



## BY-LAW 2011-

### **SITE ALTERATION BY-LAW TO REGULATE OR PROHIBIT REMOVAL OF TOPSOIL, PLACING OR DUMPING OF FILL, AND ALTERATION OF THE GRADE OF LAND WITHIN THE TOWN OF MARKHAM**

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**WHEREAS** Section 142 of the *Municipal Act, 2001*, S.O. c. 25, as amended, authorizes municipal councils to pass by-laws to regulate or prohibit the removal of topsoil, the placing or dumping of fill, and the alteration of the grade of land;

**AND WHEREAS** Section 398 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes a municipality to add fees and charges to the tax roll for a property and collect them in the same manner as municipal taxes;

**AND WHEREAS** Section 446 of the *Municipal Act, 2001*, S.O. c. 25, as amended, provides that where a person fails to do something that is required under a by-law, the municipality may undertake to do the thing required at the person's expense and the costs may be collected in the same manner as property taxes;;

**AND WHEREAS** the Council of The Corporation of the Town of Markham deems it advisable to exercise this authority, as well as to provide for the rehabilitation of lands and protect water bodies and environmental protection areas where the removal of topsoil, or the placing and dumping of fill or the alteration of grade of the land is permissible;

**NOW THEREFORE** the Council of The Corporation of the Town of Markham **ENACTS** as follows:

#### **DEFINITIONS**

1. For the purpose of this By-law, the following definitions and interpretations shall govern:

**"Adjacent"** means abutting or contiguous to;

**"Agricultural Lands"** includes all lands that are cultivated and/or used for the raising of livestock;

**"Agricultural Uses"** means,

- (a) growing crops, including nursery and horticultural crops,
- (b) raising livestock and other animals, including poultry and fish, for food and fur,
- (c) aquaculture, and
- (d) agro-forestry and maple syrup production.

**"Applicant"** means the owner of the property, where such an owner is an individual, or means any person, authorized in writing by the owner, to apply for a permit on the owner's behalf;

**"Area of Natural and Scientific Interest"** (earth science) means an area that has been,

- (a) identified as having earth science values related to protection, scientific study or education, and

- (b) further identified by the Ministry of Natural Resources as such using evaluation procedures established by the Ministry, as amended from time to time;

**“Area of Natural and Scientific Interest”** (life science) means an area that has been,

- (a) identified as having life science values related to protection, scientific study or education, and
- (b) further identified by the Ministry of Natural Resources as such using evaluation procedures established by that Ministry, as amended from time to time;

**“Authorized Agent”** means a person acting on behalf of the owner as designated on the application;

**“Body of Water”** includes any body of flowing or standing water whether naturally or artificially created;

**“Clerk”** means the Clerk of The Corporation of the Town of Markham;

**“Council”** means the Council of The Corporation of the Town of Markham;

**“Development”** means the construction of buildings and above or underground services such as roads, parking lots, paved storage areas, watermains, storm and sanitary sewers, general grading works and similar facilities on any lands in the Town of Markham;

**“Director”** means the Director of Engineering or his/her designate;

**“Drainage”** means the movement of water to a place of disposal, whether by way of natural characteristics of the ground surface or by an artificial method;

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

**“Engineer”** means a professional engineer, a consultant or an engineering firm hired/appointed by the owner;

**“Endangered Species”** means any native species, as listed in the regulations under the Endangered Species Act, that is at risk of extinction throughout all or part of its Ontario range if the limiting factors are not reversed;

**“Environmental Protection Areas”** as defined in Town of Markham Official Plan as amended from time to time;

**“Erosion”** means the detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity;

**“Existing Grade”** means the elevation of the existing ground surface of the lands upon which site alteration is proposed and of abutting ground surface up to three (3) metres wide surrounding such lands, except that where site alteration has occurred in contravention of this By-law, existing grade shall mean the ground surface of the lands as it existed prior to site alteration;

**“Fill”** means any type of material deposited or placed on lands and includes soil, stone, concrete, sod or turf either singly or in combination;

**“Finished Grade”** means the approved elevation of ground surface of lands upon which fill has been placed or grade of land has been altered in accordance with this By-law;

***“Fish Habitat”*** means the spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out the life processes, as further identified by the Department of Fisheries and Oceans (Canada);

***“Habitat of Endangered, Rare and Threatened Species”*** means land that,

- (a) is an area where individuals of an endangered species, a rare species or a threatened species live or have the potential to live and find adequate amounts of food, water, shelter, and space needed to sustain their population, including an area where a species concentrates at a vulnerable point in its annual or life cycle and an area that is important to a migratory or non-migratory species; and
- (b) has been further identified, by the Ministry of Natural Resources or by any other person, as such according to evaluation procedures established by the Ministry of Natural Resources, as amended from time to time;

