



**TOWN OF BOXBOROUGH**  
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## **EARTH REMOVAL BYLAW**

Upon the effective date of the Earth Removal Bylaw all other by-laws regulating the removal of sand, gravel, loam or other earth products shall be null and void. Authority for the following Bylaw is under the Massachusetts General Laws, Chapter 40, Section 21, Paragraph 17.

### **I. Definitions**

- A. For the purpose of this Bylaw, “earth” shall include soil, loam, sand, gravel, clay, peat, rock, or other earth material in solid form.
- B. For the purpose of this Bylaw, “Board” shall mean the Planning Board of the Town of Boxborough.
- C. For the purpose of this Bylaw, “abutters” shall be parties of interest as defined in MGL c. 40A, section 11.

### **II. Earth Removal Procedure**

- A. No person shall remove earth from any parcel of land in the Town except in conformity with this Bylaw and any subsequent amendments.
- B. No earth shall be removed from any parcel of land in the Town without a written permit from the Board, and in accordance with the Zoning Bylaws of the Town of Boxborough.
- C. Any person wishing to obtain a permit or to renew a permit to remove earth material from a property in the Town, or to use any public way within the Town for transporting such material from one part of a property to another part, shall file an application pursuant to the Rules and Regulation as most recently adopted by the Board.
- D. No permit for the removal of earth, and no renewal thereof, shall be issued until a public hearing has been held by the Board, as defined in MGL c. 40A, section 11, except in those cases specifically exempted in Section III-B. Notice of said hearing shall be given at least fourteen (14) days in advance in a newspaper commonly used for such notices by the Town, and the posting of copies thereof on municipal bulletin boards. The applicant, and all abutters as determined from the most recent tax list and annual street listing, shall be notified of the purpose, date, time and place of the hearing by registered mail.
- E. No earth removal permit can be granted pursuant to this By-Law until the applicant shall have paid a fee as established in the Earth Removal Rules & Regulations.

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- F. Any permit issued is non-transferable and shall automatically expire upon completion of the earth removal project for which it was issued or at such time as may be specified in such permit. In no case shall a permit be issued for a period longer than three (3) years. A permit may be renewed for up to two (2) years or lesser time as determined by the Planning Board after evidence is presented that all conditions of the expiring permit have been complied with and the work has been performed in good faith. A public hearing may be required by the Planning Board for renewal of permits not otherwise exempted by Section III-C of this Bylaw.

### **III. Exemptions**

- A. No permit shall be required for the moving of earth entirely within an individual parcel, and provided that no public way is used therefor, and no other Bylaw of the Town is violated thereby, and provided, further, that one or more of the following conditions shall apply:
1. Such earth moving is necessary in the construction of a building, a permit for which has been issued by the Inspector of Buildings.
  2. Such earth moving is necessary in the construction of a public or private road, walkway, bicycle path, bridle path or similar pathway.
  3. For construction of a water hole for fire protection.
  4. Such earth moving is necessary in connection with farm, garden or nursery operations.
  5. Such earth moving is necessary in connection with a cemetery.
  6. When incidental to landscaping, construction of a swimming pool, or similar activities in connection with an existing building.
- B. No earth work operation exempted from a permit under subsection III-A shall be conducted, maintained, and/or left in a condition so as to alter the natural drainage flow beyond the property; or cause dust, silt, soil, or other materials to be deposited on adjacent properties; or to otherwise cause nuisances, hazards, or other objectionable conditions detrimental to health, safety, or property values in adjacent areas. The Planning Board shall upon petition by an abutter or by any Town Official or Town Board, review the operation and may determine that, because of the nature and scope of the earthwork, an earth removal permit is required; or may require that the restoration standards contained in Section V-B of this Bylaw be observed. The Planning Board shall, in cases where the public health or public safety are threatened, request that the Board of Health or the Board of Selectmen take action to abate such practices or conditions as contribute thereto.
- C. The Inspector of Buildings may permit the removal of up to 200 cubic yards of earth from a site when such earth removal is necessary in connection with the construction of a

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building, driveway or roadway, provided that no loam is removed from the Town of Boxborough.

