

§ 30-7.12 – SOIL DISTURBANCE [Amended ??-??-2013 by Ord. No. 621

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a. Findings; purpose.

This article is deemed essential and necessary to protect the public health, safety, and welfare of the citizens of Mantoloking Borough and the surrounding communities by accomplishing the following purposes:

1. Maintain the useful life of water bodies by preventing sedimentation.
2. Prevent dangers to life and property from excessive surface water runoff and clogging of drainage structures.
3. Prevent sedimentation and impairment to the public storm sewer system.
4. Preserve the recreational use of water bodies for swimming and fishing by preventing stagnation, sedimentation and degradation.
5. Prevent the importation of deleterious and/or contaminated soil into the Borough.
6. Ensure proper distribution of imported soil to prevent negative impacts onto adjoining properties and public right-of-way.
7. Reduce public expenditures for repair of public facilities resulting from soil erosion and sedimentation.
8. Conserve the taxable value of property by enhancing the environmental character of the Borough.

b. Definitions.

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

APPLICANT

The owner or contract purchaser or an authorized agent of land of same upon which earthwork activities, including either the moving, import, and/or export of soil are to be performed.

CLEAN FILL

Clean fill, also identified as clean soil, shall be constructed of soil, sand, or rock materials or a combination of these materials free from stumps, roots, weeds, sod, rubbish, garbage, and any other material that may decay. Clean fill and clean soil shall also be free of any chemical or physical contamination in accordance with NJDEP guidelines.

EXCAVATOR

Any person or company engaged in the moving, export, import, or excavation of soil or topsoil from, in or upon any land in the Borough.

EXPORT

The exportation of soil or removing of soil from premises or site to any location off the premises.

IMPORT

The importation of soil or bringing soil to any premises from any location off-site or off the premises.

MOVE

To dig, excavate, import, export, place, fill, grade, regrade, level or otherwise alter or change the location or contour earthen material, clean soil, or clean fill.

PERMIT

A Soil Disturbance Permit issued under the terms of this chapter.

PREMISES

One or more contiguous parcels of land in single ownership. Parcels shall not be deemed to be contiguous if separated by a road or right-of-way.

SOIL

Any earth, sand, clay, loam, gravel, humus, rock or dirt, and mixtures of any said earthen materials. Soil shall not be chemically or physically contaminated.

SOIL DISTURBANCE

Any activity involving the clearing, grading, moving, transporting, or excavation of land or soil, including the export or import of earthen material.

TOPSOIL

Soil that, in its natural state, constitutes the top layer of earth and is composed of 2.75% or more, by weight, of organic matter, and has the ability to readily support vegetation. Topsoil shall not contain stones, lumps, roots, or similar objects larger than 1/2 inch in any dimension and shall have not less than a 5.8 pH value. Topsoil shall not be chemically or physically contaminated soils.

c. Application requirements.

Prior to excavation, disturbance, land grading, earthwork, importation, and/or exportation of any soil on any premises in the Borough, an application shall be made by the owner or contract purchaser or authorized agent to the office of the Borough Engineer for a Soil Disturbance Permit. All properties to be filled in the Borough shall be filled with clean fill or topsoil as defined in this chapter. In addition to the Soil Disturbance Permit from the Borough, a Soil Erosion and Sediment Control Certification may be required from the Ocean County Soil Conservation District. The application for a Soil Disturbance Permit shall be submitted to the Borough as follows:

1. If the soil disturbance is necessary for the development of a project which has been granted an approval from the Planning/Zoning Board, an application shall be made to the Borough Engineer.

2. If the soil disturbance is necessary for the development of a project which has not been granted an approval from the Planning/Zoning Board, an application shall be made to the Borough Engineer.
3. The requirements of this chapter shall not apply when one of the following occurs or is proposed for the development of a project:
 - (a). When the removal and exportation of soil is required as a result of excavation for the development of one (1) single-family dwelling crawlspace, basement, or accessory structures and site improvements, including in-ground swimming pools, patios, and driveways; or
 - (b). When the procurement of a Surface Water Management Plan approval from the Borough Engineer is required for the development of a project in accordance with section 30-4.3 of the Mantoloking Code; or
 - (c). When the total volume of topsoil and/or clean fill to be exported or imported is less than ten (10) cubic yards and a Surface Water Management Plan approval is not required. However, all earthen material to be imported shall be clean fill, as defined in this chapter, for any volume, quantity, or amount of earthen material imported to any property within the Borough of Mantoloking, and all soil disturbance activities shall not negatively impact adjacent properties or public rights-of-way, including the redirection of stormwater surface runoff.

d. Information required for application.

1. The application for a Soil Disturbance Permit shall be filed with the Borough Engineer and shall include the following documentation:
 - (a) Owner, applicant, and contractor names, street addresses, email addresses, and telephone numbers.
 - (b) The name, street address, email address, and telephone number of the excavator, if different than the contractor.
 - (c) The location of the subject property, including block/lot and street address, for which the soil disturbance activities are to occur.
 - (d) Name of project, if applicable.
 - (e) Written narrative and scope of work for proposed development, including the type of soil disturbance proposed, location of work on the subject property, and consideration for not impacting existing improvements (underground and above ground utilities, fencing, landscaping, hardscaping, driveways, foundations, bulkheads, storm sewer, roadways, etc.) on and off the subject property.
 - (f) Earthwork calculations for total volume of cut/fill for export or import of clean fill and/or clean topsoil for the subject application.
 - (g) Application fee, as identified in this chapter.
 - (h) Certification of clean fill and/or topsoil for all importation of earthen material, including all necessary analytical data for laboratory testing results from a legally certified testing laboratory supporting the material complies with the NJDEP standards for the USEPA target compound list/target analyte list (TCL/TAL) or signed certification(s) from the source of the material to be imported that the material is clean, free of contaminants or from a virgin source.