***Hazard Lands***” as defined in Town of Markham Official Plan, as amended from time to time;

***“Inspector”*** means a person designated by the Director to inspect the site alteration activities at the construction or development site for compliance with a permit;

***“Land Disturbance”*** means any man-made change of the land surface including removing vegetative cover, and/or excavating and/or filling and/or grading;

***“Lot”*** means a parcel of land, described in a deed or other document legally capable of conveying land, or shown as a block on a registered plan of subdivision;

***“Municipal Law Enforcement Officer”*** means a person appointed by Council to enforce this By-law;

***“Oak Ridges Moraine”*** means lands subject to Ontario Regulation 140/02 and subject to the requirements of the Provincial Oak Ridges Moraine Conservation Plan and Town of Markham Official Plan Amendment No. 117;

***“Owner”*** means the legal registered owner of the Lot as shown by the records of the Land Registry Office where the property register for the Lot is situated and for which a permit is sought or obtained;

***“Permit”*** means permission or authorization given in writing by the Director to perform work regulated by this By-law or part thereof;

***“Permit Holder”*** means the owner as defined in this By-law or the person in possession of the property and includes a lessee, a mortgagee in possession or a person in charge of the property;

***“Person”*** means an individual, association or corporation and their successors and assigns;

***“Placing”*** means the distribution of fill on lands to establish a finished grade higher or lower than the existing grade;

***“Planning Act”*** means the *Planning Act*, R.S.O. 1990, c.13, as amended;

***“Ponding”*** means the accumulation of surface water in the area not having drainage therefrom where the lack of drainage is caused by the placing or dumping of fill or altering of the grade of land;

***“Proposed Grade”*** means the proposed elevation of ground surface of land upon which fill is proposed to be placed or altering the grade of land is proposed;

***“Rare Species”*** means a native species that is not currently at risk of becoming threatened but, because of its limited distribution, small population or specialized habitat needs, could be put at risk of becoming threatened through all or part of its Ontario range by changes in land use or increases, in certain types of human activity;

***“Region”*** means the Regional Municipality of York;

***“Removal”*** means excavation or extraction of any fill which lowers the existing grade, and includes soil stripping;

***“Retaining Wall”*** means a concrete or concrete product wall or other material approved by the Director designed to contain and support fill which has a finished grade higher than that of adjacent lands;

***“Security Deposit”*** means a certified cheque, cash or a letter of credit;

***“Significant”*** means identified as significant by the Ministry of Natural Resources, using evaluation procedures established by that Ministry, as amended from time to time;

***“Site”*** means the lot or lots altered or proposed to be altered as permitted;

***“Site Alteration”*** means activities such as removal of topsoil from land, the placement or dumping of fill on land, the alteration of the grade of land or excavation by any means including the removal of vegetative cover, the compaction of soil or the creation of impervious surfaces, or any combination of these activities that would change the landform and natural vegetative characteristics of land, but does not include,

- (a) the construction of facilities for transportation, infrastructure and utilities uses by a public body; or
- (b) the reconstruction, repair or maintenance of a drain approved under the Drainage Act; or
- (c) the carrying out of agricultural uses.

***“Site Alteration Plan”*** means a plan prepared by an Engineer on behalf of an owner in connection with a site alteration permit pursuant to this By-law;

***“Soil”*** means any material commonly known as earth, top soil, loam, subsoil, clay, sand or gravel;

***“Soil Stripping”*** means removing of soil or topsoil;

***“Swale”*** means a depression in the ground sloping to a place of disposal of surface water for the purpose of providing a method of drainage;

***“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;

***“Town”*** means The Corporation of the Town of Markham;

***“Threatened Species”*** means any native species that is at risk of becoming endangered throughout all or part of its Ontario range if the limiting factors are not reversed;

***“Valleyland”*** means a natural area that occurs in a valley or other landform depression that has water flowing through or standing for some period of the year;

**“Watercourse”** means a natural or man-made channel or swale in which water flows, either continuously or intermittently with some degree of regularity;

**“Wetland”** means land such as a swamp, marsh, bog or fen (not including land that is being used for agricultural purposes and no longer exhibits wetland characteristics) that,

- (a) is seasonally or permanently covered by shallow water or has the water-table close to or at the surface;
- (b) has hydric soils and vegetation dominated by hydrophytic or water-tolerant plants; and
- (c) has been further identified by the Ministry of Natural Resources, or by any other person, as such according to evaluation procedures established by the Ministry of Natural Resources, as amended from time to time;

