

Chapter 144
SOIL REMOVAL

§ 144-1. Permit required.

§ 144-2. Earth removal regulations.

[HISTORY: Adopted as Art. 18, Section 4, of the revised bylaws of Halifax. Amendments noted where applicable.]

GENERAL REFERENCES

Filling of land - See Ch. 208, Art. I

§ 144-1. Permit required.

No soil, sand, gravel or loam removal shall be permitted in any area unless and until a permit has been granted by the Board of Selectmen.

§ 144-2. Earth removal regulations. [Added 5-11-1992 ATM, Art. 31¹]

A. Removal of earth restricted. The removal of earth, as defined herein, shall be prohibited except to the extent necessary when incidental to and in connection with the construction of a building or street. In no case shall the Board issue a permit for removing a greater amount of earth than the Board deems necessary for the purpose stated in the permit application.

(1) Exemptions. A permit shall not be required under this chapter for the following types of excavation: **[Added 7-19-1994 STM, Art. 7]**

(a) Excavation not in excess of one thousand (1,000) cubic yards and incidental to the construction of buildings for which all permits required by law have been issued, or the installation of walks, driveways, septic systems, swimming pools, provided that the quantity of material removed shall not exceed that displaced by the portion of the building or accessory use below finished grade.

(b) Excavation not in excess of one thousand (1,000) cubic yards incidental to customary agricultural maintenance and construction as allowed by law on land in agricultural use.

¹ Editor's Note: This article also repealed former § 144-2, Conditions for permit.

(c) Excavation not in excess of one thousand (1,000) cubic yards in compliance with the specific requirements of an approved, definitive subdivision plan. All applicants for a definitive subdivision plan shall file plans with two-foot contours with the Board of Selectmen showing the current elevations of the property to be subdivided and the proposed elevations for the subdivision and shall document the gross amount of earth to be removed from the property as part of the work in the creation of the subdivision. **[Amended 5-12-2003 ATM, Art. 38]**

(d) Excavation on land owned or operated by the Town of Halifax.

(e) Excavation incidental to and reasonably required for the legal operation of a cemetery.

B. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

BOARD - The Board of Selectmen or legally authorized representative.

EARTH - Includes but is not limited to soil, sand, clay, gravel and rock.

REMOVAL - The excavation of the earth as well as taking of earth off the property.

TOPSOIL - Loam and subsoil.

C. Procedures.

(1) The application for a permit shall be accompanied by an original plan and nine copies to the Board of Selectmen, who shall give the applicant a dated receipt. Within four days, the Board of Selectmen shall transmit one copy to the Board of Health, the Building Inspector, the Conservation Commission, the Highway Department, the Police Chief, the Town Clerk and the Water Department. The review boards shall review the application and, within 21 days after receipt, signify approval or objection, in writing, to the Board of Selectmen. The plan shall demonstrate the need to remove the amount of earth requested. **[Amended 5-10-2004 ATM, Art. 41]**

(2) Application information.

(a) The application shall include the following:

[1] A fee, as determined by the Board to cover advertising costs and expenses, shall be paid by the applicant upon demand for payment and a fee, as determined by the Board to cover engineering review costs associated with the application, shall be paid by the applicant upon demand for payment. **[Amended 5-10-2004 ATM, Art. 41; 5-10-2010 ATM, Art. 34]**

[2] The precise location of the proposed excavation as a part of the subject property.

[3] The legal name and address of the owner of the property involved.

[4] The legal name and address of the petitioner or applicant.

[5] Names and addresses of all abutting property owners within three hundred (300) feet, including those across any streets, as taken from the most recent tax list, as certified by the assessors.

[6] A plan of the land involved, prepared by a registered land surveyor or professional engineer, showing all man-made features, property lines, vegetative cover and the topography by two-foot contours 100 feet beyond the limits of the property where the excavation is to take place. **[Amended 5-13-2002 ATM, Art. 34]**

[7] A plan of the land showing two-foot contours of the site after completion of the proposed excavation, prepared by a registered land surveyor or professional engineer. **[Amended 5-13-2002 ATM, Art. 34]**

[8] An estimate of the quantity of material to be removed and topsoil to be replaced and the method to be used, verified by a registered land surveyor or professional engineer.

[9] (Reserved)²

[10] Written proof from the Town Collector that there are no unpaid local taxes, fees, assessments, betterments or other municipal charges for more than a twelve-month period.

