidental to the Dover Amendment-protected agricultural activity of creating a Christmas tree farm. As such, the zoning board for the town of Dunstable was within its power to require (and deny) a special permit for the gravel removal operation.[23]

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[21] 418 Mass. 841 (1994).
[22] *Id.* at 845.
[23] *See id*. at 847.

Justice Abrams in *Henry* relied on *Old Colony Council - Boy Scouts v. Zoning Bd. of Appeals*[24] from the Appeals Court of Massachusetts in reaching the decision.[25] As Judge Abrams wrote:

> In *Old Colony Council*, the Boy Scouts of America applied for a permit under a Plymouth zoning by-law to excavate 460,000 cubic yards of earth in order to create a cranberry bog near a campsite in a "Rural Residential District." The Plymouth zoning board of appeals denied the application on the ground that a special permit was required for such an excavation project. The plaintiff appealed to the Superior Court which affirmed the denial of the permit. The Appeals Court also affirmed on the ground that, considering the volume of earth to be excavated, the duration of the project, and the funds involved, the excavation was not incidental to the proposed cranberry bog.[26]

A similar outcome was reached in *Ward v. Rand* in 2017, in which the Massachusetts Land Court held that "[t]he Zoning Board did not err in finding that Private Defendants were not exempt from regulations under the Bylaws pursuant to G. L. c. 40A, § 3 because the Property was not primarily used for commercial agriculture and the uses made of the Property were not incidental or accessory to commercial agriculture."[27] However, in reaching that decision, the

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[24] 31 Mass. App. Ct. 46 (1991).
[25] *Henry*, 418 Mass. At 845.
[26] *Henry*, 418 Mass. At 845-6.
[27] Ward v. Rand, 25 LCR 463, 479 (2017).

Land Court relied on an unpublished case, *Jewish Cemetery Ass'n of Massachusetts v. Board of Appeals of Wayland*,[28] reasoning that:

> In [*Jewish Cemetary*] the court reasoned that the excavation associated with expansion of a cemetery was not governed by *Henry* because the "proposal does not involve different successive uses." That is to say, the cemetery was merely expanding an existing use into a new area, and the excavation of the area was limited enough in scope to be considered reasonably a single uninterrupted use of the parcel for the protected purpose. Following this reasoning the scope of preparation for a use exempted under G. L. c. 40A, § 3 would be preparation for a use (which would therefore be reasonably related to that use) that is limited enough in scope that it properly can be deemed part of (and so subordinate to) that primary and protected use. An example of this preparation might be the clearing of brush from a field prior to tilling and planting crops in that field. The clearing and tilling both would be considered part of the unitary use of the field to grow crops.[29]

This passage provides significant insight into how the Land Court understands the protections afforded by the Dover Amendment in an earth removal context. If the earth removal is "limited enough in scope that it properly can be deemed part of [a] primary and protected

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[28] 85 Mass. App. Ct. 1105 (March 7, 2014) (unpublished).
[29] *Ward* at 478 (summarizing *Jewish Cemetery*).

use[,]"[30] then it can likely fall within the Dover Amendment's "commercial agriculture" exemption and thus avoid being subject to special permits by municipal zoning boards.

c. Limits on special permits.

Even if municipalities can require reasonable special permits on sand removal for cranberry production under the Dover Amendment, there are still limits to what these permits can regulate. In *Tracer Lane*, the Land Court noted that:

> [A] special permit cannot unreasonably regulate, cannot impose conditions that go beyond statutory limits provided under § 3, cannot be used either directly or pretextually as a way to prohibit or ban the use, and cannot be used to allow the board any measure of discretion on whether the protected use can take place in the district, because to do so would be at odds with the protections provided under § 3.[31]

d. Educational and religious analogues.