**“Wildlife Habitat”** means land that,

- (a) is an area where plants, animals and other organisms live or have the potential to live and find adequate amounts of food, water shelter and space to sustain their population, including an area where a species concentrates at a vulnerable point in its annual or life cycle and an area that is important to a migratory or non-migratory species; and
- (b) has been further identified, by the Ministry of Natural Resources, or by any other person, according to evaluation procedures established by the Ministry of Natural Resources, as amended from time to time;

**“Woodland”** means a treed area, woodlot or forested area, other than a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas trees;

## PROHIBITIONS

- 2.0 No person shall carry out any activity related to site alteration within the Town, without first obtaining a permit, unless otherwise exempt, as set forth in this By-law.
- 2.1 No site alteration shall be permitted within any area designated as an Environmental Protection Areas and Hazard Lands or similar designation under the Region’s Official Plan, or as amendment from time to time.
- 2.2 No person shall permit, perform or cause to permit or to have performed site alteration on lands within the Town other than in conformity this By-law and with the terms and conditions of a permit issued under this By-law.
- 2.3 No person shall permit, perform or cause to permit or to have performed site alteration on lands within the Town that is not permitted by Ontario Regulation 140/02, the Oak Ridges Moraine Conservation Plan as shown on Schedule F Ontario Regulation 01/02, or any other applicable law or regulation as may be approved or amended from time to time.
- 2.4 No person shall fail to obey an order issued under sections 8.0 and 9.0 of this By-law.
- 2.5 Where a person has carried out site alteration contrary to this By-law, that person, the owner and the permit holder shall each be jointly and severally responsible for the restoration of the land to the pre-existing grades or to the satisfaction of the Director.
- 2.6 No person shall carry out site alteration for storage purposes, unless the storage of such fill on the land is permitted by this By-law and the applicable zoning by-laws of the Town.

- 2.7 No person shall carry out site alteration unless:
- 2.7.1 it is done at the request of or with the consent of the owner of lands where the fill is to be placed, dumped or removed;
  - 2.7.2 all fill to be dumped or placed is clean and free of trash, rubbish, glass, liquid or toxic chemicals, hazardous waste or garbage materials;
  - 2.7.3 the drainage system for the lands is provided in accordance with this By-law and all other applicable Town by-laws and the Director is satisfied that provision has been made for surface and storm water drainage where such drainage is not provided by natural gradients or a swale;
  - 2.7.4 the fill is placed or dumped or removed in such a manner, or the retaining wall containing such fill is erected in such a manner, that no ponding or alteration of existing flow is caused on abutting lands; and
  - 2.7.5 erosion and sediment control requirements are met as required by this By-law.
- 2.8 No person shall carry out any site alteration on any lands adjacent to or within 30 metres of wetlands, fish habitat, significant valleylands, significant woodlands, significant wildlife habitat, habitats of rare and endangered species, areas of natural or scientific interest and permanent or intermittent streams without having been issued a permit under this By-law by the Director.
- 2.9 Subject to section 3.1.10, no person shall carry out any site alteration on "Agricultural Lands" to an average depth greater than 300 mm. Filling a hole, excavation, or depression of depth greater than 300 mm may be permitted at the discretion of the Director. No site alteration permit will be issued on agricultural lands unless the owner provides a certificate, signed by a professional engineer/soil scientist, confirming that the site alteration will result in maintaining or improving the overall fertility of the agricultural lands.
- 2.10 No person shall perform, permit, or cause to be performed or permitted a site alteration, or permit a site condition to remain, and no permit shall be issued for a proposed site alteration that will result in:
- 2.10.1 soil erosion;
  - 2.10.2 blockage of a storm drainage system;
  - 2.10.3 blockage of a natural drainage system or watercourse;
  - 2.10.4 siltation or pollution in a watercourse;
  - 2.10.5 flooding or ponding caused by a watercourse overflowing its banks;
  - 2.10.6 an unacceptable level of nuisance in the Town;
  - 2.10.7 unreasonable hindrance of the orderly development of lands within the Town;
  - 2.10.8 flooding or ponding on a neighbouring property or adverse effect on the amenities adjacent to the land to which the permit relates;
  - 2.10.9 a detrimental effect on any environmental protection areas or areas of natural or scientific interest, wetland or wetland complex as identified by the Toronto Region Conservation Authority, the Ministry of Natural Resources, the Region or the Town;

2.10.10 a contravention of Ontario Regulation 140/02, the Oak Ridges Moraine Conservation Plan, Town of Markham Official Plan Amendment No. 117 or any other applicable law or regulation; or

2.10.11 any adverse effect to archeological or historically significant features.

### EXEMPTIONS AND EXCEPTIONS

3.0 Lands less than one (1) acre (0.405 ha) in size shall be exempted from the requirement to obtain a permit, provided that:

3.1.1 such land is not adjacent to a body of water, environmental protection areas or hazard lands; or

3.1.2 the site alteration does not in any way affect the land drainage of the abutting properties.