- D. Without a public hearing, the Board may issue permits for the removal of more than 200 cubic yards of earth for the following purposes provided the activities are not in violation of any other by-law of the Town.
1. Where necessary when in connection with activities exempted in subsection III-A when an access or earth fill has been created which is not needed or not useable at the site.
  2. When such earth is not necessary in connection with the construction of a building, the amount to be removed to be limited to the volume of the foundations and basement of the building.
  3. When such earth is not needed in connection with the construction of a private or public road provided that the quantities of earth removed shall be limited to the excess of cut and fill required to satisfy Planning Board standards with respect to width grade, and construction of the roadway.
  4. Where the moving of earth occurs entirely within an individual parcel but where a public way is used for the transportation of the material; provided that, where it is evident that the scale of the operation would be greater than that normally anticipated under Items 1 through 3 above, the Planning Board may require a public hearing.

### **IV. General Limitations**

No permit shall be issued or renewed for the removal of earth in any location if such removal:

1. Will endanger the public safety, public health or constitute a nuisance.
2. Will produce noise, dust, or other noxious effects observable at the lot lines of the property in amounts objectionable or detrimental to the normal use of adjacent properties.
3. Will result in the transportation of materials in such manner as to cause traffic congestion, dust, spillage, noise, or other nuisances or hazards, particularly on residential streets.
4. Will result in the transportation over ways which will be unduly injured thereby.
5. Will result in a change of topography and cover which will be disadvantageous to the most appropriate final use of the land or to the use of lands adjacent to the site.

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6. Will destroy any part of an unusual natural feature of the land including but not limited to the Boxborough Esker.
7. Will cause irreparable harm to or loss of important wildlife or rare plant species indigenous to the area.

### **V. Standards and Requirements**

In approving the issuance of a permit, the Board shall require conformity with the following standards and requirements. The Board may where appropriate to the circumstances, waive, modify, or more specifically state, or add to the following standards and requirements provided that the intent of this Bylaw is maintained and the General Limitations stated in Section IV above are observed. Any such deviations from the following standards and requirements shall be stated as conditions to and noted upon the permit.

#### **A. Operation Standards**

1. No excavation shall be closer than 200 feet to an existing public way unless specifically permitted by the Planning Board and no excavation shall be permitted to occur within 50 feet of any lot line. Wherever existing natural vegetation occurs, it shall be maintained on the undisturbed land for screening and noise reduction purposes.
2. Operations shall be conducted during the hours 7:30 A.M. to 5:00 P.M., Monday through Friday. No earth is to be excavated or removed on Saturdays, Sundays or Massachusetts legal holidays. These hours of operation may be altered only upon written authorization of the Planning Board. Loaded trucks shall leave the premises only during permitted hours. All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing from the load.
3. The active gravel removal area shall not exceed a total area of five (5) acres at any one time.
4. All trucking routes and methods shall be subject to approval by the Chief of Police and the Director of Public Works.
5. All access roads leading to public ways shall be treated a suitable material approved by the Planning Board for a distance of at least 200 feet back from the public way, and shall be maintained so as to confine dust and mud to the premises.
6. Access roads shall be constructed with the approval of the Planning Board and shall provide for maximum public safety and screening of the operation from public view.
7. No gravel, soil, loam, or other earth material shall be removed within any elevation five (5) feet above spring high water table, or at any other higher elevation that would preclude subsequent re-use of the area in accordance with existing public health

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- standards. This elevation shall be established from test pits and the level related to permanent monuments and/or temporary points of reference on the property. This information shall show on the topographic plan or other suitable data submitted with Form ER-1.
8. During operations, when an excavation is located closer than 200 feet from a residential area or public way and where the excavation will have a depth of more than 15 feet, with a slope in excess of 1:1, a fence at least three (3) feet high, or as directed by the Planning Board, shall be erected to limit access to this area.
  9. No area shall be excavated so as to cause the accumulation of free standing water. Permanent drainage shall be provided as needed in accordance with accepted engineering and conservation practices. Measures shall be taken to insure that silting and sedimentation of nearby streams is not caused by an temporary or permanent drainage systems on site.
  10. Sufficient topsoil shall be stripped from the operation area and stockpiled for use in restoring the area after the removal operation has ceased. No loam shall be removed from the Town of Boxborough.
  11. Any temporary shelters or buildings erected on the premises, for use by personnel or storage or maintenance of equipment shall be screened from public view. These structures shall be removed from the premises within thirty (30) days after conclusion of the operation(s) or expiration of the permit.
  12. The Planning Board or their agents shall be free to inspect the premises at any time.
  13. No excavation shall be allowed that is in violation of Chapter 131 of the Massachusetts General Laws, the so-called "Wetlands Acts".

