

The Corporation of the City of Owen Sound

By-law No. 2022-027

A By-law to regulate site alteration, including the removal, placing or dumping of fill, grading, and the destruction and injuring of trees in the City of Owen Sound

WHEREAS section 142 of the Municipal Act, 2001, S.O. 2001, c. 25 (the "Municipal Act"), provides that a local municipality may pass by-laws to prohibit or regulate the placing or dumping of fill, the removal of topsoil and the alteration of the grade of land, to require that a permit be obtained for the placing or dumping of fill, the removal of topsoil and the alteration of the grade of land and for imposing 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 135 of the Municipal Act provides that a local municipality may pass by-laws to prohibit or regulate the destruction or injuring of trees in the City; and

WHEREAS sections 8, 9 and 11 of the Municipal Act permit a municipality to pass by-laws necessary or desirable for municipal purposes, and paragraphs 11(2) 5, 6 and 8 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 section 425 of the Municipal Act permits a municipality to pass by-laws providing that any person who contravenes any by-law of the municipality enacted under the statute is guilty of an offence; and

Whereas subsection 426(4) of the Municipal Act provides that any person that hinders or obstructs, or attempts to hinder or obstruct, any person who is exercising or performing a duty under a by-law enacted under the statute is guilty of an offence; 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 statute 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 Section 446 of the Municipal Act provides a municipality with 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; and

AND WHEREAS Council for the Corporation of the City of Owen Sound deems it in the public interest to enact a by-law prohibiting or regulating

injuring trees, the placing or dumping of Fill, the removal of Topsoil, and the Alteration of the Grade of the land;

WHEREAS on Month XX, YYYY the Council for the City of Owen Sound passed Resolution No. XXX directing staff to bring forward this by-law for enactment, in consideration of Staff Report XXX, presented to the Community Services Committee on Month XX, YYYY; and

WHEREAS Council for the City of Owen Sound deems it expedient and in the public interest to enact this By-law.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF OWEN SOUND HEREBY ENACTS AS FOLLOWS:

Part I. Short Title, Purpose and Scope

Short Title

1. This by-law shall be known as the "Site Alteration By-law".

Purpose

This by-law has been enacted to ensure that:

- a. existing drainage patterns are maintained, and erosion and sedimentation are prevented;
- b. changes to drainage or grade are appropriate to protect natural heritage features and archaeological resources;
- c. interference and damage to watercourses or water bodies are prevented;
- d. groundwater and surface water quality is maintained;
- e. there is no discharge of a contaminant into the natural environment that causes or may cause an adverse effect and that degradation of the pre-existing topsoil and ground water quality at the site and on adjacent properties is prevented;
- f. Haul Routes for the transportation of fill and topsoil authorized for placement, dumping or removal will be designated to and/or from a site by the Director to minimize damage to the City's roads and minimize interference and/or disturbance to the City's residents and businesses;
- g. disturbance to landform characteristics is kept to a minimum;
- h. the destruction or injuring of trees is prohibited in the absence of a tree inventory and tree preservation, hoarding and/or replacement plan; and
- i. the proponent of the site alteration project pays for its costs.

Scope

2. This By-law shall apply to all Site Alterations within the City, or unless specifically excluded pursuant to this By-law.

Part II. Interpretation

Headings

3. The division of this by-law into parts and the insertion of headings are for convenient reference only and shall not affect interpretation of the by-law.

References to Applicable Law

4. All references to applicable law are ambulatory and apply as amended from time to time.

Definitions

5. For the purposes of this by-law:

“Arborist” means a person who has graduated from an accredited college or university with a diploma or degree in Urban Forestry, Arboriculture or equivalent, or satisfies at least one of the following requirements:

- a. is certified by the Ontario Training and Adjustment Board or the International Society of Arboriculture;
- b. is currently accepted as consulting arborist with the American Society of Consulting Arborists;
- c. is a Registered Professional Forester (RPF) as defined in the Professional Foresters Act, 2000, S.O. 2000, C. 19; or
- d. has comparable qualifications to those set out under clauses (a) through (c) above and as accepted by the Director.