- (i) Project schedule, including start of soil disturbance activities, duration of activities, and anticipated completion date.

e. Application and inspection fees.

1. Application fee.

- (a) Each application shall be accompanied by an application fee in the amount indicated on the latest revised and/or amended application form for a Soil Disturbance Permit, which shall be used to cover the cost of examining the application, support documentation, clean fill certification documentation, and other processing thereof. In the event an application for a Soil Disturbance Permit is denied, no refund of the application fee shall be permitted.

2. Inspection fee.

- (a) In the event an inspection is required by the Borough Engineer to verify compliance with a Soil Disturbance Permit for a complex application, critical stage of development, or for a substantial volume of disturbance, the applicant shall be requested as a condition of approval to post an escrow deposit with the Borough of Mantoloking.
- (b) The amount of the required estimated escrow deposit will be provided by the Borough Engineer in the applicable approval condition for a Soil Disturbance Permit to cover the cost of the inspection and enforcement of the provisions of this chapter, and/or, the conditions of approval.
- (c) The escrow account shall be replenished by the applicant to cover the cost of all necessary inspections, which may be a result of subsequent or follow-up inspections by the Borough Engineer.
- (d) The applicant shall not begin development, work, and/or soil disturbance approved under a Soil Disturbance Permit until the necessary escrow deposited has been accepted by the Borough.
- (e) The Borough Engineer may waive the requirement for an inspection fee based on the type and/or complexity of the subject application's scope of work.

f. Regulations.

- 1. All other outside agency approvals and/or municipal approvals and permits shall be required and procured, if necessary. No work shall begin on any project until all necessary permits and approvals have been procured and, if necessary, all related conditions of approvals successfully completed and addressed.
- 2. All imported material shall be documented to be from the source of approval. The applicant must provide clear, written, and legible documentation confirming the imported material is from the approved source for clean fill.
- 3. All soil disturbance activities shall be completed without producing negative impacts on adjoining private properties, adjoining public property, or adjoining public rights-of-way.
- 4. All earthwork activities shall be completed to ensure the pre-construction drainage patterns or the approved revised drainage patterns are maintained or accomplished, and drainage patterns for surface and subsurface runoff of stormwater shall not be created by any soil disturbance activities

- which create a nuisance, health and safety problem, or any other negative or detrimental conditions on adjacent or adjoining lands.
5. All imported material shall be clean fill, as defined in this chapter, and shall be free of any chemical or physical contamination.
 6. No staging or stockpiling of clean fill shall be permitted within public rights-of-way or off-site.
 7. If an inspection is required by the Borough Engineer, a minimum forty-eight (48) hour formal written notice shall be provided to the Borough Engineer. Failure of proper notification may result in the rescindment of approval; revocation of permit; an issuance of requirements for corrective work or action; or denial and rejection of completed earthwork and soil disturbance activities.
 8. All transporting and hauling of earthen material to the subject premises shall not create damage to the public roadways and rights-of-way, including the deposition of material along the public roads or within the public rights-of-way and sedimentation of public storm sewer systems. Any and all damage from the operations of hauling material to or from the subject premises shall be repaired by the applicant at no expense to the Borough. All material deposited within the public rights-of-way, roads, or storm sewers as a result of the transporting and hauling of material to or from the subject premises shall be cleaned and properly removed by the applicant at no expense to the Borough.
 9. The hours of operation and acceptable noise levels for all approved soil disturbance activities shall comply with all other applicable chapters of this Code.
 10. The applicant shall not create dust as a result of any approved soil disturbance activities, and the applicant shall not deposit any earthen material into any waterway.
 11. Prior to any approved soil disturbance, an underground utility mark-out call shall be completed by the applicant, in accordance with State law, for the protection of all potential subsurface utilities within or adjacent to the limits of work.
 12. The detailed specifications and standards for any Soil Disturbance Permit shall be dictated by the specific characteristics of the subject premise, adjoining sites, and application's scope of work. All standards for soil disturbance and soil stabilization shall be in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey, as promulgated by the State Soil Conservation Committee. During the review process for a permit application, the Borough Engineer may request additional specifications and/or other documentation to support the proposed development and soil disturbance activities, if the Borough Engineer is not satisfied with the original submitted application documents, and the additional requested documentation is required for approval of the subject Soil Disturbance Permit application.

g. Enforcement.

1. The Borough Engineer shall enforce the provisions of this chapter, including, but not limited to, those violations arising out the failure of any person or entity to apply for and obtain a Soil Disturbance Permit. The Borough Engineer shall complete the necessary inspections in accordance with this chapter or conditions of permit approval, and whenever directed by the Borough, for active Soil Disturbance Permits to ensure proper completion and implementation of the terms and conditions of the issued Soil Disturbance Permit. The Borough Engineer shall report all violations and take any action deemed necessary for proper enforcement to address

emergency conditions, public health and safety concerns, and/or negative impacts to adjoining properties and rights-of-way.

h. Revocation of permit; violations and penalties.

1. After notice and an opportunity to be heard before the Borough Engineer, the Soil Disturbance Permit of any person may be revoked or suspended for such period as the Borough Engineer may determine for any violation of terms hereof or the terms and conditions of any permit granted hereunder. In addition to action on the revocation provided for herein, any person who violates this chapter or any director or officer of a corporation who participates in a violation of this chapter shall, upon conviction thereof, be subject to a maximum fine of \$2,000, or imprisonment for a period not to exceed 90 days, or both. Each and every day that such violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense.

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