### **B. Restoration Standards**

1. No slope shall be left with a grade steeper than one foot (1') vertical to two feet (2') horizontal. Any disturbed land within 200 feet of an existing or private way shall be graded at a slope not to exceed two percent (2%).
2. All debris, stumps, boulders, and similar material, shall be removed from the site or disposed of in an approved location on site. Organic material such as stumps, brush, wood and similar materials shall be covered with a minimum of two feet (2') of soil.
3. Prior to the release of the Performance Guarantee, and/or expiration of the permit, ground levels and grades shall be established as shown on the topographic plan.
4. Subsoil shall be spread over the disturbed area to a minimum of four inches (4"). This soil shall be treated with three tons of lime per acre and 1,000 pounds of 10-10-10 fertilizer per acre and seeded with grass or legums mixture prescribed by the

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- Middlesex Conservation District, or other treatment and seeding or planting as approved by the Planning Board. Trees or shrubs may be planted in order to provide screening, natural beauty, and to reduce erosion. The planted area shall be protected from erosion during the establishment period.
5. Upon completion of the operation, the land shall be left so that the natural drainage flow exits the property at the original drainage points or empties into the original drainage channel; and when it does so, the volume of runoff or flow at any one point is not increased above that which was normal for that particular point in the absence of the earthwork operation.
  6. Before release of performance guarantee and/or expiration of the permit, “as built” drawings shall be prepared by a registered engineer or land surveyor at a scale of 1”=40’ or other scale acceptable to the Planning Board. The drawings shall show final grades; location and elevations of monuments; location, type, and size or capacity of underground drainage and other utilities installed; the location, boundaries and depth of organic fill areas; the location of access roads; and similar permanent improvements. An original opaque ink or mylar or other suitable permanent and reproducible plan, and one print thereof shall be submitted to the Planning Board. The plan shall include an insert “locus plan” at a scale of 1”=200’, showing the area in relation to nearby streets, natural features and surrounding areas.

### **C. Performance Guarantee**

A performance bond, bank deposit, check or similar security shall be required for each area on which the permit has been issued. The amount of such surety shall be five thousand dollars (\$5,000) per acre of removal and restoration area depending on conditions at the site, or such other amount as may be determined by the Planning Board as necessary to ensure final compliance with the restoration standards, including the preparation of “as built” drawings required in V-8-6. The performance guarantee will be released upon request of the permit holder after the Planning Board shall have determined that the holder has completed the operation and restored the area excavated in conformity with his permit and the standards and requirements of this Bylaw.

## **VI. General Administration**

- A. The Board or its agent may, from time to time enter upon the premises involved to inspect or determine whether the work is being properly conducted.
- B. Upon petition and payment of applicable filing fee by the owner, permit holder, abutters, or upon the vote of the Board, the Planning Board may hold a new hearing and/or reissue or modify an existing permit subject to any regulations not in conflict with this Bylaw. The filing fee shall be reimbursed by the permit holder if it is determined that a violation of the conditions of the permit has occurred.

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- C. The Board may order the revocation or suspension of a permit if the conditions established thereunder are not complied with; but the permit holder in such situation shall not be relieved of his obligations thereunder.

### **VII. Violations**

- A. If a violation is determined, a notice shall be sent by certified mail ordering the cessation of earth removal activities.
- B. If a permit holder or other offender persists in such violation, the Board shall seek an imposition of penalties authorized by MGL c. 40, section 21, of \$50 for the first offense, \$100 for the second offense, and \$200 for each subsequent offense, or seek to obtain a court order to compel compliance with this Bylaw. Each day in violation of the provisions of this Bylaw, after warning thereof, shall be considered a separate offense unless the operator shall initiate immediate actions to bring the operation to compliance with this Bylaw. This Bylaw may also be enforced through the non-criminal disposition procedures set forth in MGL c. 40, section 21D. The enforcing officer under this Bylaw shall be the Building Inspector or any police officer of the Town of Boxborough.
- C. If the offender holds a permit issued under this Bylaw such permit may be revoked and operations shall cease until such time as the necessary measures are taken to assure compliance with this Bylaw and a new permit is issued.

Adopted: February 4, 1952  
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Approved by Attorney General: August 9, 1999  
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