“Agricultural Lands” includes:

- a. land upon which agriculture is a permitted use pursuant to the applicable zoning by-law(s), and
- b. land which is being used for agriculture at the time of application of a Permit;

“City” means The Corporation of the City of Owen Sound;

“Clearing and grubbing” means the removal of all surface objects, brush, roots and other protruding obstructions, trees and stumps which result in the removal of topsoil or the alteration of grade of the land;

“Conservation Authority” means the Grey Sauble Conservation Authority;

“Commercial Fill Operation” means the removal, placing or dumping of Fill involving remuneration or other compensation paid to an owner of land whether or not the remuneration or compensation paid is the sole reason for the removal, placing or the Dumping of Fill;

“Complete Application” means an application and contents described in Part VII Permit Application and Schedule “A” Minimum Site Alteration Standards of this By-law;

“Council” means the Council of the Corporation of the City of Owen Sound;

“Crown” means the upper part of a tree, which includes the branches and leaves;

“Cut” means the removal of fill from a site and/or the transfer of fill within a site;

“Designated Official” or “Designate” means the Director or their authorized alternate;

“Destroy” means the removal of a tree or harm resulting in the death, ruin, or removal of an irreversible injury that may result from neglect, accident, or design;

“Diameter at Breast Height (DBH)” refers to a point of measurement 1.4 metres from the ground;

“Director” means the Director of Public Works and Engineering and shall include any alternate person authorized by the Director to carry out any of the powers or duties of the Director as a designate pursuant to this By-law.

“Dump”, “Dumped” or “Dumping” means the placing or depositing of fill in a location other than where the fill was obtained and includes the movement and depositing of fill from one location to another on the same property;

“Existing Grade” means the ground surface elevations of lands as it existed prior to grading or the placing or dumping of fill;

“Fill” means any type of material removed from or deposited or placed on lands and, without limiting the generality of the foregoing, includes soil, subsoil, topsoil, stone, mulch, sod, turf, clay, sand, gravel or other such similar material, either singly or in combination thereof to the discretion of the Director;

“Fill Management Plan” means a detailed document approved by the Director that has details on current conditions, existing and proposed grade elevations, how the site alteration activities will be conducted, the final site conditions and the impact mitigation measures to be employed and as further set out in Schedule “C” Fill Management Plan Standards below;

“Finished Grade” means the final elevation of the ground surface of lands upon which fill has been placed;

“Grading” means the activity of moving soils or changing the ground surface on a site to achieve a desired topographical effect;

“Haul Route” means roads designated or approved by the City for the purposes of ingress or egress to a site alteration as a condition of a permit;

“Hydro -Excavation Truck” means any truck that excavates, evacuates, removes or moves fill with water and/or air. The material hauled in a hydro-excavation truck may be referenced as, among other names: slurry, liquid fill, wet fill or fill;

“Lot” means a parcel of land which can be legally conveyed;

“MECP” means the Ministry of the Environment, Conservation and Parks;

“Municipal Law Enforcement Officer” means a person appointed by Council to enforce the provisions of this By-law and a Police Officer;

“Normal Farm Practice” means a practice that is conducted in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations under similar circumstances and includes the use of innovative technology used with advanced management practices;

“Order” means an order issued under this By-law;

“Owner” means the registered owner of land;

“Permit” means a site alteration permit, whether Class 1 or Class 2 (defined herein), issued pursuant to this By-law subject to Part VIII 26 and Part VIII 27, valid for a period of twelve (12) consecutive months;

“Permit, Class 1” means a permit issued on behalf of the City for the alteration of property grades, the placing or dumping of fill, the removal of topsoil;

“Permit, Class 2” means a permit issued on behalf of the City to regulate the possible injury or destruction of trees on property within the City;

“Public Open House” means a meeting that is open to the public for the purposes of Part XI of this By-law;

“Qualified Person” means a person who meets the qualifications as set out in section 5 or 6 of O. Reg. 153/04 - Records of Site Condition - Part XV.1 of the Environmental Protection Act;

“Road(s)” 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 City, County of Grey or Province of Ontario;

“Security” means financial security in the form of a cash deposit or an irrevocable letter of credit to ensure fulfillment of the terms of a permit or to secure the cost of repairing damage to municipal property as a result of work undertaken under a permit, which is posted under this By-law or pursuant to a site alteration agreement;

“Site” means the lot or lots subject to a proposal for site alteration;

“Site Alteration” means any one or combination of the following activities:

- a. the placing/dumping of fill on land;
- b. the removal/cutting of soils from land;
- c. the alteration of the grade of land by any means including placing fill, clearing, grubbing, stripping of topsoil;
- d. the removal/destruction of vegetation including trees;
- e. the compaction of soil or the creation of impervious surfaces; and
- f. another activity deemed to meet the intent of this definition by the Director.

