



THE CORPORATION OF THE TOWNSHIP OF KING

BY-LAW NUMBER 2021-039

A By-law to prohibit and Regulate Site Alteration and Movement of Fill in the Township

WHEREAS Section 142 of the Municipal Act, 2001, S.O. 2001, c.25, as amended (hereafter referred to as the Municipal Act) authorizes the Council of The Corporation of the Township of King to pass By-laws for prohibiting or regulating Site Alteration to the Grade (topography) of Property through the movement, removal or placement of Topsoil, Soil or Fill within the Township; and,

WHEREAS Sections 8, 9 and 11 of the Municipal Act, permits a municipality to pass By-laws necessary or desirable for municipal purposes, and paragraphs 5, 6 and 8 of Subsection 11 (2) authorize By-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons, and the protection of persons and property; and,

WHEREAS Section 23.2 of the of the Municipal Act, authorizes a municipality to delegate its powers to an officer, employee, or agent of a municipality; and

WHEREAS Subsection 444(1) of the Municipal Act, permits a municipality, if satisfied that a contravention of a By-law of the municipality passed under the Municipal Act, has occurred, to make an order requiring the person who contravened the by-law or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity; and,

WHEREAS Subsection 446 of the Municipal Act, gives a municipality the authority to direct or require a person to do a matter or, thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person’s expense. For these purposes the municipality may enter upon land at any reasonable time. The municipality may recover the costs of doing a matter or, thing from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes; and,

WHEREAS Section 425 of the Municipal Act, permits a municipality to pass by-laws providing that any person who contravenes any By-law the municipality passed under the Municipal Act, is guilty of an offence; and

WHEREAS Section 426 (4) of the of the Municipal Act deems that any Person that hinders or obstructs, or attempts to hinder or obstruct, any Person who is exercising or performing a duty under this By-law created under the Act is guilty of an offence;

NOW THEREFORE the Council of the Corporation of the Township of King HEREBY ENACTS AS FOLLOWS:

THAT this By-law be comprised of Thirteen (13) Parts containing various sections, namely:

- PART 1 INTERPRETATION AND ADMINISTRATION
- PART 2 DEFINITIONS
- PART 3 PROHIBITIONS
- PART 4 EXEMPTIONS
- PART 5 REQUIREMENTS FOR ISSUANCE OF A PERMIT
- PART 6 ABANDONMENT, CLOSURE, EXPIRY, RENEWAL, TRANSFER, REVOCATION AND AMENDMENT OF PERMITS
- PART 7 ENFORCEMENT
- PART 8 ORDERS
- PART 9 WORK DONE BY TOWNSHIP
- PART 10 PENALTY AND OFFENCE
- PART 11 APPEAL
- PART 12 TRANSITION PROVISION,
- PART 13 EFFECTIVE DATES AND REPEAL OF PREDECESSOR BY-LAW

1. INTERPRETATION AND ADMINISTRATION

Short Title

1.1 This By-law may be referred to as “Site Alteration By-law”.

Administration

1.2 This By-law applies to all Property in the Township.

1.3 The Director will be responsible for the administration of this By-law.

Delegated Authority

1.4 The Director is authorized and has the delegated authority to:

- a) Approve, exempt/waive, issue, revoke, extend, renew, amend, or close a Permit and/or grant approvals of Site Alteration and impose Conditions for continuing to hold a Permit depending on the Site Alteration in addition to the requirements under this By-law;
- b) Determine when a Public Information Centre or a Meeting of Council is required or not required;
- c) Determine and deem an Application as abandoned, expired, or closed;
- d) Approve and coordinate any remediation works;
- e) Approve amendments to Site Alteration and Fill Management Plans;
- f) Approve and amend Application forms and Guidelines;
- g) Establish appropriate requirements;
- h) Ensure compliance with section 3.9 of this By-law, including requiring appropriate testing and documentation.
- i) Appoint a peer review consultant or other engineering, scientific and technical experts to fulfill the role or duties of an Officer for purposes of this By-law;
- j) Require or exempt certain works from provisions of this By-law, as permitted in this By-law;
- k) Authorize any Person to carry out any of the powers or duties of the Director and/or Officer pursuant to this By-law; and
- l) Authorize and/or to hire such agents, contractors and other Persons to perform the work, as required.
- m) Approve an increase in the amount of Hard Landscaping in designated areas.” **Amended By-law 2023-050**

Conflict

1.5 Where there is a conflict between a provision of this By-law and a provision of any other Township By-law, the provision that establishes the highest standards to protect the health and safety of the public and natural environment shall apply. No agreement shall be deemed to provide an exemption from the requirements of this By-law unless this By-law authorizes such exemption and the agreement specifically provides for it.