Despite the permit exemption, lands less than one (1.0) acre (0.405 ha) in size remain subject to, and shall comply with, all other relevant provisions of this By-law, and other applicable by-laws, legislation or regulation of any level of government.

3.1 This By-law does not apply:

3.1.2 Where no more than 300 mm of fill in depth is placed on lands for the purpose of lawn dressing, landscaping, adding to flower beds or vegetable gardens, provided that:

3.1.2.1 the elevation of the land within 600 mm of any property line is not changed;

3.1.2.2 there is no change in the location, direction or elevation of any natural or artificial watercourse, open channel, swale or ditch used to drain land; and

3.1.2.3 there is control of any sediment runoff.

3.1.3 To activities or matters undertaken by the Town or the Region;

3.1.4 To site alteration requirements imposed after December 31, 2002 as a condition 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 agreement entered into under those sections;

3.1.5 To site alteration requirements 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;

3.1.6 To site alteration requirements undertaken by a transmitter or distributor, as those terms defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system;

3.1.7 To site alteration requirements undertaken on lands as 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*;

- 3.1.8 To site alteration requirements undertaken on lands in order to lawfully establish and operate or enlarge any pit or quarry on land:
  - 3.1.8.1 that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act; and
  - 3.1.8.2 on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*;
- 3.1.9 To site alteration undertaken as an incidental part of drain construction under the *Drainage Act*, *Tile Drainage Act* or the *Municipal Act, 2001*;
- 3.1.10 To removal of the 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. This exception does not include the removal of topsoil for sale, exchange or other disposition;
- 3.1.11 If a regulation is made under section 28 of the *Conservation Authorities Act* respecting the site alteration in any area of the Town, the site alteration in the area affected by such regulation;
- 3.1.12 To removal or addition of topsoil where the quantity of topsoil removed or added in any one lot does not exceed five (5) cubic metres;
- 3.1.13 To land where a building permit has been issued by the Town for the erection of a building or structure, and the site plan accompanying the building permit application provides sufficient information to determine that site alteration confirms with the provisions of this By-law; or
- 3.1.14 To fill that is placed or dumped in an excavation to the elevation of existing grade following the demolition or removal of a building or structure.

#### **REQUIREMENTS FOR ISSUANCE OF A PERMIT**

- 4.0 All permit applications must be completed in full, and all required supporting documentation provided, prior to the issuance of a permit.
- 4.1 To obtain a permit pursuant to this By-law, an applicant shall provide the following information:
  - 4.1.1 a completed application for Site Alteration Permit, duly signed by the applicant, in the form (Schedule "E") prescribed by the Director from time to time;
  - 4.1.2 the application permit fees as established by the Director, from time to time and as outlined in the Town's Fee Bylaw 2002-276, as amended;
  - 4.1.3 securities as per Schedule "A" to this By-law;
  - 4.1.4 proof of liability insurance with a minimum coverage amount of \$ 5,000,000;
  - 4.1.5 a Site Alteration Plan, certified by a professional engineer, meeting the standards set out in Schedule "B" to this By-law and containing the site design guidelines as set out in Schedule "C" to this By-law;



- 4.1.6 confirmation that the applicant complies or will comply with the Permit Conditions as specified in Schedule "D" to this By-law or as amended from time to time to the satisfaction of the Director;
- 4.1.7 a report describing the Site Alteration Plan showing features and special site conditions, including erosion and sediment control measures and their design details as per Schedule "B" to this By-law;
- 4.1.8 confirmation that the appropriate archaeological assessments on lands deemed to have moderate to high potentials for the discovery of archaeological resources have been completed to the satisfaction of the Ministry of Culture;
- 4.1.9 if located on the Oak Ridges Moraine as shown on Schedule F, confirmation that the site alteration is in compliance with Ontario Regulation 140/02, the Oak Ridges Moraine Conservation Plan, and the Town of Markham Official Plan Amendment No. 117;
- 4.1.10 for site alteration on agricultural lands, a soil fertility report, signed by a professional engineer/soil scientist, confirming that the site alteration will not result in a reduction in the overall soil fertility; and
- 4.1.11 any additional information as required, in writing, by the Director.