“Site Alteration Agreement” means an agreement between an owner and the City required by the Director as a condition of obtaining a permit under this By-law;

“Site Alteration Plan” means a conceptual document approved by the Director that has details on current conditions, how the site alteration activities will be conducted, the final site conditions and the impact mitigation measures to be employed as further set out in Schedule “B” Site Alteration Plan Requirements below;

“Site Plan” means a set of drawings that clearly indicates the area on the site subject to site alteration along with the property lines of the lot or lots;

“Topsoil” means those horizons in a soil profile, commonly known as “O” and “A” horizons, containing organic material and includes deposits of partially decomposed organic material such as peat;

“Tree” means a plant of any species of woody perennial including its root system, which has a DBH of 100mm or greater;

"Zoning By-law" means a by-law passed under section 34 of the *Planning Act*, R.S.O. 1990, c. P.13, applicable to lands within the City.

Part III. GENERAL PROHIBITIONS

6. Unless otherwise exempt or excepted under this By-law, no person shall cause, permit, perform or carry out site alteration without first obtaining a permit from the City to do so.
7. Unless otherwise exempt or excepted under this By-law, no person shall damage /destroy a tree or permit a tree to be damaged/destroyed without first obtaining a permit from the City to do so.
8. Where a permit has been issued under this By-law authorizing a site alteration, no person shall undertake or permit a site alteration except in accordance with:
 - a. the plans, documents or other material filed in support of the issuance of the permit;
 - b. the conditions attached to the permit;
 - c. compliance with the terms of any agreement with the City entered into under this By-law; and
 - d. the provisions of this By-law.
9. No person shall modify a site alteration approval without the advance authorization of the Director.
10. No person shall operate a commercial fill operation in the City of Owen Sound.
11. In addition to the requirements of this By-law, no person shall remove or dump fill, or cause or permit the removal or dumping of fill unless such fill complies with the Ministry of the Environment, Conservation and Parks standards for clean Fill, as described in the *Environmental Protection Act*, R.S.O. 1990, c.E.19.
12. No person shall import any fill onto any land where the quality of the imported soil is not acceptable for the intended use and betterment of the land.
13. No person shall import any fill onto any property with the use of a hydro excavation truck except where approval has been given by Council.
14. No person shall fail or refuse to obey an order issued under this By-law.
15. No person shall obstruct a Municipal Law Enforcement Officer carrying out an inspection under this By-law.

Part IV. LEGISLATED EXEMPTIONS

16. Section 142 (5) of the Municipal Act exempts the following activities from the prohibitions of this by-law and from the necessity to obtain a site alteration permit:
 - a. public sector related activities or matters undertaken by the City, County of Grey, and Grey Sauble Conservation Authority;

- b. the dumping of fill, removal of topsoil or alteration of the grade of land imposed as a condition after December 31, 2002 to the approval of a site plan, a plan of subdivision or a consent under sections 41, 51 or 53, respectively, of the Planning Act or as a requirement of a site plan agreement or subdivision/severance agreement entered into under those sections;
 - c. the 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 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, S.O. 1998, c. 15, Sched. A, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - e. the dumping of fill, removal of topsoil or alteration of the grade of land undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*, R.S.O. 2990, c.A.8;
 - f. the 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 statute; 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; and
 - g. the 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*, R.S.O. 2990, c.D.17 or the *Tile Drainage Act*, R.S.O. 1990, c.T.8;
17. Section 135 (12) of the Municipal Act, exempts the following activities from the prohibitions of this by-law:
- a. activities or matters undertaken by the City, County of Grey, and Grey Sauble Conservation Authority;
 - b. activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act*, 1994;
 - c. the injuring or destruction of trees by a person licensed under the *Surveyors Act*, 1990 necessary to engage in the practice of cadastral surveying or his or her agent, while making a survey;
 - d. the injuring or destruction of trees 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 injuring or destruction of trees 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 the regulation prior to the enactment of this by-law;

- f. the injuring or destruction of trees 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 injuring or destruction of trees 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, 1990*;
- h. the injuring or destruction of trees 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.

