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Town of Amherstburg

**The Corporation of the Town of Amherstburg  
Site Alteration By-Law # ####-###**

**Being a By-law to Regulate Site Alteration and the Removal, Placement and  
Movement of Fill in the Town of Amherstburg**

**Whereas** Section 11(2) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg to pass By-laws, respecting the following matters:

- a) Economic, social and environmental well-being of the municipality, including respecting climate change;
- b) Health, safety and well-being of persons; and
- c) Protection of persons and property, including consumer protection;

**And Whereas** Section 23.1 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg to delegate its powers to an officer, employee, or agent of the municipality;

**And Whereas** Section 128 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg to prohibit and regulate with respect to public nuisances, including matters that in the opinion of Council, are or could become or cause public nuisances;

**And Whereas** Section 129 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg to prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors;

**And Whereas** Section 142 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg to:

- a) Prohibit or regulate the placing or dumping of fill;
- b) Prohibit or regulate the removal of topsoil;
- c) Prohibit or regulate the alteration of the grade of the land;
- d) Require that a permit be obtained for the placing or dumping of fill, the removal of topsoil or the alteration of the grade of the land; and

- e) Impose conditions to a permit, including requiring the preparation of plans acceptable to the municipality relating to grading, filling or dumping, the removal of topsoil and the rehabilitation of the site;

**And Whereas** Section 425(4) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg to pass by-laws providing that a person who contravenes a by-law of the municipality passed under this Act is guilty of an offence;

**And Whereas** Section 436 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether a by-law of the municipality passed under this Act, a direction or order of the municipality made under this Act or made under a by-law of the municipality passed under this Act is complied with, and provide that for the purposes of an inspection the municipality may:

- a) Require the production for inspection of documents or things relevant to the inspection;
- b) Inspect or remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- c) Require information from any person concerning a matter related to the inspection; and
- d) Alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection;

**And Whereas** Council of the Corporation of Amherstburg deems it in the public interest to pass this by-law to regulate the dumping and placing of fill and site alterations in order to ensure that:

- a) Existing Drainage patterns are maintained and that any changes to existing Drainage patterns are appropriate to protect environmental features;
- b) Natural heritage features, landforms and archaeological and heritage resources are protected;
- c) There is no discharge of a contaminant to the natural environment that causes or may cause an Adverse Effect and the degradation of the pre-existing soil, surface water, and groundwater quality of the site and on adjacent properties is prevented;
- d) Damage to the municipality's roads, highways and infrastructure are minimized;
- e) Disturbances and nuisance impacts to the municipality's residences and businesses are minimized; and

- f) Costs and liabilities are borne by the Owners who undertake Site alteration within the Town of Amherstburg;

**And Now Therefore** the Council of the Town of Amherstburg hereby enacts as follows:

## **1.0 Definitions**

1.1 In this By-law:

- a) **“Adverse Effect”** means one or more of:
- i. impairment of the quality of the natural environment for any use that can be made of it;
  - ii. injury or damage to property or plant or animal life;
  - iii. harm or material discomfort to any person;
  - iv. an adverse effect on the health of any person;
  - v. impairment of the safety of any person;
  - vi. rendering any property or plant or animal life unfit for human use;
  - vii. loss of enjoyment of normal use of property; and
  - viii. interference with the normal conduct of business.
- b) **“Agreement”** means a written agreement between the Owner and the Town.
- c) **“Agricultural”** means the cultivation of land, the production of crops and the selling of such product on the premises, and the breeding and care of livestock and the selling of such livestock or the product of such livestock raised on the premises, and without limiting the generality of the foregoing includes aviaries, apiaries, fish farming, animal husbandry, and the raising and harvesting of field, bush, or tree crops, market gardening, nurseries, greenhouses and an accessory air strip. However, “Agricultural” use does not include facilities for the permanent or temporary housing of persons employed on the lot, an abattoir or any premises used for the killing of livestock or the processing of meat.
- d) **“Applicant”** means the Owner of a Property and includes a Person formally identified in writing on behalf of the Owner to apply for a Permit.
- e) **“Application”** means a submission to the Director made under Section 4 of this By-law.