Severability

1.6 If a court of competent jurisdiction declares any section, or any part of any section, of this By-law to be invalid, or to be of no force or effect, it is the

intention of the Township that every other provision of this By-law be applied and enforced in accordance with its terms to the extent possible according to law.

Compliance with Other Laws

- 1.7 This By-law, and the provisions contained within, are intended to be complimentary to Federal and Provincial statutes and Regulations, and to other By-laws passed by Council. If any other applicable law requires a higher standard than this By-law requires, the higher standard shall apply.
- 1.8 By-laws, statutes, regulations and guidelines referenced include any amendments, replacements or updates to those By-laws, statutes, regulations and guidelines.

2 DEFINITIONS

- 2.1 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 to 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) **“Agricultural”** means the use of Property or a building on the Property for an agricultural purpose, including, but not limited to, animal husbandry, aquaculture, beekeeping, dairying, field crops, forestry, fruit farming, horticulture, market gardening, poultry raising and the operation of glass- or plastic-covered greenhouses.
 - c) **“Applicant”** means the Owner of a Property and includes a Person authorized in writing to act on behalf of the Owner to apply for a Permit.
 - d) **“Application”** means a written submission to request or amend a Permit.
 - e) **“Conservation Authority”** means Lake Simcoe Region Conservation Authority (LSRCA), Toronto Region Conservation Authority (TRCA) and Nottawasaga Valley Conservation Authority (NVCA).
 - f) **“Condition(s)”** means the mandatory performance requirements outlined in a Permit or Order and may include the requirement for monetary deposits or securities in connection with the Application.
 - g) **“Contaminant”** means any solid, liquid, gas, odor, 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) "**Council**" means the Council of The Corporation of the Township of King.
- i) "**Director**" means the Director of Engineering, Public Works and Building of the Township (or any successor job title) designated to have responsibility for this By-law and may include any Person authorized by the Director to carry out any of the powers or duties of the Director, pursuant to this By-law.
- j) "**Drainage**" means the movement of surface water, whether by way of the natural characteristics of the ground surface or by artificial means.
- k) "**Fill**" means any type of material that can be removed from (cut) or placed on (in-fill) land including but not limited to, the following:
- i. "Aggregate" means a collective term for the mineral materials such as sand, gravel and crushed stone that can be used with a binding medium to form compounds such as concrete. Aggregates can either be natural or manufactured. ~~and excludes asphalt which can be placed on surface but not below Grade;~~ **Amended by By-law 2024-034**
 - ii. ~~"Clean concrete and brick" mean concrete, brick, block and other silica-based construction materials that are free of Contaminants;~~ "Clean concrete and brick" means concrete, brick, patio pavers, block and other silica-based construction materials that are free of Contaminants;" **Amended by By-law 2023-050**
 - iii. "Compost" means a mixture of various decaying organic substances, such as dead leaves or manure, used for fertilizing soil;
 - iv. "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;
 - v. "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 R.R.O. 1990, Regulation 347 (Environmental Act)*;
 - vi. "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 No. 10 sieve;
 - vii. "Sod" means the upper stratum of soil bound by grass and plant roots into a thick mat (turf);
 - viii. "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 No. 10 sieve
 - ix. "Topsoil" means those horizons in a soil profile, commonly known as the "O" and the "A" horizons, containing organic material and includes deposits of partially decomposed organic matter such as peat.
 - x. "Asphalt" means a mixture of dark bituminous pitch with sand or gravel, used for surfacing roads, driveways and paths, which may include, without limitation, loose or recycled material or a contiguous surface. **Amended by By-law 2023-050**
 - xi. "Artificial Turf" means any surface synthetic fibers made to resemble turf or other grass-like surface and used as a surface cover. **Amended by By-law 2023-050**
- l) "**Grade**" at any point on the land means the elevation of the ground surface of the land; and