While sand use for cranberry production falls into the agricultural provision of the Dover Amendment, the amendment also has protections for religious and educational purposes, providing that "[n]o zoning ordinance or by-law shall regulate or restrict . . . the use of land or

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[30] *Id.*
[31] *Tracer Lane II*, 2021 Mass. LCR LEXIS at *20 (citing PLH LLC v. Town of Ware, 2019 Mass. LCR LEXIS 246 (2019); *see also*, Dufault v. Millennium Power Partners, L.P., 49 Mass. App. Ct. 137 (2000); Y. D. Dugout, Inc. v. Bd. of Appeals of Canton, 357 Mass. 25 (1970).

structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies."[32] There has been a bevy of cases litigating these two provisions of the Dover Amendment in Commonwealth,[33] some of which have implications for how sand removal and use might be understood in future litigation.

In *Newbury Junior College v. Brookline*,[34] the town of Brookline sought to use zoning laws to prohibit Newbury Junior College from using buildings as dormitories.[35] The Appeals Court held that this was not allowed under the Dover Amendment.[36] Specifically, the panel noted that "[c]ases under the Dover Amendment have established that municipalities may not, by regulatory pretext under G. L. c. 40A, 11 nullify the special protection accorded to religious or educational purposes."[37] Insofar as a dormitory is an incidental but crucial element to achieving collegiate education, sand removal may arguably be thought of as a necessary, Dover Amendment-protected element of cranberry production.

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[32] G.L. ch. 40A, § 3.
[33] *See, e.g.*, Sisters of Holy Cross v. Brookline, 347 Mass. 486 (1964); Radcliffe College v. Cambridge, 350 Mass. 613 (1966); Bible Speaks v. Board of Appeals, 8 Mass. App. Ct. 19 (1979); Commissioner of Code Inspection v. Worcester Dynamy, Inc., 11 Mass. App. Ct. 97 (1980); Worcester v. New England Inst. & New England Sch. of Accounting, Inc., 335 Mass. 486 (1957).
[34] 19 Mass. App. Ct. 197 (1985).
[35] *See id.* at 198.
[36] *Id.* at 208.
[37] *Id.* at 205.

In *Trustees of Tufts College v. City of Medford*,[38] the Supreme Judicial Court found that the Dover amendment is "is intended to encourage 'a degree of accommodation between the protected use . . . and matters of critical municipal concern.'"[39] The court added "that such an accommodation cannot be achieved by insisting that an educational institution seek a variance to obtain permission to complete its project."[40] Again, in an educational context, the Dover Amendment provides a healthy degree of protection from zoning board overreach, which may well transcend to agricultural uses like sand removal and use.

ANALYSIS

a. Insofar as sand use and removal is either required in or incidental to the commercial agricultural activity of cranberry production, it is likely exempt from unreasonable special permit requirements under the Dover Amendment.

The decisions above make underscore the importance of framing in any hypothetical future cases involving sand removal and special permits in the Commonwealth. While few would likely contend that cranberry production itself is not an agricultural activity under G.L. ch. 128, § 1A and thus protected by the Dover Amendment, the role of sand within cranberry production is

[38] 415 Mass. 753 (1993).
[39] *Id.* at 760.
[40] *Id.*

more nuanced. Notably, when earth removal is found to be non-incidental to the proposed agricultural activity as in *Henry*, it is moved outside of the agricultural exemption provided by the Dover Amendment and the earth removing party can be required to obtain a special permit. This naturally leads to the most important question for legal purposes: is sand incidental to cranberry production?