Part V. MUNICIPAL PERMITTING EXCEPTIONS

- 18. Notwithstanding that a permit is not required under Part V of this By-law, every person carrying out a site alteration in the City shall comply with "Minimum Site Alteration Standards" (Schedule 'A') during the site alteration.
- 19. A site alteration permit is not required for the following Class 1 categories of site alteration:
 - a. site alteration necessary for construction, repair or alteration of a building or structure, including an on-site sewage system, driveway, parking pad or pool, pursuant to a valid Building Permit that has been issued by the City for the erection of a building or structure, where the site plan accompanying the building permit application provides sufficient information to ensure that the site alteration proposed therein meets the guidelines established by the Director pursuant to this By-law.
 - b. any filling of an excavation to the elevation of an existing grade following the demolition or removal of a building or structure for which a Building Permit for Demolition has been issued under the *Building Code Act, 1992*, S.O. 1992, c. 23.
 - c. site alteration on lands for the purpose of flood or erosion control to establish finished grade shown on a grading and drainage plan approved by the Grey Sauble Conservation Authority or the City.
 - d. the construction, extension, alteration, maintenance or operation of works under section 28 of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. P.50.
 - e. the activities of a Ministry of the Provincial Government, the Corporation of the County of Grey, Grey Sauble Conservation Authority, any utility company as relates to lands owned by them in the City or activities currently under exemption, related but not limited to the establishment or maintenance of utilities and services, roads, bridges, flood and erosion control facilities, walkways, bicycle paths, fences, retaining walls, steps and lighting.

- f. site alteration that involves the dumping or placing of topsoil on a site for improving the soil capability for agricultural purposes on agricultural lands as part of a normal farm practice.
- g. Site alteration that is:
 - i. determined to be a normal farm practice (including removal of topsoil as an incidental part of sod farming, greenhouse operation and nurseries for horticultural products); and
 - ii. carried out by owners or properties that have an active registration as a “farming business” as defined in the Farm Registration and Farms Organization Funding Act and are in good standing under that statute.
- h. the stockpiling of fill in the ordinary course of the operation of a garden supply establishment that is legally established under the Zoning By-law, provided that such activity does not result in the permanent alteration of the existing grade of the land of the garden supply establishment. For this exemption to apply, the owner must:
 - i. maintain records from the material source sites indicating that the imported material meets the requirements of the site condition standards for agricultural property use; and
 - ii. demonstrate, to the satisfaction of the Director, that the material is being exported regularly and not returning to the same property.
- i. circumstances where the total amount of fill relative to the size of the site is no greater than the following:

Lot Area	Max. Fill Permitted
0.1 hectares or less	10 cubic metres
0.2-0.5 hectares	100 cubic metres
0.6 hectares or larger	500 cubic metres

The maximum volumes noted above are permitted within any twelve (12) month period for betterment of and the permitted use of the site.

- 20. A site alteration permit is not required for the following Class 2 categories of site alteration:
 - a. any lands regulated under the Grey County Forest Management By-law 4341-06, as amended, or its successors as per the Municipal Act section 135(5);
 - b. removal of trees with DBH less than 100 millimeters;
 - c. trees that are identified as dead, diseased, or a safety risk to a property or person following inspection by an Arborist;
 - d. nuisance tree removal as defined in Schedule ‘F’ of this By-law; and
 - e. trees that are removed as part of normal farm practices.

Part VI. ADMINISTRATION

- 21. The Director shall be responsible for the administration of this By-law.

22. Consistent with the intent and provisions of this By-law, the Director is authorized as Council's delegate and has the authority to:
- a. approve, issue, revoke, extend, renew, amend site alteration permits and impose conditions on the issuance of a permit;
 - b. determine and deem an application for permit as abandoned, expired, or closed;
 - c. approve and coordinate any remediation works;
 - d. appoint a peer review consultant or other engineering, scientific and technical experts or to fulfill the role or duties of Municipal Law Enforcement Officer for purposes of enforcement of this By-law, the cost of the specialist is to be borne by the applicant, consistent with the City's Purchasing By-law;
 - e. interpret the intent of the By-law where the type of site alteration proposed is not clearly defined;
 - f. authorize any person to carry out any of the powers or duties of the Director pursuant to this By-law;
 - g. approve forms and documents to be used under this By-law;
 - h. authorize and/or hire such agents, contractors and other persons to perform the work, as required; and
 - i. take any actions or steps incidental to or ancillary to the Director's authority under this By-law.