#### **EXPIRY, RENEWAL, TRANSFER, REVOCATION AND REFUSAL OF PERMITS**

- 5.0 Permits issued pursuant to this By-law shall be valid for a period of 180 days from the date of issuance. Should land disturbance activities continue past, or rehabilitation measures are not completed within 180 days, the Director may extend the period one or more times for an additional 180 days each time. The Director may require additional control measures and inspection fees, as a condition of the extension.
- 5.1 Notwithstanding section 5.0, permits issued under this By-law shall expire ninety (90) days after the date of issuance of permit if no work is commenced under the permit.
- 5.2 A permit which is no longer valid or which has expired pursuant to this By-law, must be renewed upon making a written application to the Director accompanied by payment of the original permit fees, failing which the Town shall remedy any deficiencies pursuant to the provisions of this By-law.
- 5.3 If the title of the lands for which a permit has been issued is transferred while the permit remains in effect, the permit shall be cancelled unless the new owner of the lands, within thirty (30) days of the transfer, forthwith advises the Director of such transfer and either:
  - 5.3.1 provides the Town with an undertaking to comply with all the conditions under which the existing permit was issued and also provide a letter of credit and/or a security deposit in accordance with the requirements of Schedule "A" to this By-law; or
  - 5.3.2 applies for and obtains a new permit in accordance with the provisions of this By-law.
- 5.4 Where a permit is issued based on mistaken, false or misleading information, the Director shall revoke the permit, and the owner and the permit holder shall ensure that all work that was the subject of revoked permit ceases.
- 5.5 A permit may be revoked by the Director under any of the following circumstances:

- 5.5.1 it was issued in error;
  - 5.5.2 the owner or permit holder requests, in writing, that it be revoked;
  - 5.5.3 the terms of an agreement under this By-law have not been complied with;
  - 5.5.4 work authorized under the permit has not been commenced prior to its expiry date; or
  - 5.5.5 the owner fails to comply with subsection 5.3 of this By-law.
- 5.6 If a permit has expired, been cancelled or revoked after the work has commenced and prior to the completion of the site alteration, the owner shall forthwith restore the site to its original condition or stabilize the site to the satisfaction of the Director in a manner that will prevent adverse impacts on abutting properties and the environment.
- 5.7 Where the Director refuses to issue a permit, the applicant shall be informed in writing of the refusal.

6.0 [INTENTIONALLY LEFT BLANK]

**ADMINISTRATION AND ENFORCEMENT**

- 7.0 The Director may delegate any of his/her duties under this By-law to an inspector or municipal law enforcement officer.
- 7.1 Inspectors and municipal law enforcement officers, upon producing the appropriate identification, may enter and inspect any lands to determine whether the provisions of this By-law, an order issued under this By-law or a condition of the permit issued under this By-law have been complied with.
- 7.2 No person shall obstruct an inspector or municipal law enforcement officer who is carrying out an inspection pursuant to this By-law. Any person who so obstructs an inspector or a municipal law enforcement officer is guilty of an offence.

**ORDER TO DISCONTINUE ACTIVITY**

- 8.0 If a municipal law enforcement officer has reasonable and probable grounds to believe that a contravention of this By-law has occurred, the municipal law enforcement officer may make an order requiring the owner of the land and person who caused or permitted to be caused the site alteration to discontinue the activity.
- 8.1 An order issued under section 8.0 shall set out:
- 8.1.1 the reasonable particulars of the contravention;
  - 8.1.2 what the owner must do to rectify the contravention;
  - 8.1.3 the date and time by which the order must be complied with;
  - 8.1.4 a statement that if the work is not done in compliance with the order within the specified time period, the Town may have the work done at the expense of the owner;
  - 8.1.5 information regarding the Town's contact person; and

- 8.1.6 the name of the owner, the municipal address and the legal description of the land that is the subject of the contravention.

### **WORK ORDER**

- 9.0 If a municipal law enforcement officer is satisfied that a contravention of this By-law has occurred, the officer may make an order requiring the work to be done to correct the contravention.
- 9.1 An order issued under section 9.0 shall set out:
  - 9.1.1 the reasonable particulars of the contravention;
  - 9.1.2 what the owner must do to rectify the contravention;
  - 9.1.3 the date and time by which the order must be complied with;
  - 9.1.4 a statement that if the work is not done in compliance with the order within the specified time period, the Town may have the work done at the expense of the owner;
  - 9.1.5 information regarding the Town's contact person; and
  - 9.1.6 the name of the owner, the municipal address and the legal description of the land that is the subject of the contravention.

### **SERVICE OF ORDERS**

- 10.0 Orders issued by a Municipal law enforcement officer under subsections 8.0 and 9.0 shall be served personally or by prepaid registered mail to the last known address of the owner and any other person to be served.
- 10.1 If the Town is unable to effect service on the owner under section 10.0, a placard containing the terms of the order may be placed in a conspicuous place on the land and the placing of the placard shall be deemed to be sufficient service of the order on the owner.