A favorable reading of *Fielding*'s description of sanding would suggest the answer to that question is yes. Webster's dictionary defines incidental as "being likely to ensue as a chance or minor consequence" of a given action.[41] Not only is the practice central to the creation, maintenance, and protection of cranberry bogs, it is also well-documented as having been part and parcel of cranberry production for nearly 200 years.[42] Furthermore, cases like *Williams Bros. of Marshfield v. Peck*[43] demonstrate that Sand Rights that "entitle the owner of those rights to excavate and remove sand from any place subject to the burden, at any time, and thus effectively prevent the development of the burdened land for almost any purpose whatsoever"[44] for cranberry production are still valuable interests within the Commonwealth,[45] which logically supports the proposition that the use of sand (including its removal) is viewed as an incidental aspect of cranberry production. Applying the test from *Ward* and *Jewish Cemetery*, this would

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[41] Incidental, Merriam-Webster, https://www.merriam-webster.com/dictionary/incidental (last visited Aug. 16, 2023).
[42] *See Fielding*, 14 LCR at 292.
[43] 19 LCR 155 (2011).
[44] *Id.* at 156.
[45] *See id.*

support the notion that sanding "can be deemed part of (and so subordinate to) [the] primary and protected use" of cranberry production, and thus would be afforded protection from special permit requirements under the Dover Amendment.

Old Colony Council, however, would tend to cabin sand removal's status as incidental to a protected commercial agricultural activity under the Dover Amendment somewhat. There, the "net effect of the plaintiff's undertaking . . . [was] the creation of a sand and gravel quarry in conjunction with creating a cranberry bog" and thus not incidental.[46] This may limit the ability of cranberry producers to create new cranberry bogs that would require much earth removal, even if sanding existing bogs is considered incidental to an agricultural activity under the auspices of the Dover Amendment.

b. Pretextual invocations of the Dover Amendment often fail, but sand removal is likely not pretextual in the context of cranberry production.

Another approach to framing existing earth removal case law is to argue that, in interpreting the Dover Amendment, courts are often vigilant in discerning genuine agricultural purposes from those merely asserted to bypass zoning regulations.[47] A pivotal issue that often emerges is whether the agricultural practice in question is being invoked as a pretext to skirt

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[46] *Old Colony Council*, 31 Mass. App. Ct. at 49.
[47] *Compare id., with* Jewish Cemetery Ass'n of Massachusetts v. Board of Appeals of Wayland, 85 Mass. App. Ct. 1105 (March 7, 2014) (unpublished).

standard land-use regulations. While the Dover Amendment's protection is expansive, it's not an all-encompassing shield for every land-use operation that claims an agricultural purpose.

In the context of cranberry production, the intrinsic and historical role of sanding is unmistakable.[48] As established, the practice is deeply embedded in cranberry cultivation and is not a recent innovation meant to exploit legal loopholes.[49] This distinguishes cranberry producers from entities that might opportunistically introduce new or marginal practices with the primary aim of benefiting from the Dover Amendment's protection.

In a legal context, pretext is defined as "[a] false or weak reason or motive advanced to hide the actual or strong reason or motive suggests a cloak, a disguise, or a justification introduced to hide the actual intent."[50] For cranberry producers, mining sand is not merely a superfluous justification to greenlight earth removal but is vital to their agricultural processes. Given its historical precedent and recognized benefits in bog maintenance, sand removal in this context can hardly be classified as a pretextual invocation of the Dover Amendment.

This likely does not give carte blanche to cranberry producers to engage in unrestricted sand removal, however, especially if such removal disrupts the balance between genuine agricultural needs and environmental or zoning concerns. The line of what is considered

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[48] *See* Fielding v. Old Tuck Cranberry Corp., 14 LCR 292, 295 (2006).
[49] *Cf. id.*
[50] *Pretext*, BLACK'S LAW DICTIONARY (11th ed. 2019).

incidental versus what is viewed as a primary commercial venture will be subject to judicial discretion and the Dover Amendment's "reasonable regulations."[51]

Ultimately, cranberry producers have a strong argument that sanding, given its deep history and indispensable role, is authentically aligned with their agricultural purpose and not a mere contrivance to bypass regulatory hurdles.

c. Selling excess sand created harvested during cranberry production is likely not incidental to a commercial agricultural activity under the Dover Amendment and thus not exempt from special permits, but a novel interpretation of the sand as an agricultural commodity arguably may exempt it from special permits.