Part VII. PERMIT APPLICATION

23. The following requirements apply to **Class 1** categories of site alteration:
- a. any site alteration involving fill that exceeds the maximum volumes set out in Part V. subsection 19 (i) is prohibited unless a permit is issued by the Director;
 - b. every owner applying for a permit pursuant to Part III of this By-law shall submit to the Director:
 - i. a completed General Information Planning Application Form A.0 and a completed Site Alteration Application Form C.2;
 - ii. payment of the fee for a permit as set out in the City's 'Fees and Charges By-law', as amended from time to time;
 - iii. a security in an amount satisfactory to the Director; and
 - iv. a certificate of commercial general liability insurance in the owner's name, in the amount of satisfactory to the Director, naming the City as an additional insured party, and maintain said liability insurance for the duration in which the Permit is valid. The certificate and release and indemnity required by Schedule "B" Section 9 (C) shall be in the form prescribed by the Director from time to time.
 - c. for small scale site alteration applications, being fill in the amount of less than one thousand cubic metres (1000 m³) within any twelve (12) month period:

- i. a site alteration plan in accordance with the Site Alteration Plan Requirements as described in Schedule "B" of this By-law and the Minimum Site Alteration Standards as described in Schedule "A" of this By-law to the satisfaction of the Director.
 - d. for large scale site alteration applications, being more than one thousand cubic metres (1000 m³) within any twelve (12) month period:
 - i. a site alteration plan in accordance with the Site Alteration Plan Requirements as described in Schedule "B" of this By-law and the Minimum Site Alteration Standards as described in Schedule "A" of this By-law to the satisfaction of the Director; and
 - ii. a Fill Management Plan in accordance with Schedule "C" of this By-law to the satisfaction of the Director.
24. The following requirements apply to **Class 2** categories of Site Alteration:
- a. any Site Alteration/works whereby three (3) or more trees having 100 mm DBH or greater, or any single tree that is listed as endangered, threatened or special concern species in the Provincial *Species at Risk Acts*, will be be deliberately damaged or planned to be damaged is prohibited unless a Permit is issued by the Director;
 - b. every owner applying for a permit pursuant to Part III of this By-law shall submit a complete application to the Director, including the following:
 - i. a completed General Information Planning Application Form A.0 and a completed Site Alteration Application Form C.2;
 - ii. payment of the fee for a permit as set out in the City's Fees and Charges By-law, as amended from time to time;
 - iii. an arborist report, prepared by a qualified arborist or other qualified professional, including a Tree Inventory and Preservation Study as described in Schedule "D" of this By-law identifying the species, diameter, location, and number of all trees with a DBH measurement equal to or greater than 100 millimetres at breast height;
 - iv. photos of the site and trees affected;
 - v. site plan, including all other trees identified in masses showing the outline of canopy created by the massing in the areas of disturbance on the site;
 - vi. reason for proposed tree injury or destruction; and
 - vii. a Tree Replacement and/or Preservation Plan in accordance with Schedule 'E' of this By-law.

Part VIII. PERMIT ISSUANCE

- 25. The following general provisions apply to the issuance of any permit:
 - a. the Director shall review or cause to be reviewed a complete application for a permit in a timely manner;

- b. the City may engage legal, engineering or other technical consultants deemed necessary by the Director in order to evaluate and/or review studies and/or agreements or to provide assistance to the Director in respect of an application and ensuing site alteration in which case such costs shall be charged back to the owner;
 - c. the issuance of a permit under this By-law does not relieve an owner or any other person from compliance with this By-law or any other applicable law;
 - d. Notice of a permit issuance shall be provided to all adjacent landowners by posting a placard on the lands subject to site alteration and provided to applicable agencies via mail/email;
 - e. where an owner requests a material change to a plan, specification, document or other information following the issuance of a permit, the Director may require additional payment of one-half of the original permit fee and submission of revised documentation, which shall be approved by the Director prior to any continued work;
 - f. notwithstanding the issuance of a permit, an applicant or owner shall comply with this By-law. Where non-compliance with this by-law is discovered following issuance of a permit, the Director may revoke it, and the permit holder shall forthwith cease all work, which was the subject of the revoked permit;
 - g. where a permit has been issued, an applicant or authorized agent shall request the Director to make inspections at the commencement and completion of the work and shall request such further inspections as may be required by the Director or the conditions of the permit;
 - h. a permit shall be valid for a period of one (1) year from the date of issuance;
 - i. the Director shall not issue a subsequent permit or accept an application for a site alteration within a twelve (12) month period of the expiry date of any previous permit;
 - j. in addition to a permit, the Director may require the applicant to enter into a site alteration agreement, which may be required to be registered on title of the lands, and which may include a requirement to provide additional security;
 - k. Class 2 Permits are subject to the conditions of the City Tree Replacement Ratio Policy as described in Schedule "E" and the fees associated with such policy within the City's Fees and Charges By-law.
26. The Director may issue a permit for Class 1 categories of site alteration where:
- a. the person has fulfilled all of the requirements of this By-law, including the payment of all applicable fees, charges and security;
 - b. the site is not within an area where the site alteration is prohibited under this By-law or any other applicable law;
 - c. the issuance of the permit will result in maintaining or improving the overall agricultural capability of the site or is incidental to a normal farm practice;