- f) **“Conservation Authority”** means the Essex Region Conservation Authority (ERCA);
- g) **“Contaminant”** means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an Adverse Effect;
- h) **“Corporation”** means the Town of Amherstburg;
- i) **“Council”** means the Council of The Corporation of the Town of Amherstburg;
- j) **“Director”** means an employee of the Municipality authorized to administer and enforce the provisions of this By-law and shall include any person authorized by the Director or Municipal Council to carry out any of the powers and/or duties of the Director pursuant to this By-law;
- k) **“Drainage”** means the movement of stormwater and surface water, including but not limited to the movement of water along a swale from one location on the Property to another location on or off the Property, whether by way of the natural characteristics of the ground surface or by artificial means;
- l) **“Fill”** means any type of material that can be removed from (cut) or placed on (deposited) land and includes, but is not limited to, the following:
  - i. **“Soil”** means unconsolidated naturally occurring mineral particles and other naturally occurring materials resulting from the natural breakdown of rock or organic matter by physical, chemical or biological processes that are smaller than 2 millimetres in size or that pass the US #10 sieve;
  - ii. **“Excess Soil”** means soil, crushed rock or soil mixed with rock or crushed rock, that has been excavated as part of a project and removed from the project area for the project;
  - iii. **“Liquid Soil”** means soil that has a slump of more than 150 millimetres using the Test Method for the Determination of “Liquid Waste” (slump test) set out in Schedule 9 to Regulation 347;
  - iv. **“Rock”** means a naturally occurring aggregation of one or more naturally occurring minerals that is 2 millimetres or larger in size or that does not pass the US #10 sieve;
  - v. **“Crushed Rock”** means a naturally occurring aggregation of one or more naturally occurring minerals that is mechanically broken down

into particles that are smaller than 2 millimetres in size or that pass the US #10 sieve;

- vi. **“Topsoil”** means those horizons in a Soil profile, commonly known as the “A” and “O” horizons, containing organic material and includes deposits of partially decomposed organic matter such as peat;
  - vii. **“Sod”** means the upper stratum of soil bound by grass and plant roots into a thick mat (turf);
  - viii. **“Compost”** means a mixture of various decaying organic substances such as dead leaves or manure, used for fertilizing soil;
  - ix. **“Aggregate”** means gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite or other material, but excludes asphalt which can be placed on surface but not below grade; and
  - x. **“Clean concrete and brick”** means concrete, brick, block and other silica-based construction materials that are free of Contaminants.
- m) **“Fill Management Plan”** means a document prepared by, or on behalf of an Owner in accordance with the Guidelines detailing such things as existing Site conditions, proposed conditions, Site Alteration operations, and impact mitigation measures to be employed.
- n) **“Grade”** at any point on the land means the elevation of the ground surface of the land; and
- i. **“Existing Grade”** means the Grade as it existed prior to any Site Alteration.
  - ii. **“Approved Grade”** means the final ground surface elevation of a Site Alteration that has been approved by the Town;
- o) **“Guidelines”** means the guidance document that provides information for Application and documentation requirements for a Permit, as developed by the Director and updated from time to time, to be used for the purpose of administering this By-law;
- p) **“Haul Routes”** mean routes defined by the Director as part of a Permit or any Agreement made under this By-law that describe which routes must be followed when transporting Fill to or from the Site;
- q) **“Invasive Species”** means Invasive Species as defined in the *Invasive Species Act*, 2015, as amended;

- r) **“Large Site Alteration”** means any Site Alteration and Movement of Fill that does not meet the definition of a Minor Site Alteration. A Permit is required for a Large Site Alteration;
- s) **“Minor Amendment”** means an amendment to the Fill Management Plan that does not include any of the following:
  - a. Any change to the Approved Grade;
  - b. Any change to the total volume of Fill to be imported, exported, or moved;
  - c. Any change to the volume of Liquid Soil to be imported or moved; and
  - d. Any change to inbound truck traffic, including without limitation, the frequency or total amount of such traffic;
- t) **“Minor Site Alteration”** means a Site Alteration and Movement of Fill where the requirement for a Permit is based on a one-time maximum cumulative volume per Property, calculated from the area of Property suitable for Site Alteration and Movement of Fill, up to a maximum of 350 cubic metres), but does not include placement of any volume of Liquid Soils;
- u) **“Movement of Fill”** means any non-natural transfer of Fill from one location to another of any distance within the Town excluding Fill that is transported through the Town and is always contained within the transport vessel;
- v) **“Normal Farm Practice”** has the same meaning as defined in the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c.1, as amended;
- w) **“Officer”** means a Person employed by the Town to enforce the Town’s By-laws;
- x) **“Ontario Regulation 153/04”** as amended', means the Records of Site Condition regulation under Part XV.I of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 and any subsequent amendments to the Act or regulation;
- y) **“Ontario Regulation 406/19”** means the On-Site and Excess Soil Management regulation under the *Environmental Protection Act*, R.S.O. 1990, c. E.19 and any subsequent amendments to the Act or regulation;