[b] The applicant shall indicate on a road map provided with the application the routes to be used to transport the earth removed, including any driveways to and from the subject property. The applicant shall also furnish the approximate number and size of the truckloads of earth to be removed from the subject property each day.

(3) Prohibited earth removal. **[Amended 5-10-2004 ATM, Art. 41]**

(a) No earth removal permit shall be issued for earth removal projects which:

[1] In the opinion of the Board of Selectmen, will endanger the general health or safety or constitute a nuisance; or

² Editor's Note: Former Subsection C(2)(a)(9), requiring security for the application, was repealed 5-13-2002 ATM, Art. 34.

[2] In the opinion of the Board of Selectmen, will result in detriment to the normal use of adjacent property by reason of noise, dust or vibration.

(b) The Board of Selectmen shall not issue an earth removal permit until a public hearing has been held upon the application for a permit to remove earth materials. Within 45 days after the receipt of any such application the Selectmen shall cause a notice of the time and the place of such hearing thereof and of the subject matter sufficient for an identification to be published in a newspaper of general circulation in the Town at least once, the cost of said notice to be paid by the applicant, the first publication to be not less than 14 days before the day of such hearing. Proof of notice to the abutters must be provided by the applicant at the time of the hearing. [**Amended 5-9-2016 ATM, Art. 42**]

(4) The Board shall have the authority to waive any and all procedures under (1) and (2) when, in the discretion of the Board, said waiver shall be in the public interest. [**Added 10-17-1994 STM, Art. 2; amended 5-10-2004 ATM, Art. 41**]

D. Conditions. The permit issued by the Board shall state all the conditions imposed, including but not limited to the following:

(1) No processing of earth and no operation involving earth materials other than the permitted removal shall take place on the subject premises during the period of time of the permit unless specifically permitted by law.

(2) No earth or other materials foreign to the subject premises, including but not limited to boulders, asphalt, cement, road construction debris, demolition debris and tree stumps, shall be brought onto and deposited on the subject premises during the time period of the permit, except topsoil and living plant material for reclamation use. All stumps and debris shall be removed and disposed of in an approved location.

(3) Earth removal shall be performed in phases on land areas of not more than five (5) acres each, hereinafter referred to as "phase areas." Work of any sort connected with earth removal shall not be performed on more than one (1) phase area at a time. Work in a subsequent area shall not commence until all work, including restoration of the previous phase area, has been completed to the satisfaction of the Board or its representative.

(4) The permit grantee shall, to the satisfaction of the Board, stake or mark clearly all phase areas and buffer zones with Schedule No. 40 two-inch PVC pipe at one-hundred-foot intervals. These boundary markers shall be maintained at all times during the time period of the original and any renewed permits. [**Amended 7-19-1994 STM, Art. 7**]

- (5) Before excavation commences and at the expense of the permit grantee, monitoring wells shall be drilled at locations and in numbers determined by consulting engineers of the Halifax Water Department who will conduct initial tests to determine ground and well elevations. All excavation shall be at least seven (7) feet above the groundwater elevation as determined by the Halifax Water Department, except for permitted agricultural uses and excavation of areas for drainage as permitted by town boards. **[Amended 7-19-1994 STM, Art. 7]**
- (6) No excavation below the natural grade of any boundary line shall be permitted closer than fifty (50) feet to such boundary unless written consent is given to the permit grantee by the issuing authority and the owner of the property abutting such boundary.
- (7) No topsoil shall be removed from subject premises, unless it is determined by the Board to be excess, until reclamation of all disturbed areas is completed. Reclamation requires replacing of topsoil to a depth of not less than four (4) inches, seeding, planting, fertilizing, watering and attending in keeping with the best professional standards.
- (8) The finished level and grading shall leave no slope exceeding a grade of three (3) feet horizontal and one (1) foot vertical. In all cases levelling and grading shall be performed so that the natural contours of the land shall be preserved to the extent possible. Excavating to a lower elevation than required by the plan for which the permit was granted is strictly prohibited and punishable by a fine of one hundred dollars (\$100) per cubic foot, revocation of permit and/or other penalties as determined by the Board. **[Amended 7-19-1994 STM, Art. 7]**
- (9) The subject premises shall be kept free of any debris, including tree stumps. No debris generated on site shall be buried or otherwise disposed of on site without the prior written consent of the Board and the Board of Health.
- (10) Records showing the amount of earth removed shall be provided monthly by the permit grantee, and quarterly reports certified by a registered professional engineer shall also be submitted to the Board. The method of measurement of materials removed shall be determined by the Board's engineer. The Board may require more frequent reports if it deems that circumstances warrant them. Reports to the Board by said engineer shall be at the permit grantee's expense.
- (11) No earth removal or related operations shall take place except between 7:00 a.m. and 5:00 p.m. Monday through Saturday and in no case on a legal holiday. Included among related operations are the starting of engines, loading and unloading of trucks and preparations for commencing of work which are audible over a distance. All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing from the load.