- d. the issuance of the permit is appropriate for the development and use of the site and where the general intent and purpose of the Zoning By-law, the Official Plan, and this By-law will be maintained.
27. The Director may issue a permit for Class 2 categories of site alteration where:
- a. the person has fulfilled all the requirements of this By-law including the payment of all applicable fees, charges and security;
 - b. the site is not within an area where the site alteration is prohibited under this By-law or any other applicable law; and
 - c. the work proposed under the permit does not involve contravention of the *Endangered Species Act, 2007, S.O. 2007, c.6, Environmental Protection Act, R.S.S. 1990, c., the Ontario Heritage Act R. S. O. c. 0.18, zoning or land use by-laws, the Building Code Act S. O. 1992 c.23, the Planning Act, R.S.O. 1990, c. p.13, Conservation Authorities Act, R.S.O. 1990, c. C.27, Municipal Act, 2001 S. O. 2001, c.25, the Drainage Act, R.S.O. c., and the Federal Fisheries Act, R.S.C. 1985, c. F-14 and where such acts or by-laws require approval such approval is obtained, and proof submitted or will be obtained and submitted before the work under the permit is carried out.*

Part IX. POWERS OF DELEGATION

28. For the purposes of this By-law, the delegate is the Director of Public Works and Engineering as defined in Part II.
29. The following principles apply to delegation and delegated approvals:
- a. all relevant local and provincial legislation and policy continue to apply. Delegation will not result in non-compliance with any in-force and applicable City policy or Provincial regulations;
 - b. staff shall summarize all applications being considered by the staff delegate for the information of City Council prior to consideration of the permit;
 - c. City Council shall be notified of the decision of the delegate, including any conditions of approval;
 - d. the delegate, Council, or the applicant may direct that Council consider any given site alteration application;
 - e. the delegate is authorized to refuse, approve, or provisionally approve site alteration applications;
 - f. the delegate and City Manager are authorized to execute site alteration agreements approved through delegation, and any other documents required to implement the conditions of approval; and
 - g. where Part XI applies for Council consideration of a Permit Application, the Director shall continue to oversee administration of this By-law.

Part X. RIGHTS OF APPEAL

30. Where the Director issues or refuses to issue a permit, the applicant, any adjacent landowner who considers themselves aggrieved or agencies having jurisdiction within the City may appeal the decision of the Director to the Committee of Adjustment by filing a notice of

appeal in writing to the City Clerk within twenty (20) days of the date of the decision, which shall contain:

- a. the person's name, address, email address (if applicable), phone number; and
 - b. details concerning the reason for appealing the decision.
31. A notice of appeal shall be served to the City Clerk by prepaid ordinary mail, registered mail, courier, email or in-person at City Hall.
 32. Upon receipt of a notice of appeal, the City Clerk may request and require production of any further documents, reports and information to be provided by the person appealing and may consider any issue relevant to the issuance of the Permit, including legal issues and interpretation of the By-law, and may consult with legal counsel.
 33. On the basis of evidence supplied by the Director and the appellant, the Committee of Adjustment may affirm, vary or rescind the decision in writing and shall deliver same by ordinary prepaid mail, registered mail, courier, or email to the person appealing the decision. The decision of the Committee of Adjustment is final.