### **WORK DONE BY THE TOWN**

- 11.0 If the work required by an order under subsections 8.0 and 9.0 of this By-law is not done within the specified period, the Town, in addition to all other remedies it may have, may do the work at the owner's expense and may enter upon the land, at any reasonable time, for this purpose.
- 11.1 If the costs for work pursuant to section 11.0 are not paid to the Town within 30 days of written demand therefor, the Treasurer may add the costs, including interest, to the tax roll for the lot and collect them in the same manner as municipal taxes.

### **OFFENCE AND PENALTY**

- 12.0 Every person who contravenes this By-law is guilty of an offence.
- 12.1 On conviction, a person may be liable:
  - 12.1.1 on a first conviction, to a fine of not more than \$10,000.00; and

12.1.2 on any subsequent conviction(s), to a fine of not more than \$25,000.00 each subsequent conviction(s).

12.2 Despite section 12.1 of this By-law, where the person convicted is a corporation, the maximum fines are \$50,000.00 for a first conviction and \$100,000.00 for any subsequent conviction(s).

#### **SEVERABILITY**

13.0 If a court or a tribunal of competent jurisdiction declares any provision or part of a provision of this By-law to be illegal or unenforceable for any reason whatsoever, then that particular provision or provisions or part of the provision shall be severed and remainder of this By-law shall continue to remain in full force and shall be valid and enforceable to the fullest extent permitted by the law.

#### **APPLICATION OF OTHER LAWS AND APPROVALS**

14.0 The issuance of a permit by the Director does not relieve the applicant of the responsibilities of obtaining all other approvals which may be required by the Town or by any level of government and agencies thereof or from the compliance with any other by-law, legislation or regulation.

#### **SCHEDULES**

15.0 The following Schedules attached to this By-law form and are part of this By-law:

- 15.1 Schedule "A" Security Deposit;
- 15.2 Schedule "B" Standards for Site Alteration Plan;
- 15.3 Schedule "C" Site Design Guidelines;
- 15.4 Schedule "D" Permit Conditions;
- 15.5 Schedule "E" Application for Site Alteration Permit; and
- 15.6 Schedule "F" Oak Ridges Moraine Boundary.

#### **SHORT NAME**

16.0 This By-law shall be referred to as the "Site Alteration By-law".

#### **REPEAL**

17.0 By-law 2006-97, as amended, are hereby repealed.

#### **EFFECT**

18.0 This By-law shall take effect and come into force upon its passing.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS  
TH DAY OF , 2011.

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KIMBERLEY KITTINGHAM  
TOWN CLERK

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MAYOR FRANK SCARPITTI

## **SCHEDULE "A"**

### **Security Deposit**

#### **Security Deposit**

1. Letter of Credit/Security Deposit:

An irrevocable Letter of Credit/Security Deposit in favour of the Town to cover 110% of the estimated cost of erosion and sediment control measures or site control measures is required. The Town will also require a Security Deposit of \$ 5,000.00 for damages to roads such as mud tracking and dust control. The Letter of Credit/Security Deposit shall be in a form acceptable to the Town Treasurer.

1.1 The Letter of Credit/Security Deposit must remain in effect for the full duration of the permit. Any Letter of Credit/Security Deposit and its subsequent renewal forms shall contain a clause stating that thirty (30) days written notice must be given to the Town prior to its expiry or cancellation;

1.2 In the event that the Town receives notice that a Letter of Credit/Security Deposit is expiring and will not be renewed, or, if further or additional securities are not provided within the said thirty (30) days, the Town may draw on the current Letter of Credit at the discretion of the Director/Town Council. The permit holder agrees that any interest accruing on the realized security shall belong to the Town and not the permit holder.

2. It is the responsibility of the permit holder:

2.1 To provide a proof satisfactory to the Director that the lot has been adequately reinstated and stabilized in accordance with the requirements of this By-law and the Site Alteration Plan accompanying the permit which may be required to be certified by a professional engineer as per discretion of the Director; and

2.2 To request that the Town carry out a final inspection to confirm that all relevant terms of this By-law have been complied with.

3. When the provisions of Section 2 of this Schedule have been fully complied with to the satisfaction of the Director, the Director shall release the applicant's letter of credit/security deposit or the remaining amount of any reduced Letter of credit/security deposit.

4. The permit shall be made available to the applicant within forty (40) working days if all the required information is presented to the Town for their review.

## **SCHEDULE "B"**

### **Standards for Site Alteration Plan**

Two (2) certified copies of the Site Alteration Plan are required. All plans are to be in metric units and printed from the original drawings with all information provided legible and clearly. All plans are to be folded to 8.5" × 11.0" size with the title blocks visible. All elevations shall be tied to the existing Town benchmarks and be related to geodetic datum.