- z) “**Order**” means a mandatory requirement for action within a specified time period specifically issued by an Officer or the Director to address issues of non-compliance with the By-law and/or the Conditions of a Permit;
- aa) “**Owner**” includes the registered owner of the lands to which a Site Alteration is proposed and any person, firm or corporation in charge, management or control of such lands and shall include an Applicant, operator or property owner;
- bb) “**Permit**” means a Site Alteration Permit issued pursuant to this By-law and includes any agreements entered into by the Municipality and the Owner of the land to which the Site Alteration applies;
- cc) “**Person**” includes Owners, individuals, sole proprietorships, partnerships, corporations, trustees, agents, or legal representatives.
- dd) “**Project Area**” means, in respect of a project, a single property or adjoining properties on which the project is carried out.
- ee) “**Property**” means land and includes: a parcel or tract of land capable of being conveyed as a separate parcel pursuant to the provisions of the *Planning Act* or is described in accordance with a registered Plan of Condominium, or if approved by the Director, a combination of two or more such parcels of Property that are adjacent to each other;
- ff) “**Public Information Centre**” means an informal open meeting to which all members of the public are welcome, the purpose of which is to inform the public of the intent of a proposed Site Alteration project and to receive comments from the public;
- gg) “**Site**” means the lot or lots of a Property altered or proposed to be altered by means of a Site Alteration;
- hh) “**Site Alteration**” means any alteration to the Existing Grade of a Property through the movement, removal, placement or relocation, either temporarily or permanently, of any Fill;
- ii) “**Town**” means The Corporation of the Town of Amherstburg;

- jj) **“Watercourse”** means a natural or man-made channel or swale in which a flow of water occurs, either continuously or intermittently with some degree of regularity.

## **2.0 General Provisions and Regulations**

- 2.1 No Person shall conduct Site Alteration and Movement of Fill within the Town other than in compliance with this By-law.
- 2.2 Compliance with this By-law does not relieve the Owner from any responsibility to obtain all other approvals as required from any other government or authority, or compliance with any other obligation.
- 2.3 No Person shall fail to obey an Order issued under this By-law.
- 2.4 No Person shall do anything, or permit or cause the doing of anything, which results in the alteration, modification, fouling or blockage of any swale, ditch, Drainage course, Watercourse, or part thereof, on any land unless authorized by the public authority or public agency with relevant jurisdiction.
- 2.5 No Person shall undertake, cause, or permit Site Alteration and Movement of Fill that may adversely affect the quality or quantity of any surface water or groundwater however it may exist, including all water used for or available as a source of water for agriculture or human consumption.
- 2.6 No Person, in the performance of a Site Alteration, shall injure or destroy a tree or other tree which is subject to tree protection measures as a condition under this By-law except to the extent that such injury or destruction is specifically authorized in writing in accordance with the provisions of this By-law and any other applicable By-laws of the Town of Amherstburg or the County for the protection of trees.
- 2.7 All activity is restricted by the Town’s Noise By-law No. 2001-43, as amended, which outlines prohibited periods of time.
- 2.8 No Person shall undertake, cause, or permit Site Alteration unless the Owner maintains the Property in accordance with the Town’s Property Standards By-law No. 1999-28, as amended.
- 2.9 No Person shall undertake, cause, or permit any Site Alteration and Movement of Fill on any Property unless the activity is in accordance with:



- a) The Zoning By-Law No. 1999-52, as amended;
- b) The requirements of a Conservation Authority; and
- c) All other laws, policies and By-laws.