Part XI. COUNCIL CONSIDERATION

34. Where site alteration involves the following within any 12-month period, the permit for such site alteration may only be issued when approved by Council, which shall have the same powers as the Director pursuant to this By-law:
 - a. the removal or dumping of fill out of or onto a site that exceeds one thousand cubic metres (1000 m³);
 - b. the removal or destruction of 20 trees or more; or
 - c. the Delegate has approved another permit for site alteration for the same property within the given 12-month period.
35. In addition to the requirements of Sections VII Permit Application and VIII Permit Issuance, every owner applying to Council for approval of a permit for a site alteration involving in excess of one thousand cubic metres (1000 m³) will be required to enter into a site alteration agreement, which may be required to be registered on title of the lands, and which may include a requirement to provide additional security.
36. Upon receipt of a complete application for a site alteration that exceeds one thousand cubic metres (1000 m³), the Director shall:
 - a. schedule a public meeting;
 - b. provide the person submitting the complete application notice of the public meeting at least thirty (30) days prior to the date of the meeting;
 - c. provide notice of the complete application to all registered owners of land within one hundred and twenty (120) metres of the boundaries of the site at least thirty (30) days prior to the date of the meeting;
 - d. post notice of the public meeting on the City's web page at least ten (10) days prior to the public meeting date; and

- e. direct the person submitting the complete application to post a placard on the site as provided by the City at least ten (10) days prior to the public meeting so that it is clearly visible to the public, provide proof of the placement of the placard to the Director and leave the placard on the site until the permit is issued or denied.
- 37. Comments received at the public meeting shall form part of a technical report provided by the Director to Council and form part of the review by Council.
 - 38. Council consideration of the complete application shall be held in public and the owner may request to make a deputation to Council through the City Clerk in accordance with the City's Procedural By-law.
 - 39. Upon reviewing the complete application and technical report, Council shall consider whether it meets the requirements of Sections VII Permit Application and VIII Permit Issuance of this By-law. The decision of Council is final.

Part XII. PERMIT SUSPENSION, REVOCATION, TRANSFER AND EXPIRY

- 40. The City may draw on any security provided under this By-law in order to remedy any breach of the provisions of this By-law, the conditions of a permit, or any other obligation of the owner relating to the permit.
- 41. A permit issued pursuant to the provisions of this By-law may be revoked by the Director or Council at any time and without notice under any of the following circumstances:
 - a. if no work has been commenced after three (3) months from the date of issuance;
 - b. if the permit was issued on mistaken, misleading, false or incorrect information;
 - c. if the permit was issued in error; or
 - d. where the owner is in contravention of a condition to the permit, a provision of this By-law, or a provision of the site alteration agreement, where one has been entered into.
- 42. No refund of any permit fees paid pursuant to this By-law shall be provided if a permit expires.
- 43. A permit may be extended prior to the passing of the tenth (10) month from the date of the issuance of the permit if work has been completed under that permit. An extension may be granted upon submission of a new application to the Director accompanied by a payment of permit fees, provided that the previously permitted work has not been revised.
- 44. A renewal or extension of a permit issued pursuant to this By-law shall be valid for a period of six (6) months from the date of issuance but shall expire after three (3) months from the date of issuance if work has not been commenced by that date.
- 45. A permit may be cancelled upon written request from the owner to the Director. An inspection of the site will be conducted to ensure that no work has commenced and that the site is in an acceptable condition.
- 45. If title to the site for which a permit has been issued is transferred while the permit remains in effect, the permit is automatically

cancelled unless the new owner, within thirty (30) days prior to the transfer:

- a. provides the City with:
 - i. an undertaking prepared by a qualified person agreeing to comply with all conditions under which the existing permit was issued;
 - ii. an executed assumption agreement satisfactory to the Director; and
 - iii. an executed release and indemnity as required by Schedule B, Section 9.c; or
- b. applies for and obtains a new permit in accordance with the provisions of this By-law; or
- c. confirmation has been provided to the satisfaction of the City that a Site Alteration Agreement has been registered on title of the lands.