#### **1. Site Alteration Plan**

The Site Alteration Plan shall be at a scale of 1:500 (or 1:1000 if accepted by the Director) and shall include the following information:

- 1.1 A key map showing the location of the lot, site boundaries and number of hectares of the lot, including the nearest major intersection and north arrow;
- 1.2 The use of the land and the location and use of the building and other structures adjacent to the lot;
- 1.3 The location, dimensions and use of the buildings and other structures existing or proposed to be erected on the lot;
- 1.4 Identification of driveways on each lot and all basements and right-of-way over, under, across or through each lot;
- 1.5 The location of lakes, streams, wetlands, channels, ditches, other water courses, other water bodies and environmental protection areas on and within thirty (30) metres beyond the site boundary;
- 1.6 The Regional storm flood line and the Conservation Authority fill regulation lines;
- 1.7 The identification and location of predominant soil types;
- 1.8 The location and type of existing vegetative cover, including the species and size of all trees and shrubs;
- 1.9 The location and dimensions of any existing and proposed storm water drainage systems and natural drainage patterns on and within thirty (30) metres beyond the lot boundary;
- 1.10 The location of any easements on the property;
- 1.11 The location and dimensions of utilities, structures, roads, highways and paving on the lot within thirty (30) metres beyond the lot boundary;
- 1.12 The existing site topography at a contour interval not to exceed one half of one metre determined in accordance with the Canadian Geodetic Datum and to extend a minimum of thirty (30) metres beyond the lot boundary with spot elevations along the property line at 0.5 - 1.0 metre intervals to clearly show the existing drainage patterns on the land and the abutting lands;
- 1.13 The proposed final grade elevations of the lot;
- 1.14 The location and dimensions of all proposed land disturbing activities;

- 1.15 The location and dimensions of all proposed temporary stockpiles for soil and other materials;
- 1.16 The location and dimensions of all proposed access routes from highways;
- 1.17 The location and dimensions of all proposed staging areas for equipment;
- 1.18 The location, dimensions, design details and design calculations of all construction site control measures, including plan and profile drawings of ESC and SWM ponds, necessary to meet the requirements of this By-law. As required in this By-law for the lots / sites with more than five (5) ha disturbed at a time, or in staggered manner, all of which are served by a common discharge location, a Sediment Control Pond, or equivalent control measures (e.g., storm water management ("SWM") facility, if applicable) must be provided. The design criteria for the Sediment Control Pond is provided in Schedule "C" to this By-law;
- 1.19 If the ultimate SWM facility cannot be used as the Sediment Control Pond for the entire lot during construction period or land disturbance period, a temporary sediment control pond shall be constructed with the design criteria as described in Schedule "C" to this By-law;
- 1.20 Provisions for the maintenance of the construction site control measures during construction including a mud tracking prevention program which describes the procedure for mud tracking prevention and road clean up and designating a contact person for such a program throughout each land disturbing and land developing activity;
- 1.21 An indication on the drawing of directions of overland flow and overland flow routes;
- 1.22 A schedule of the anticipated starting and completion dates of each land disturbing or land developing activity including the installation of construction site control measures needed to meet the requirements of this By-law;
- 1.23 For the placing or dumping of fill, the Fill Plan must include the material of the fill that will be introduced to the native soil;
- 1.24 Measures that will control the erosion of any fill placement. Retaining walls are required if the finished grade of the lands at the property line is higher than that of the existing grade of the abutting lands. The details of the retaining wall including dimensions, duly signed by the structural engineer, must be provided in the Fill Plan;
- 1.25 Details of site rehabilitation including the type and location of all interim and permanent stabilization measures;
- 1.26 A certificate on the drawing, executed by a Registered Professional Engineer, or a Registered Ontario Land Surveyor, in the following form:

*"I have reviewed the plans for the construction of \_\_\_\_\_ located at \_\_\_\_\_ and have prepared this plan to indicate the compatibility of the proposal to existing adjacent properties and municipal services. It is my belief that adherence to the proposed grades as shown will produce adequate surface drainage and proper facility of the municipality services without any detrimental effect to the existing drainage patterns or adjacent properties."*



- 1.27 And such other information with respect to the site as may be required by the Director.

