



TO: Director, Preliminary Plan Review Bureau SUPERSEDED BY EI 74-092 EFFECTIVE 10/3/1974	<h1>ENGINEERING INSTRUCTION</h1> <p>NEW YORK STATE DEPARTMENT OF TRANSPORTATION</p> <p>SUBJECT: MODIFYING CUT SLOPES AND OTHER MEANS OF OBTAINING BORROW</p> <p>Subject Code: 7.26-2-9.00</p>
Distribution: <input checked="" type="checkbox"/> Main Office <input checked="" type="checkbox"/> Regions <input type="checkbox"/> Special	Code: <u>EI 74-79</u>
APPROVED:   R. H. Edwards (Facilities), J. Sternbach (Constr.)	Date: <u>8/23/74</u> Supersedes: EI 73-89

Ecological, aesthetic, and economic consideration often make it desirable to allow a Contractor to flatten cut slopes, laterally move cut slopes beyond the design slopes, or borrow within the R.O.W. limits and utilize such material on the project or for the construction of other projects. To ensure uniformity in administering this matter throughout the State, the following Design and Construction Procedures are to be implemented immediately. PLEASE NOTE THAT THE FOLLOWING PROCEDURES ARE NOT APPLICABLE IN SITUATIONS WHERE THE STATE DETERMINES THAT DESIGN MODIFICATIONS OF PROJECT CONTOURS ARE NECESSARY. SUCH CORRECTIONS ARE ORDERED BY THE STATE WITH PAYMENT PROVIDED UNDER THE APPROPRIATE CONTRACT ITEMS.

The following procedure provides proper reimbursement to the State as owner of the material, and ensures that competitive bid conditions are maintained to the fullest extent possible.

I Design

Where it is feasible to obtain material on the project suitable for use on or off the project, the designer should designate specific locations where the State will allow the Contractor to excavate material beyond the design cut slopes and the extent of excavation permissible.

Appropriate notes should indicate that no payment for such additional excavation will be made under the unclassified excavation item (except as borrow under an item that is paid for in its original position; examples are Items 203.01, 203.04), that no royalty will be required for the material and that all additional expense related to the extra excavation operation (such as larger seeding area) shall be borne by the Contractor. When the material is used on the project, payment for the material will be made under the item for which it is being used. If rock cut slopes are considered for flattening, the Soil Mechanics Bureau must be first consulted.

The following special note is to be inserted in project proposals when the designer specifies allowable borrow locations on a project:

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SPECIAL NOTE - Obtaining Borrow By Modifying Cut Slopes

Within the following station limits, the Contractor, at his option, may modify the cut slopes to obtain construction material for this project or for other locations subject to the conditions stated in this Special Note, elsewhere in the proposal, and on the plans.

(Describe all details of modification for particular project)

A royalty will not be required from the Contractor by the State for material obtained from these areas. Payment will be made for such additional excavation beyond the design slope only when the extra material qualifies and is utilized as borrow for a project item which is paid for in its original position. No payment for excavation will be made when the material is used for an item paid for in its final compacted position. In this case, the material will be paid for under the item for which it used. Any additional cost caused by modification of the slopes, such as increased quantities of seeding, mulching, fencing, slope drains, or other items, shall be borne by the Contractor.

II Construction

The Regional Director may approve the modification of cut slopes and other means of obtaining borrow, which is not part of the contract, so long as proper provisions are made to prevent unsafe conditions, damage, and nuisances to property, wildlife areas, and haul routes within and without the contract limits. Such approval may be granted only after review of a written proposal by the Contractor showing the final deposition of the material, the haul route, hauling hours, and provisions necessary to comply with the above. Should unanticipated conditions arise resulting in any unsatisfactory situation, the Engineer shall immediately rescind the approval pending satisfactory correction.

The following procedure shall apply to areas within the R.O.W. limits not designated in a Special Note where the Contractor requests and is granted permission to modify slopes to obtain material for use on State contract work only. In these areas the Contractor will be required to reimburse the State with a royalty commensurate with the value of the material obtained and an analysis of the difference in haul costs from other acceptable sources. Permission will not be granted to excavate material beyond the design slopes if it is to be used on other than State contract work.

The royalty is composed of the approximate value of the excavated material plus the difference in haul costs, which will always result in a positive number. The value of the excavated material shall be appropriate for the item for which it is to be utilized. For example, the value of material meeting the requirements of subbase material would be greater than the value of common borrow. The difference in haul costs is the comparison between the Contractor's original source of borrow material and the material obtained

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by modifying cut slopes on the project. In determining the haul cost differential, the analysis is not to be based solely on the different haul lengths but consideration must be given to the different type of hauling operation and equipment involved, the difference in costs involved in hauling on haul roads or public highways, the additional costs to be borne by the Contractor for increased quantities of seeding caused by modification of slopes and any other variables involved.

Prior to modifying rock cut slopes, the Soil Mechanics Bureau must be consulted. If rock cut slopes are flattened sufficient to eliminate the need for presplitting, a rebate will be necessary in addition to the royalty for the material.

All special requirements to be fulfilled by the Contractor, at his expense, shall be clearly stated in the agreement. The foregoing requirement of a royalty shall apply only to locations not designated in the Contract Documents.

All the requirements in Section 107-11, Restoration of Disturbed Areas Within the Right-Of-Way, shall also apply.

Modification of cut slopes resulting in the top of slope falling outside the State's R.O.W. will not be permitted without authorization of the Regional Director.