Under existing Massachusetts case law surrounding the interpretation of what is incidental to agricultural activities under the Dover Amendment, the sale of excess sand is likely not exempt from special permits. Following the "part of and subordinate to" logic in *Ward*, it would seem that selling excess sand generated during the excavation process for cranberry sanding is not part of cranberry production, as it would be hard to say that the sale contributed to the sanding operations. Similarly, *Henry*'s focus on whether an activity is "minor relative to a proposed agricultural use [or] minor in relation to the present operation" would seem to indicate the barometer which the Supreme Judicial Court would measure the sale of sand against would be the present cranberry operation. In the absence of a logical need to sell the sand as related to sanding operations, it stands to reason the sale may not pass muster under the *Henry* holding.

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[51] *See* G.L. ch. 40A, § 3.

A path to protecting the sale of sand may still exist within the definition of G.L. ch. 128, § 1A. In its entirety, the statute states:

> Farming" or "agriculture" shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, *the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities*, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.[52]

Recontextualizing sand extracted during the earth removal processes for cranberry production as an agricultural commodity may allow cranberry producers exemption from zoning board special permits, as the Dover Amendment relies on Chapter 128 for its definition of agriculture.[53] This may especially be true if the sand being sold is for use in another agricultural

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[52] G.L. ch. 128, § 1A (emphasis added).
[53] G.L. ch. 40A, § 3 (“For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128”).

context, an ag-to-ag sale. Still, this is speculation, as there exists no case law directly on point in the Commonwealth at the time of this writing.

CONCLUSION

In Massachusetts, sand is woven deeply within the tapestry of the state's agricultural pursuits. The significance of sand in various farming endeavors is undeniable, fostering not only agricultural abundance but also fortifying the Commonwealth's economy and employment landscape. Any actions that impede agricultural companies from utilizing sand easily—like town zoning boards requiring a special permit for its removal and sale—will necessarily impact the backbone of an industry contributing billions to the economy and providing jobs to thousands in the Commonwealth.

Surveying the current state of statutory and case law surrounding the removal, usage, and sale of sand in Massachusetts agriculture, several arguments emerge to support the protection of the free and unimpeded agricultural use of sand:

1. **Argument on Historical Integration**:
    - **Argument**: Sand has been interwoven with Massachusetts agriculture for centuries, providing a foundation for various farming practices.

- **Implication**: This deep-seated historical integration supports the notion that sand's extraction and use should not be entangled with excessive special permit requirements, especially under the protective provisions of the Dover Amendment and the existing body of jurisprudence interpreting the Amendment.

2. **Argument Against Regulatory Overreach**:
    - **Argument**: Regulations like special permit and other zoning board decisions should be discerningly applied, ensuring genuine agricultural practices aren't unintentionally stifled, per the spirit of the Dover Amendment.
    - **Implication**: The inherent and varied roles of sand in different agricultural contexts means its utilization should not be seen as merely a strategic maneuver to bypass regulations.
3. **Argument for Reevaluating Sand's Role in Creating New Agricultural Projects**:
    - **Argument**: While sand's primary function in agricultural undertakings like cranberry production is clear, the management of sand to be sold brings forth opportunities for wider agricultural applications, especially in agricultural-to-agricultural sales context.
    - **Implication**: By framing sand to be sold as an invaluable agricultural asset, an argument can be fashioned for its broader use and sale, without restrictive special permits.

While the law continues to evolve, it is clear that sand's importance in agriculture remains steadfast. In the context of cranberry farming, its use is indispensable. Cranberry production

companies, therefore, must be able to extract and sell sand without unnecessary impediments to sustain an industry that is so integral to Massachusetts' agricultural and economic landscape. As we navigate the ever-changing landscapes of agriculture and legislation, it's crucial that the significance of sand to agriculture, especially cranberry production, is recognized and its use duly protected.