2.10 No person shall perform any works during any period in which a wind warning for the area has been issued by Environment Canada.

2.11 No person shall undertake, cause or permit any Site Alteration and Movement of Fill that will result in an Adverse Effect.

2.12 No Person shall conduct any Site Alteration and Movement of Fill unless the Fill:

- a) Complies with the requirements of Ontario Regulation 406/19 and Ontario Regulation 153/04;
- b) Does not contain putrescible materials;
- c) Does not contain Contaminants; and
- d) Is free of termites, pests and Invasive Species including the eggs and seeds of such species.

2.13 This By-law is not intended to and shall not circumvent any development approval process which is required under the *Planning Act* and, without limiting the generality of the foregoing, the Fill permit process shall not be used to allow for area grading and pre-servicing of subdivision lands, industrial or commercial development which would otherwise be addressed through the site plan or subdivision approval process under sections 41, 51 or 53 of the *Planning Act*.

2.14 No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Person who is exercising a power or performing a duty under this By-law.

2.15 Notwithstanding any other provision of this By-law, the Director may at his/her discretion require any applicant to enter into an Agreement with the Town.

### **3.0 Exemptions**

3.1 Notwithstanding Section 2 of this By-law, Site Alterations are permitted in the following circumstances:

- a) The construction, extension, alteration, maintenance or operation of works under Section 26 of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c.P.50, as amended.
- b) Activities of the Town, Essex County, a Conservation Authority, a local board of a municipality or the Provincial or Federal government.

- c) Removal of Topsoil incidental to a Normal Farm Practice that is legally established under the Town's Zoning By-law, including such removal as an incidental part of sod farming, greenhouse operations, and nurseries for horticulture. This exception respecting the removal of Topsoil as an incidental part of a Normal Farm Practice does not include the removal of Topsoil for sale, exchange or other disposition.
- d) The placing or dumping of Fill, removal of Topsoil or alteration of the Grade of land imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections.
- e) The placing or dumping of Fill, removal of Topsoil or alteration of the Grade of land imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under that regulation.
- f) The placing or dumping of Fill, removal of Topsoil or alteration of the Grade of land undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act*, 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section.
- g) The placing or dumping of Fill, removal of Topsoil or alteration of the Grade of land undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*.
- h) The placing or dumping of Fill, removal of Topsoil or alteration of the Grade of land undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land;
  - i. That has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and
  - ii. On which a pit or quarry is a permitted land use under a By-law passed under section 34 of the *Planning Act*.
- i) The placing or dumping of Fill, removal of Topsoil or alteration of the Grade of land undertaken as an incidental part of drain construction under the *Drainage Act* or the *Tile Drainage Act*.
- j) The use, operation, establishment, alteration, enlargement or extension of a Waste management system or Waste disposal site within the meaning of Part V of the *Environmental Protection Act*, R.S.O. 1990, c.E.19, as amended.
- k) Construction of a building or structure including a driveway and parking pad, pursuant to a valid Building Permit which has been issued by the Town for the erection of the building or structure, where the Site Plan accompanying the

Building Permit application provides sufficient information to ensure that the Site Alteration proposed conforms with the provisions of this By-law.

- l) Site Alterations incidental to a Normal Farm Practice that is legally established under the Town's Zoning By-law, including the application of Topsoil for spreading over Agricultural Property provided that the Existing Grade of the Property is not increased by more than 200 millimetres at any given point. This exception is only available to those Owners or Properties that have an active registration as a "farming business" as defined in the Farm Registration and *Farms Organization Funding Act* ("FRFOFA"), and are in good standing under the FRFOFA.
- m) Site Alterations undertaken as an emergency measure with the approval of the Director, under the Town's Emergency Management Plan, or under the direction of the Town, Essex County, Conservation Authority, or any other governmental agency with jurisdiction.