- i. "Approved Grade" means the final elevation of the ground surface following Site Alteration or Movement of Fill as approved by the Director in accordance with this By-law;
 - ii. "Existing Grade" means the elevation of the existing ground surface prior to any Site Alteration and Movement of Fill, including the natural Grade prior to human activities or the Grade previously legally established such as a former Approved Grade; and
 - iii. "Unapproved Grade" means the elevation of the ground surface that is not an Existing Grade or Approved Grade.
- m) "**Guidelines**" means the Application, supporting documentation and Conditions requirements for a Permit, as determined by the Director from time to time, to be used for the purpose of administering this By-law. Without limiting the generality of the foregoing, the Guidelines may require the posting of deposits and/or securities in connection with the Application. Guidelines may be posted at www.king.ca.
- n) "**Highway**" means a common and public highway and includes a street, bridge or other structure forming part of a highway over or across which a highway passes and includes the whole of a road allowance under the jurisdiction of the Township.
- nnn) "Hard Landscaping" means any surface covering of land that has limited permeability and restricts the infiltration of water into the natural environment, including but not limited to any building or structure with a rooftop, porch, paved roadway, interlocking brick, pool decking, permeable pavers, patio pavers, artificial turf, compacted gravel, asphalt or concrete surface, or parking area. Hard Landscaping excludes pools, sod, soil, river rock, or other horticultural elements." **Amended by By-law 2023-050**
- o) "**Invasive Species**" means Invasive Species as defined in the *Invasive Species Act, 2015*, S.O.2015, c.22 as may be amended.
- ooo) "Low Impact Development" means systems that preserve or restore the existing drainage and water balance conditions by infiltration and groundwater recharge, evapotranspiration, and reducing runoff volume and flow rates." **Amended by By-law 2023-050**
- p) "**Large Site Alteration**" means any Site Alteration that does not meet the definition of a Minor Site Alteration or a Small Site Alteration.
- ppp) "Qualified Professional" means an individual certified to perform the works by their accredited governing association, including but not limited to, Professional Engineers Ontario, Ontario Association of Certified Technicians and Technologists, Ontario Association of Landscape Architects, and the Association of Ontario Land Surveyors." **Amended by By-law 2023-050**

- q) **“Minor Site Alteration”** means a one-time maximum cumulative volume of Site Alteration per Property based on the area of Property suitable for Site Alteration (the Property area excluding buildings, structures and fixed features) calculated as follows: Area of Property suitable for Site Alteration in hectares x 200 m³ /hectare (approximately 20 triaxle truckloads) of Site Alteration, up to a maximum area of Property suitable for Site Alteration of 1.0 hectares. The maximum volume is a one-time maximum cumulative allowance. Any Site Alteration that exceeds the maximum one-time cumulative volume is prohibited without a Permit. Once this cumulative volume has been reached regardless of the timeframe over which it occurred no further Site Alteration is allowed without a Permit.

The maximum volume calculation excludes any Site Alteration conducted under the approval of any other legal instrument of the Township such as a Building permit or Swimming Pool Permit;

qqq) “Villages” means the areas shown in Appendix A.” **Amended by By-law 2023-050**

- r) **“Movement of Fill”** means any non-natural transfer of Fill from one location to another of any distance except Fill that is transported through the Township and is always contained within the transport vessel.

rrr) “Residential Lot” means a lot where the principal use is residential, and where the lot contains a single detached dwelling, semi detached dwelling or townhouse dwelling. **Amended by By-law 2023-050**

- s) **“Normal Farm Practice”** means a practice that,

(a) is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances, or

(b) makes use of innovative technology in a manner consistent with proper advanced farm management practices.

- t) **“Officer”** means a By-law Enforcement Officer, or other individual authorized by the Township to enforce the Township by-laws and may include his/her designate, a peer review consultant or other technical specialist, if designated by the Director under this By-law.

- u) **“Ontario Regulation 153/04”** means *Ontario Regulation 153/04 (Records of Site Condition — Part XV.1 of the Environmental Protection Act.)*

- v) **“Ontario Regulation 406/19”** means *Ontario Regulation 406/19 (On Site and Excess Soil Management) under the Environmental Protection Act.*

- w) **“Order”** means an Order issued under this By-law.

- x) **“Owner”** means the registered Owner(s) of the Property.