Part XIII. ORDERS

46. For the purpose of ensuring compliance with this By-law, the Director or any person authorized by the Director or a Municipal Law Enforcement Officer may, at all reasonable times, enter upon and inspect any site to determine whether or not the following are being complied with:
 - a. this By-law;
 - b. a condition of a permit;
 - c. a provision of the site alteration agreement;
 - d. a direction or order made under this By-law; or
 - e. a prohibition order made under section 431 of the Municipal Act, 2001.
47. The Director or a Municipal Law Enforcement Officer, for the purposes of the inspection under Section 46 may:
 - a. require the production for inspection of documents or things relevant to the inspection;
 - b. inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - c. require information in writing or otherwise as required by the officer 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.
48. Any cost incurred by the City in exercising its authority to inspect under Section 47 including, but not limited to, the cost of any examination, test, sample or photograph necessary for the purposes of the inspection, shall be paid by the owner or occupant of the site where the inspection takes place.
49. If the Director or a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the owner or the person who caused or permitted the site alteration to discontinue the activity and the order shall set out:

- a. the municipal address or the legal description of the site;
 - b. reasonable particulars of the contravention; and
 - c. the period of time within which there must be compliance.
50. If the Director or a Municipal Law Enforcement Officer is satisfied that a person has caused or permitted the performance of a site alteration in contravention of the provisions of this By-law, he or she may make an order requiring work to be done to correct the contravention and the order shall set out:
- i. the municipal address or the legal description of the site;
 - ii. reasonable particulars of the contravention;
 - iii. the period of time within which there must be compliance; and
 - iv. that if the work is not done in compliance with the order within the period as specified, the City may have the work completed at the expense of the owner.
51. Any Order issued under subsection 49 of this By-law shall be served personally or by registered mail to the last known address of the owner of the site and to any other person to be served. If an order is served by registered mail, the service shall be deemed to have been made on the fifth (5) day after the date of mailing.
52. Upon completion of the work to correct the contravention by or on behalf of the City under subsection 50 (iv) of this By-law the City shall have a lien on the land for the amount spent in excess of any security applied to remedy or rectify the contravention and the amount may be added to the tax roll and collected in the same manner and with the same priority as municipal property taxes.

Part XIV. PENALTY AND OFFENCE

53. Every person who contravenes any provision of this By-law, a condition of a permit, or an order issued under this By-law, is guilty of an offence and upon conviction is liable:
- a. on a first conviction, to a fine of not more than \$10,000; and
 - b. on any subsequent conviction, to a fine of not more than \$25,000.
54. Notwithstanding subsection 53 of this By-law, where the person convicted is a corporation, the maximum penalty that may be imposed is:
- a. on a first conviction, to a fine of not more than \$25,000; and
 - b. on any subsequent conviction, to a fine of not more than \$50,000.
55. In addition to any fine or any other penalty, any person who is convicted of contravening a provision of this By-law, the terms or conditions of a permit issued pursuant to this By-law, or any order issued pursuant to this By-law, may be ordered by a court of competent jurisdiction at the expense of the person to:
- a. rehabilitate the land;
 - b. remove the Fill; and
 - c. restore the grade of the land to its original condition.

Part XV. OBSTRUCTION

- 56. No Person shall hinder or obstruct or attempt to hinder or obstruct the Director or a Municipal Law Enforcement Officer, or person in the discharge of duties under this By-law as required by the Director or Municipal Law Enforcement Officer in order to bring a site into compliance with this By-law or an order issued under this By-law.
 - a. No person shall provide false information in any statement, whether orally, in writing or otherwise, made to a Municipal Law Enforcement Officer or the Director.
- 57. No person shall hinder or obstruct, or attempt to hinder or obstruct, any Municipal Law Enforcement Officer or Director who is exercising a power or performing a duty under this By-law

Part XVI. SEVERABILITY

- 58. Should a court of competent jurisdiction declare any provision of this by-law to be invalid or of no force and effect, the provision is deemed severable from this By-law and it is the intention of the City that the remainder of the By-law shall survive and be applied and enforced in accordance with its terms to the extent possible under the law.

Part XVII. ENACTMENT

- 59. This By-law shall come into full force and effect on the date it is passed at which time all by-laws, policies and resolutions that are inconsistent with the provisions of this by-law are hereby repealed insofar as it is necessary to give effect to the provisions of this by-law.

FINALLY PASSED AND ENACTED this ___th day of _____, 2022.

Mayor Ian C. Boddy

Briana M. Bloomfield, City Clerk

Schedule 'A': Minimum Site Alteration Standards

Schedule 'B': Site Alteration Plan Requirements

Schedule 'C': Fill Management Plan Standards

Schedule 'D': Tree Inventory & Preservation Study Standards

Schedule 'E': Tree Replacement Requirement

Schedule 'F': Nuisance Tree List