3.2 No Person shall undertake, cause, or permit any Site Alteration without a Site Alteration Permit issued under this By-law, unless the Property is:

- a) 0.1 hectares or less, in which case the Owner may Place a maximum of 10 cubic metres of Fill once onto or within the Property without a Site Alteration Permit;
- b) 0.1 to 0.2 hectares, in which case the Owner may Place a maximum of 50 cubic metres of Fill once onto or within the Property without a Site Alteration Permit;
- c) 0.2 to 0.5 hectares, in which case the Owner may Place a maximum of 100 cubic metres of Fill once onto or within the Property without a Site Alteration Permit;
- d) 0.5 hectares or larger, in which case the Owner may Place a maximum of 350 cubic metres of Fill once onto or within the Property without a Site Alteration Permit;

3.3 The maximum volumes noted above are a one-time allowance and does not apply to placement of any Liquid Soil. Any Site Alteration involving Fill that exceeds the maximum volumes is prohibited unless a Site Alteration Permit is issued by the Director.

3.4 Notwithstanding Sections 3.1 and 3.2, the Site Alterations set out remain subject to the provisions of Section 2, and Sections 4 to 11 inclusive of this By-law.

#### **4.0 Requirements for Issuance of a Permit / Applications for a Permit**

- 4.1 Except as otherwise provided herein, a Site Alteration Permit is required for any Site Alteration. All Site Alteration Permits shall be issued by the Director.
- 4.2 Unless exempt in accordance with the provisions of Section 3, no Person(s) shall conduct a Site Alteration within the Town without first applying for and obtaining a Permit.
- 4.3 Any Person applying for a Site Alteration Permit shall complete an Application for a Site Alteration Permit in a form established from time to time by the Director and the said Application for Site Alteration Permit shall be accompanied by such supporting documentation, payment of all fees and providing all information as required by the Director and by the Guidelines. The Application will not be reviewed until enough documentation has been provided to the satisfaction of the Director to deem the Application complete.
- 4.4 An Application for Large Site Alteration Projects greater than 10,000 cubic metres or involving the placement of Liquid Soils greater than 100 cubic metres shall not be approved until Council has considered the Application at a public meeting at which the Applicant and any interested members of the public will have a fair opportunity to make representation.
  - a) Notice of the public meeting is to be provided to property owners and agencies in a similar manner as a Zoning By-law under subsection 17(15) of the *Planning Act* or an alternative approved by the Director.
  - b) In the case of a public meeting, all comments and concerns received must be addressed by the Applicant and submitted to the Town for evaluation as part of the Application.
- 4.5 Fees as referenced under this By-law are payable under the Town's User Fee Schedule, as amended from time-to-time.
- 4.6 Notwithstanding any other provisions of this By-law, after taking into consideration of the proposed works and whether the Applicant otherwise has conformed with this By-law, the Director, or as appropriate, Council, may waive certain requirements of Section 4, and/or reduce or waive the Permit fee and/or the refundable security deposit.

- 4.7 If two or more Applications submitted within a three year period, create a project totaling more than 10,000 cubic metres, the latter shall be processed under Section 4.4.

## **5.0 Abandonment, Expiry, Renewal, Amendment, Transfer, Revocation, and Closure of Permits**

- 5.1 An Application for a Permit will be deemed abandoned when a period of twelve months has elapsed during which:
- a) The Person applying for a Site Alteration Permit has not provided any additional information, documents, reports, drawings, fees or other items as required by the Director to process or consider the Application; or
  - b) The Application has been placed on hold or in abeyance, at the request of the Applicant or at the discretion of the Director; or
  - c) The Application has not seen meaningful progress through submissions towards the issuance of a Permit.
- 5.2 A Permit shall remain valid for a period of one year from the date of issuance, unless otherwise specified as a Condition of the Permit by the Director.
- 5.3 A Site Alteration Permit will be issued for the period of one year, provided that where such Site Alteration Permit is issued for a Large Site Alteration, an expiry date shall be specified by the Director as a condition of the Site Alteration Permit or as set out in any Agreement.
- 5.4 A Site Alteration Permit for a Large Site Alteration will be subject to an annual review conducted by the Director to determine whether such Site Alteration Permit should be varied, extended or revoked.
- 5.5 An Applicant or Owner may submit a request in writing to the Director for an amendment to a Permit based on proposed changes to the details of the original Application as reflected in the Conditions.
- 5.6 An Applicant or Owner may submit a request to the Director for a Renewal to a Permit for which the only change from the original Application and Conditions is the timeline and expiry date.