- y) **"Permit"** means a formal authorization issued by the Township under this By-law.
- z) **"Person"** includes individuals, sole proprietorships, partnerships, corporations, trustees, agents, or legal representatives.
- aa) **"Property"** means land including all buildings and structures on the land.
- bb) **"Public Information Centre"** means an open meeting to which all members of the public are invited, for the purpose of informing the public and receiving comments regarding a proposed Site Alteration.
- cc) **"Qualified Person"** means a person who meets the qualifications as set out in Section 5 or 6 of *Ontario Regulation 153/04* (Records of Site Condition - Part XV.1 of the *Environmental Protection Act*).
- dd) **"Site"** means the lot or lots of a Property altered or proposed to be altered by means of a Site Alteration.
- ee) **"Site Alteration"** means, but is not limited to, any alteration to the Existing Grade of a Property-through the removal, placing, relocation or Movement of Fill.
- ff) **"Site Alteration and Fill Management Plan"** means a document prepared by, or on behalf of an Owner in accordance with the Guidelines detailing such things as current Site conditions, methodology, Existing Grade, Approved Grade and impact mitigation measures.
- gg) **"Small Site Alteration"** means any Site Alteration that does not meet the definition of a Minor Site Alteration and is less than 1,000 m³ of total Site Alteration (approximately 100 triaxle truckloads) in any 12-month period.
- hh) **"Temporary Fill Storage Site"** means any Property where Fill is stored above the Existing Grade on a temporary basis as part of the activities of a licensed business.
- ii) **"Temporary Storage of Fill"** means the storage of Fill at a Temporary Fill Storage Site above Existing Grade for a period of time determined by the activities of the licensed business with the expectation that the business involves the regular Movement of Fill on to and off the Site in a manner that results in no Fill being stored longer than 18 months.
- jj) **"Tree"** means any species of woody perennial plant including its root system that has reached or can reach a height of at least 4.5 metres at physiological maturity.
- kk) **"Township"** means The Corporation of the Township of King and includes the geographical area within the Township.

- ll) **"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.
- mm) **"Zoning By-law"** means Township's Comprehensive Zoning By-law, as applicable and amended from time to time.

3 PROHIBITIONS

- 3.1 No Person shall conduct, undertake, cause, permit or carry out a Site Alteration on any Property within the Township without first obtaining a Permit, unless otherwise exempt as set forth in this By-law.
- 3.2 No Person shall have, or allow to remain, Fill on that Person's Property that is not approved through a Permit, whether or not the Fill was placed there while the Person was the Owner of the Property.
 - 3.2.1 No residential lot containing a single detached or semi-detached dwelling located in the Villages shown in Appendix 'A' to this By-law may contain more than 60% Hard Landscaping calculated cumulatively over the entire lot." **Amended by By-law 2023-050**
 - 3.2.2 No residential lot containing a townhouse dwelling located in the Villages shown in Appendix 'A' to this By-law may contain more than 80% Hard Landscaping calculated cumulatively over the entire lot. **Amended by By-law 2023-050**
 - 3.2.3 Every person to whom a Permit is issued shall comply with the provisions and conditions of a permit. **Amended by By-law 2024-034**

Responsibility for Other Obligations

- 3.3 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 obligations.

Trees

- 3.4 No Person shall conduct, undertake, cause, permit or carry out a Site Alteration that could injure or destroy a Tree except in accordance with The Regional Municipality of York Forest Conservation By-law.

Groundwater

- 3.5 No Person shall conduct, undertake, cause, permit or carry out a Site Alteration that may adversely affect the quality or quantity or 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.

Drainage / Watercourse

- 3.6 No Person shall conduct, undertake, cause, permit or carry out a Site Alteration that could adversely affect any Watercourse or Drainage on any Property without prior written approval from the Director.
 - 3.6.1 No person shall install, have or allow to remain Hard Landscaping within 0.6 metres of the property line without prior written approval of the Director." **Amended by By-law 2023-050**

Unapproved Grade

- 3.7 No Person shall conduct, undertake, cause, permit or carry out a Site Alteration that will result in an Unapproved Grade.

Adverse Effect

- 3.8 No Person shall conduct, undertake, cause, permit or carry out a Site Alteration that will, or can be reasonably expected to, result in an Adverse Effect.

Ontario Regulations

- 3.9 No Person shall conduct, undertake, cause, permit or carry out Site Alteration 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.

By-laws, Acts and Plans

- 3.10 No Person shall conduct, undertake, cause, permit or carry out Site Alteration on any Property unless the activity is in accordance with:
- a) The Zoning By-law;
 - b) Noise By-law;
 - c) Property Standards By-law;
 - d) Clean Yards By-law;
 - e) The *Greenbelt Plan*;
 - f) The Oak Ridges Moraine Conservation Plan (ORMCP);
 - g) The requirements of a Conservation Authority; and
 - h) All other statutes, regulations, policies and By-laws.