- (12) The preservation of trees, bushes and other vegetation and the erecting of fencing may be required to muffle objectionable noise and vibration.
- (12.1) The permit holder shall be responsible for all spillage onto the public ways of the Town. If, for reasons of safety, it becomes necessary for the Town to clean up and remove such spillage, the cost shall be charged to the permit holder. **[Added 11-30-2000 STM, Art. 19]**
- (12.2) The permit holder shall be responsible for all damage to public ways from traffic, occurring in connection with the permit, entering or exiting the site. **[Added 11-13-2000 STM, Art. 19]**
- (13) This permit is subject to a fee of twenty-five cents (\$0.25) per cubic yard or more, as determined by the Board, payable to the Town of Halifax. Any inspections by an engineer of the Town's choice to ensure that the work being done follows the approved plans and this section shall be paid by the applicant. **[Amended 5-10-2004 ATM, Art. 41; 5-10-2010 ATM, Art. 35]**
- (14) The earth removal permit is not transferable without approval of the Board. Transfer of equity ownership or legal interest in the subject property shall be considered a transfer; however, the pledging of such to secure a mortgage or other loan shall not be considered a transfer, but if the lender should acquire ownership or interest by foreclosure, it shall be deemed a transfer.
- (15) The permit grantee shall notify the Board, in writing, within forty-eight (48) hours of any material change in his circumstances and/or plans as represented in his application, including change of ownership, general/operational contractors or purpose for removing earth.
- (16) Reserved.³
- (17) The applicant agrees by acceptance of the permit to allow the Board or its representative free access to the site to conduct inspections to determine compliance with the conditions of the permit at any time without prior notice.
- (18) No permit will be issued until a performance bond, letter of credit or assignment of account has been posted with the Town in an amount deemed by the Board to be sufficient to repair and restore the land for future use as set forth in Subsection D(7) above, either by the permit grantee, after which the bond will be released or, if not, by the Town, using the proceeds from the forfeited bond for that purpose.

³ Editor's Note: Former Subsection D(16), which provided for applications for renewal of permits, was redesignated as Subsection D(19.1) by 5-10-2004 ATM, Art. 41.]

(19) Any permit issued by the Board shall automatically expire upon the termination date stated therein. A special permit for any earth removal shall not be issued for more than one (1) year's duration and may be renewed thereafter with a public hearing legally advertised fourteen (14) days prior to the hearing.

(19.1) Applications for renewal of permits must be made 45 days or more before expiration of the current permit. Applications shall include a current topographical plan detailing current status and restoration progress. The renewal, if granted, shall date from the day the current permit expires. Renewal shall not be granted if work and restoration under the current permit is unsatisfactory to the Board or its agent. **[Amended 5-10-2004 ATM, Art. 41]**

(20) The Board shall have the authority to waive any and all conditions when, in the discretion of the Board, said waiver shall be in the public interest and not inconsistent with the general intent of this chapter. **[Amended 7-19-1994 STM, Art. 7]**

E. (Reserved)⁴

F. Validity. The invalidity of any section or provision of this section shall not invalidate any other section or provision thereof.

G. Penalty. Penalties shall be in accordance with MGL c. 40, § 21D. A person, firm or corporation violating any provision of this chapter shall be fined \$20 for each offense. Each cubic yard removed shall constitute a separate offense.⁵ **[Added 1-25-1993 STM, Art. 10; amended 5-11-1998 ATM, Art. 63]**

⁴ Editor's Note: Former Subsection E, Prohibited earth removal, was redesignated as Subsection C(3) by 5-10-2004 ATM, Art. 41.

⁵ Editor's Note: Former § 144-3, Removal outside Town, which immediately followed, was repealed by 5-10-2004 ATM, Art. 41.