- 5.7 If title to the Property for which a Permit has been issued is transferred while the Permit is in effect, the Permit shall be revoked unless the new Owner, before or at the time of the transfer:
- a) Provides the Town with an undertaking to transfer the Permit and comply with all Conditions under which the Permit was issued; and
  - b) In the case where there is an Agreement, enters into an Agreement with the Town to comply with all terms and conditions of the existing Agreement.
- 5.8 Upon receipt of the Application to amend, renew or transfer by the Director, the Director shall determine:
- a) Whether there are any substantial changes from the original Application submitted in support of the Site Alteration Permit;
  - b) Whether there are any outstanding Orders or other items of non-compliance relating to the existing Site Alteration Permit and/or Agreement;
  - c) Whether there are any new requests and/or regulations imposed by Council relating to the issuance of Site Alteration Permits under this By-law;
  - d) Whether the Guidelines and the requirements established in Section 4 by the Director from time-to-time require the provision of further documentation and information and, if such documentation and information is required, whether same is reasonable and should be submitted to the Town; and
  - e) Whether there have been any other legislative changes which may require the review, revocation or amendment of the existing Site Alteration Permit.
- 5.9 Where an Owner makes a material change to a plan, specification, or document or other information following the issuance of a permit, the Director may require submission of revised drawings, plans, and/or reports, which shall be approved by the Director prior to any dumping, placing or removal of Fill or alteration of Grade.
- 5.10 Upon the completion of the reviews contemplated herein by the Director, the Director shall be entitled to amend, renew, transfer or revoke the Site Alteration Permit.
- 5.11 The Director may, at their discretion, approve Minor Amendments to Site Alteration Permits.
- 5.12 The Director may at any time and without notice revoke a Site Alteration Permit for any one of the following reasons:
- a) It was obtained based on mistaken, false or incorrect information;
  - b) It was issued in error;
  - c) The Owner or any Person on their behalf requests in writing that it be revoked;

- d) Work authorized under the Site Alteration Permit has not commenced within six months of the Site Alteration Permit issue date;
- e) Work authorized under the Site Alteration Permit has not been performed for any period of six consecutive months;
- f) The Site Alteration Permit holder has failed to comply with any of the conditions of the Site Alteration Permit and/or Agreement; or
- g) The Site Alteration Permit holder is unwilling or unable to comply with the conditions of an Order.

5.13 Every Owner shall ensure to satisfy all Conditions of the Permit, notwithstanding if the Permit is expired and may further be required to provide the Town with:

- a) A letter of acknowledgement of the filing of a Record of Site Condition if there is a change of use as per Ontario Regulation 153/04, as amended;
- b) A final topographic survey prepared by an Ontario Land Surveyor confirming that the final grade matches the Approved Grade; and
- c) Completion of all Permit Conditions.

5.14 A Permit is considered closed when all the Conditions and Orders related to the Permit have been deemed to be fulfilled to the satisfaction of the Director and confirmed in writing, at which time all unexpended deposits and securities held by the Town shall be released.

## **6.0 Enforcement and Administration**

- 6.1 This By-law shall be administered and enforced by the Director and his/her designate(s) and by those persons designated as Officers by the Director and/or as may be appointed by Council. Without limiting/restricting any other power, duty or function granted by this By-law, Officer(s) and/or the Director may: give direction, issue Order(s) to discontinue or to perform work and further give verbal or written direction and may enter Property and/or carry out and direct whatever inspections, are reasonably required to determine compliance with this By-law.
- 6.2 Officers may, at any reasonable time, enter and inspect any Property to determine whether the provisions of this By-law, or any condition of a Site Alteration Permit, Agreement or Order issued under this By-law, are being complied with. This power of entry does not allow the Officer to enter any building being used as a residence.
- 6.3 Officers may, at any reasonable time, enter any Property for the purpose of collecting information, taking photographs, videos, measurements, readings and samples (air, surface water, groundwater, soil, materials, etc.) for audit and

verification of compliance with this By-Law or the conditions of any Site Alteration Permit, Agreement or Order.