4 EXEMPTIONS

- 4.1 Notwithstanding Section 3 of this By-law, this By-law does not apply to:
- a) Activities or matters undertaken by the Township, The Regional Municipality of York, a Conservation Authority, the Provincial government, or the Federal government;
 - b) In accordance with Section 142 (5) of the *Municipal Act, 2001, S.O.2001*, this By-law does not apply to;

(a) activities or matters undertaken by a municipality or a local board of a municipality;

(b) 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;

(c) *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;*

(d) *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;*

(e) *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;*

(f) *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; or

(g) *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*

(h) Residential lots in the Villages as shown on Appendix 'A' may be exempted from the Hard Landscaping provisions set out in Section 3.2.1 and Section 3.6.1 of this By-law, where such lot has received approval of a Minor Variance under Section 45 of the Planning Act from any minimum pervious surface provisions of the Township's Zoning By-laws. **Amended by By-law 2023-050**

(i) Residential lots in the Villages as shown on Appendix 'A' that do not meet the maximum Hard Landscaping provisions set out in Section 3.2.1 and Section 3.6.1 of this By-law but were in compliance with all applicable provisions of the Township's Zoning By-law prior to the passing of this By-law shall be deemed as a legal non-conforming lot. **Amended by By-law 2023-050**

Exception

A by-law respecting the removal of topsoil does not apply to the removal of topsoil as an incidental part of a normal agricultural practice including such removal as an incidental part of sod-farming, greenhouse operations and nurseries for horticultural products.

Exclusion

The exception in respecting the removal of topsoil as an incidental part of a normal agricultural practice does not include the removal of topsoil for sale, exchange or other disposition.

- c) 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; and
- d) 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.

5 REQUIREMENTS FOR ISSUANCE OF A PERMIT

Exceptions and Waiver

- 5.1 ~~Despite section 3.1, a Permit is not required in the following situations:~~
 Despite Section 3.1 and Section 3.2.1, a Permit is not required in the following situations: **Amended by By-law 2023-050**

Another Legal Approval

- ~~a) When another legal instrument of the Township, such as a Planning approval, a building permit, or legal agreement with the Township includes a clause specifically waiving the requirement for a Permit, including:

 - ~~i. Construction or demolition of a Building and minor related works adjacent to the building footprint pursuant to a building permit which has been issued by the chief building official; and~~
 - ~~ii. Any Filling of an excavation to the elevation of Existing Grade following the demolition or removal of a Building for which a demolition permit has been issued by the chief building official, or for which no demolition permit is required under the *Building Code Act, R.S.O. 1992, c.23*.~~~~

- (a) Subject to section 5.1.1 of this By-law, when another legal instrument of the Township, such as a Planning approval, a Building Permit, a Pool Permit, or legal agreement with the Township includes a provision specifically waiving the requirement for a Permit, including: **Amended By-law 2024-034**
 - i. A grading plan, approved by the Township’s Director of Public Works, associated with the construction of a building, accessory structure, addition and/or pool.
 - ii. Any Filling of an excavation to the elevation of Existing Grade following the demolition or removal of a Building for which a demolition permit has been issued by the Chief Building Official of the Township, or for which no demolition permit is required under the *Building Code Act, R.S.O. 1992, c.23*.
 - iii. An exceedance of the maximum Hard Landscaping permissions in Sections 3.2.1 and/or 3.6.1 of this By-law, as approved in writing by the Township’s Director of Public Works based on an application which includes:
 - a. A grading and drainage site plan, prepared and stamped by a Qualified Professional; and
 - b. A stormwater evaluation, including calculations and details to support the use of mitigation measures including Low Impact Development, prepared and stamped by a Qualified Professional.

- c. A post construction stamped certification by a Qualified Professional that the works have been completed and function as approved.

Amended by By-law 2023-050

Provisions and Conditions of Approval to Another Legal Instrument

- 5.1.1 Notwithstanding Section 5.1, where a Permit is not required under this By-law in accordance with Section 5.1 (a) above, an Owner shall comply with any provisions or conditions imposed under the legal instrument referred to in Section 5.1 (a) above, including but not limited to approved lot grading, erosion and sediment control and stormwater management. **Amended by By-law 2024-034**

Normal Farm Practice

- b) Normal Farm Practice;

Roads and Highways

- c) Site Alteration that is an incidental part of the construction or reconstruction of any public Highway, or underground service;

Temporary Fill Storage

- d) Temporary Fill Storage Sites (such as a garden center, contractors' yard, aggregate distribution yard, Fill storage yard or similar facility and could include a Soil Bank Storage Site but not a Soil Processing Site) where:
 - i.. There is no permanent alteration to Existing Grade;
 - ii. The activities comply with Ontario Regulation 406/19 On-Site and Excess Soil Management;
 - iii. There is no Adverse Effect;
 - iv. Site Alteration in the form of Temporary Storage of Fill occurs above Existing Grade;
 - v. Any Fill does not include Liquid Soil;
 - vi. The activity that involves the Temporary Storage of Fill requires a Business License;
 - vii. The Property is zoned for the activity that involves the Temporary Storage of Fill;
 - viii. The period of storage is determined by the activities of the licensed business with the expectation that the business involves the regular Movement of Fill on to and off the Site in a manner that results in no year over year net increase in Fill volume storage above Existing Grade; and,
 - ix. The Owner can provide records to the satisfaction of the Township that the above noted conditions are being met.

Permit Waiver

- f) When a Permit waiver is provided by the Director in writing.

By-law Requirements when Permit Waived

- 5.2 Where the requirement for a Permit is waived in accordance with the provisions of Section 5.2 all other Sections of the By-law except, 5.3 through 5.7 and Section 6, of the By-law remain applicable.

Large Site Alteration

- 5.3 In the case of a proposed Large Site Alteration, at the discretion of the Director based on the size and potential issues related to the Application, additional requirements may be imposed including, but not limited to:
 - a) A Site Alteration and Fill Management Plan prepared by a Qualified Person;
 - b) – A Public Information Centre;
 - c) – A legal agreement with the Township; and,
 - d) Approval of Council.

Complete Application

- 5.4 Any Person applying for a Permit shall complete an Application for a Permit in the form established by the Director and shall submit the Application along with all applicable fees and documentation. The required documentation shall be outlined on the Application form and included in the Guidelines.
- 5.5 Notwithstanding anything else in this By-law, no Permit will be issued until the Director is satisfied that a completed Application, including all supporting documentation, and information required as identified in the Guidelines, including fees and deposits, has been submitted and approved.

Public Meeting

- 5.6 At the discretion of the Director the Applicant may be required to conduct a Public Information Centre and/or a submission to Council.
- 5.7 In the case of a Public Information Center all comments and concerns received must be addressed by the Applicant and submitted to the Director for evaluation as part of the Application.

Fees and Charges

- 5.8 Fees as referenced under this By-law are payable under the Township Fees and Charges By-Law including but not limited to administration and enforcement activities.

6 ABANDONMENT, EXPIRY, RENEWAL, TRANSFER, REVOCATION, AMENDMENT AND CLOSURE OF PERMITS

Abandoned

- 6.1 An Application for a Permit will be deemed abandoned and the Application and respective file will be closed, where a period of twelve (12) months has elapsed during which:
 - a) The Person applying for a Permit has not provided all information, documents, fees and deposits as required by the Director including any new submissions that may be required;

- b) The Application has been placed on hold or in abeyance; or
- c) The Application has not seen meaningful progress through submissions towards the issuance of a Permit.

Expiry

- 6.2 A Permit for a Small Site Alteration will be issued for a period of one year and expires on the date set out in the Permit, unless otherwise specified as a Condition of the Permit.
- 6.3 A Permit for a Large Site Alteration will have no expiry date unless specified as a Condition of the Permit.
- 6.4 If a Permit issued for a Large Site Alteration has no expiry date, such Permit will be subject to an annual review conducted by the Director to determine whether such Permit should be amended, renewed or revoked.
- 6.5 Every Owner shall satisfy all Conditions of the Permit, even if the Permit is expired, and shall also provide the Township with:
 - a) A letter of acknowledgment of the filing of a Record of Site Condition (in accordance with Ontario Regulation 153/04, as amended);
 - b) A completed final topographic survey confirming the Approved Grade; and
 - c) Proof of completion of all Permit Conditions.

Transfer

- 6.6 If title to the Property for which a Permit has been issued is transferred while the Permit is in effect, the Permit shall be automatically revoked unless the new Owner, prior to the time of the transfer, provides the Township with an undertaking, to the satisfaction of the Director, to comply with all Conditions under which the Permit was issued.

Revocation

- 6.7 The Director may at any time and without notice revoke a Permit for any of the following reasons:
 - a) It was obtained based on mistaken, false or incorrect information;
 - b) It was issued in error;
 - c) The Property Owner and/or Permit holder requests in writing that it be revoked;
 - d) The Permit holder has failed to comply with any of the Conditions of the Permit; or
 - e) The Permit holder is unwilling or unable to comply with the Conditions of an Order.

Amendment

- 6.8 An Applicant or Owner may submit a request to the Director for an amendment to a Permit based on proposed changes to the details of the initial Application as reflected in the Conditions.

Renewal

- 6.9 An Applicant or Owner may submit a request to the Director for a renewal to a Permit if the only change from the initial Application and Conditions is the timeline and expiry date.