- 6.4 Officers may, at any reasonable time, request copies of reports, manifests or other documents for the purposes of auditing compliance with this By-Law or the conditions of any Site Alteration Permit, Agreement or Order.
- 6.5 Where an Officer and/or the Director has reasonable grounds to believe that an offence has been committed by a Person, the Officer and/or the Director may require the name, address and proof of identity of that Person, and the Person shall supply the required information.
- 6.6 No person shall hinder or obstruct or attempt to hinder or obstruct an Officer conducting an Inspection or a Person performing corrective works under this By-law.
- 6.7 No person shall provide false information in any statement, whether orally, in writing or otherwise, made to an Officer and/or the Director.
- 6.8 Council for the Town delegates to the Director the authority to issue Site Alteration Permits and approve Agreements on behalf of the Town.
- 6.9 The Director may authorize any Person to carry out any of the powers or duties of the Director pursuant to this By-law.
- 6.10 Where any Site Alteration occurs, is undertaken, caused, or permitted on any Property, the Owner of the Property is presumed to have undertaken, caused, or permitted the Site Alteration to occur, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

## **7.0 Orders**

- 7.1 If an Officer is satisfied that a Person has undertaken, caused, permitted, allowed or performed a Site Alteration and Movement of Fill in contravention of this By-law, a Site alteration Permit issued pursuant to this By-law and/or an Agreement entered into pursuant to this By-law, the Officer may issue an Order requiring work to cease and/or work to be done to correct the contravention, and the Order shall set out:
  - a) the municipal address or the legal description of the land;
  - b) reasonable particulars of the contravention and of the work to be done and the period within which there must be compliance with the order; and



- c) notification that if the work or action is not done and/or ceased, as the case may be, in compliance with the Order within the period specified, the Town may have the work done at the expense of the Owner and seek penalties as outlined in Section 8.

## 7.2 Service of Orders

Orders issued by an Officer under Sections 8.1 or 8.2 shall be served:

- a) personally or by prepaid registered mail to the last known address of the Owner of the land and any other person to be served.
- b) If the Town is unable to effect service of an Order on the Owner under Section 10.3(a), a placard containing the terms of the order may be placed in a conspicuous place on the land and the placing of the placard shall be deemed to be sufficient service of the order.

- 7.3 An Order may also be issued in any case where ownership to the Property has changed but the offence remains.

## 8.0 Penalties and Offenses

- 8.1 Every person who contravenes a provision of this By-law, a Condition of Permit and/or Agreement, including an Order issued under this By-law is guilty of an offence.

- 8.2 If an Order has been issued under this By-law, and the Order has not been complied with, the contravention of the Order shall be deemed to be a continuing offence for each day or part of a day that the Order is not complied with.

- 8.3 Every Person who is guilty of an offence under this By-law shall be subject to the following penalties upon conviction, as prescribed by the *Municipal Act*, 2001, S.O. 2001, c.25, as amended:

- a) a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000. However, a special fine may exceed \$100,000;
- b) In the case of a continuing offence, for each day or part of a day that the offence continues, a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$10,000. However, despite Section 8.3(a), the total of all of the daily fines for the offence is not limited to \$100,000; and
- c) In the case of a multiple offence, for each offence included in the multiple offence, a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$10,000. However, despite Section 8.3(a), the total of all fines for each included offence is not limited to \$100,000.

- 8.4 When a person has been convicted of an offence under this By-law:
- a) The Ontario Court of Justice; or
  - b) Any court of competent jurisdiction thereafter;
- may, in addition to any other penalty imposed on the Person convicted, make an Order prohibiting the continuation or repetition of the offence by the Person convicted, and/or require the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
- 8.5 Municipal fees for administration and enforcement activities under this By-law shall be subject to the rates and fees set out in the Town's User Fee Schedule, as amended from time to time.

## **9.0 Severability**

- 9.1 If any provision of this By-law or the application thereof to any Person or circumstance is invalid, the invalidity shall not affect other provisions or application of this By-law which can be given effect without the invalid provision or application, and to this end the provisions of this By-law are severable.

## **10.0 Schedule(s)**

- 10.1 Schedule "A" attached to and forms part of this By-law.

## **11.0 Effective Dates and Repeal of Predecessor By-laws**

- 11.1 This By-law shall come into force and effect upon the date it is passed.

READ a first and second time this \_\_\_\_ day of \_\_\_\_, [YEAR].

READ a third time and passed this \_\_\_\_ day of \_\_\_\_, [YEAR].