Closure

- 6.10 A Permit is considered closed when all the Conditions and Orders related to the Permit have been fulfilled to the satisfaction of the Director, at which time all unexpended deposits and securities held by the Township shall be released to the Applicant unless an agreement specifies otherwise.

7 ENFORCEMENT

Officers and Director

- 7.1 This By-law may be enforced by Officers and/or the Director. Without limiting/restricting any other power, duty or function granted by this By-law, Officers and/or the Director may: give direction, issue an Order 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.
- 7.2 An Officer and/or the Director may issue an Order under this By-law to any Person believed to be contravening or have contravened any provision of this By-law.
- 7.3 An Order may include but is not limited to:
 - a) Immediately desist from the activity constituting or contributing to such contravention;
 - b) Leave the Property and cease the contravening activity immediately; and,
 - c) Take immediate action to mitigate and/or remediate the impacts of the activity.

Entry and Inspection

- 7.4 Officers and the Director may, at any reasonable time:
 - a) Enter and inspect Property to determine compliance with the provisions of this By-law, or any Condition of a Permit, or Order issued under this By-law. This power of entry does not allow entry into any dwelling;
 - b) Enter the Property to collect information, take photographs, videos, measurements, readings and samples (air, surface water, groundwater, soil, materials, etc.);
 - c) Require the production of copies of reports, manifests or other documentation for the purposes of auditing any Site Alteration or compliance with the Conditions of a Permit, agreement or Order; and
 - d) Require the production of documents for inspection or things relevant to the inspection, inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts.

Duty to Identify

- 7.5 Where an Officer has reasonable grounds to believe that an Offence has been committed by a Person, the Officer may require the name, address and proof of identity of that Person, and the Person shall supply the required information.

Obstruction

- 7.6 No Person shall hinder or obstruct or attempt to obstruct the Director or Officer, or person in the discharge of duties under this By-law as required by the Director or Officer in order to bring a Property into compliance with this By-law or an Order issued under this By-law.

- 7.7 No person shall provide false information in any statement, whether orally, in writing or otherwise, made to an Officer or the Director.
- 7.8 No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Officer or Director who is exercising a power or performing a duty under this By-law.

Obey Order

- 7.9 No Person shall fail to obey an Order issued under this By-law.

Presumption

- 7.10 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.

8 ORDERS

Contravention

- 8.1 If an Officer or the Director is satisfied that a Person has undertaken, caused, permitted, allowed or performed a Site the Alteration in contravention of the provisions of this By law, the Conditions of a Permit, and/or an agreement pursuant to this By-law, the Officer may issue an Order requiring work to be done to correct the contravention.
- 8.2 Orders issued shall contain the municipal address and/or the legal description of the Property, and shall set out:
 - a) Reasonable particulars of the contravention, the work to be done, any work or action required to cease or be undertaken to rectify the contravention, and the period within which there must be compliance with the Order; and
 - b) Notification that if the work or action is not done, or ceased, as the case may be, in compliance with the Order within the period specified, the Township may have the work done at the expense of the Owner and seek penalties as outlined in this By-law.

Order Served

- 8.3 Orders issued by an Officer under this By-law shall be served as follows:
 - a) Personally, or by prepaid registered mail to the last known address of the Owner, the Permit holder and any other Person to whom the Order is issued; or
 - b) If the Township is unable to effect service on the Owner, a placard containing the terms of the Order may be placed in a conspicuous place on the Property and the placing of the placard shall be deemed to be service of the Order.

Order Deemed to be Served

- 8.4 If an Order is served on a Person by registered mail, it shall be deemed to have been served on the Person on the 5th day after mailing of the order, which deemed service may be rebutted by the Person proving, on a balance of probabilities, that they did not receive the order.
- 8.5 An Order may also be issued to a new Owner in any case where ownership of the Property has changed but the offence continues or remains.

9 WORK DONE BY THE TOWNSHIP

Remedial Action

- 9.1 If the Conditions of an Order made under this By-law are not complied with within the period specified in the Order, in addition to all other remedies it may have, the Township may undertake any activity to fulfill any of the Conditions of a Permit or Order at the Owner's expense, and may enter upon Property at any reasonable time for this purpose..

10 PENALTY AND OFFENCE

Offence

- 10.1 Every Person who contravenes a provision of this By-law, a Condition of a Permit or an Order issued under this By-law, is guilty of an Offence.
- 10.2 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.

Administrative Penalty

- 10.3 Instead of laying a charge under the *Provincial Offences Act, R.S.O. 1990, c. P. 33*, as amended, for a breach of any provision of this By-law, an officer may issue an administrative penalty to the person who has contravened this By-law.
- 10.4 The Officer has the discretion to either proceed by way of an administrative penalty or a charge laid under the *Provincial Offences Act, R.S.O. 1990, Chapter P.33*. If a person is required by a municipality to pay an administrative penalty in respect of a contravention of this By-law, the person shall not be charged with an offence in respect of the same contravention.
- 10.5 The amount of the administrative penalty for a breach of a provision of this By-law, issued under this By-law, is fixed as set out in the Township's Administrative Penalty By-law as amended, or any successor By-law.
- 10.6 A person who is issued an administrative penalty shall be subject to the procedures as provided for in the Township's Administrative Penalty By-law as amended, or any successor By-law.
- 10.7 An administrative penalty imposed on a person pursuant to this By-law that is not paid within 15 days after the day it becomes due and payable, constitutes a debt of the person to the Township and may be added to a municipal tax roll and collected in the same manner as municipal taxes.

Penalties

- 10.8 Every Person who is guilty of an Offence under this By-law shall be subject to the following penalties:
- a) Upon a first conviction, to a fine of not less than \$250 and not more than \$50,000;
 - b) Upon a second or subsequent conviction for the same Offence, to a fine of not less than \$500 and not more than \$100,000;
 - c) Upon conviction for a continuing Offence, to a fine of not less than \$500 and not more than \$10,000 for each day or part of a day that the Offence continues. The total of the daily fines may exceed \$100,000; and

- d) Upon conviction of a multiple Offence, for each Offence included in the multiple Offence, to a fine of not less than \$10,000 and not more than \$100,000.
 - e) The total of all fines for each included Offence is not limited to \$100,000.
- 10.9 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.

Cost Recovery

- 10.10 The Township may recover its costs of remedying a violation of this By-law by invoicing the Owner, by instituting court proceedings or by adding the cost, including interest, to the tax roll in the same manner as municipal taxes and the exercise of any one remedy shall not preclude the exercise of any other available remedy.

11 APPEAL

- 11.1 A Person who considers themselves aggrieved by an Order made by an Officer may appeal the Order to the Director within 20 days after the date on which the Order is made. The appeal shall be in writing and shall contain the Person's name, address, email address (if applicable), phone number and details concerning the reason for appealing the Order and the remedy being requested.
- 11.2 An appeal shall be served by prepaid ordinary or, registered mail, courier, or email addressed to the attention of the Director.
- 11.3 An appeal will be heard only if filed/received per the above mentioned time period and all applicable fees paid.
- 11.4 The appeal shall be heard in writing. The Director may also arrange for an oral hearing to be held if the Director, in his/her sole and absolute discretion, considers it necessary to do so.
- 11.5 An appeal does not stay the operation of the Order appealed from, but the Director may, on such terms as are just, stay the operation of the Order until the disposition of the appeal.
- 11.6 On an appeal, the Director may request and require production of any further documents, reports and information to be provided by the person appealing the Order, from the Officer who issued the Order, and from any other person who may have knowledge or information relevant to the Order. The Director may consider any issue relevant to the issuance of the Order, including legal issues and interpretation of the By-law, and may consult with legal counsel in determining the validity of the Order.
- 11.7 The Director may affirm, vary or rescind the Order and take any other action that the Director considers the person ought to take in accordance with this By-law and for this purpose, the Director may substitute his/her opinion for that of the Officer. Any decision made by the Director shall be made in writing and shall be delivered by ordinary prepaid registered mail, courier, email, or facsimile transmission to the person appealing the Order and the Officer who issued the Order.

12 TRANSITION PROVISION

- 12.1 Notwithstanding the repeal of By-laws 97-84, 99-111, 2002-58, 2002-98 and 2005-74 and all amendments thereto, those By-laws shall continue to apply to any acts, omissions or occurrences, and to any Offences that took place prior to the enactment of this By-law.

13 EFFECTIVE DATES & REPEAL OF PREDECESSOR BY-LAW

- 13.1 This By-law Repeals 97-84, 99-111, 2002-58, 2002-98 and 2005-74.
13.2 This By-law shall come into force and effect upon its passage, at which time By-law 97-84 and all amendments thereto shall hereby be repealed.

READ a FIRST and SECOND time this 26th day of April, 2021

READ a THIRD time and FINALLY PASSED this 26th day of April, 2021.

Steve Pellegrini
Mayor

Kathryn Moyle
Director of Corporate Services
Township Clerk

*(Ref.: Growth Management Services and Public Works Departments
Joint Report No.: JR-2021-01, C.O.W. April 26, 2021)*