## **2. Design Report:**

The Design Report shall include the following information:

- 2.1 Project description including the nature and purpose of land disturbing activity, the legal description of the property, and a reference to adjacent properties and landmarks;
- 2.2 Condition of existing site including land use, site topography, soils, vegetation, drainage system, and receiving waters;
- 2.3 Description of areas within the development site that have potential for serious erosion or sediment problems;
- 2.4 Description of the features in the drawing as per section 1 of this Schedule;
- 2.5 A delineation and brief description of the measures to be undertaken to prevent erosion and to retain sediment on the site, including, but not limited to, the designs and specifications for swales, dikes, drains, sediment control ponds, and a schedule for their maintenance and upkeep;
- 2.6 A delineation and brief description of the vegetative measures to be used, including, but not limited to, mulches, types of seeds and fertilizers and their application rates, the type, location and extent of pre-existing and undisturbed vegetation types and a schedule for maintenance and upkeep;
- 2.7 Description of new Erosion and Sediment Control techniques and measures provided such techniques are proven to be as or more effective than the equivalent Erosion and Sediment Controls;
- 2.8 Record keeping procedure including sample inspection and maintenance forms. Maintenance record-keeping procedure including name of the person who will keep the inspection and maintenance record;
- 2.9 An estimate of the cost of implementing and maintaining all interim Erosion and Sediment Control measures as per standards acceptable to the Town; and
- 2.10 The report must be stamped, dated and signed by a Professional Engineer.

## **SCHEDULE "C"**

### **Site Design Guidelines**

- 1.0 Every Site Alteration shall be performed in accordance with the following objectives:
- prevention or limiting of off-site impacts of soil erosion and sedimentation; and
  - compliance with federal, provincial, TRCA, Region of York and Town standards.

- 2.0 The site control measures outlined in these guidelines shall be deemed to be a condition of every permit unless waived in writing by the Director.

#### **3.0 Site Dewatering**

- 3.1 Dewatering operations may be conducted provided that water is not permitted to discharge directly into the receiving bodies of water or streams; and
- 3.2 Water pumped from the lot shall be treated by structural devices such as sediment control pond, temporary sedimentation pond, grit chambers, sand filters, up-flow chambers, swirl concentrators or other appropriate controls. If water is demonstrated to have no particles greater than forty (40) microns in size, then dewatering operations may be conducted provided water is not permitted to discharge directly into the receiving bodies of water or streams.

#### **4.0 Drain Inlet Protection**

All rear lot storm drain inlets shall be protected with filter fabric or equivalent barriers so as not to admit sediment-laden runoff from the disturbed areas and the control measures must meet the standards and specifications accepted by the Director.

#### **5.0 Site Erosion and Sediment Control Practices**

The Site Alteration Plan should consider the following types of controls:

- 5.1 Stabilization practices for soil erosion and sediment control are commonly of three types:
- 5.1.1 vegetative stabilization practices such as temporary seeding, sod stabilization, permanent seeding and plantation, maintenance of buffer zone, and preservation of natural vegetation;
  - 5.1.2 non-vegetative stabilization practices such as mulching, geo-textiles, soil-retaining measures and stream bank stabilization; and
  - 5.1.3 in-stream stabilization practices such as temporary stream crossings, cofferdams, dry flumes, sediment curtains, by-passes or full diversions, and dewatering.
- 5.2 Runoff velocity dissipation measures, which slow down the runoff flowing across the site by using measures such as check dams and surface roughening, and gradient terraces;
- 5.3 Stormwater runoff controls, which prevent runoff from flowing across disturbing areas by using measures such as earth dikes, drainage swales, and drains;

- 5.4 Structural practices such as temporary Sediment Control Pond or ultimate SWM ponds, which hold stormwater runoff in a controlled fashion and remove sediments in the storage device; and
- 5.5 In the event that a Sediment Control Pond cannot be constructed to service the entire site (i.e., capture all runoff from the site), the reasons must be documented and alternative control measures must be implemented. Other sediment control measures, which remove sediments from on-site runoff before it leaves site, include silt fences, sediment traps, storm drain inlet protection, filter fabrics, and straw bale barriers.

#### **6.0 Sediment Control Pond**

- 6.1 As required in this By-law, for the lots with more than five (5) ha disturbed at a time, or in a staggered manner, all of which are served by a common discharge location, a Sediment Control Pond, or equivalent control measures (e.g., ultimate SWM facility, if applicable) must be provided.
- 6.2 Sediment Control Pond Design Criteria should be as follows:
  - 6.2.1 the Sediment Control Pond shall be constructed prior to topsoil stripping or fill placement;
  - 6.2.2 the Sediment Control Pond and conveyance channels should be located in such a way that the runoff will be captured and conveyed from the entire disturbed area to the pond;
  - 6.2.3 the Sediment Control Pond volume should consist of both permanent pool and active storage component. The permanent pool component should be sized for a minimum 125 m<sup>3</sup>/ha or the volume required equivalent to an 'Enhanced Protection' water quality control under the latest MOE SWM Planning and Design manual, whichever is greater. The active storage volume component should be sized for a minimum of 125 m<sup>3</sup>/ha of runoff or the latest Ministry of the Environment, TRCA requirements, whichever is greater and released over a minimum 24-hour period;
  - 6.2.4 the basin to width ratio should be three (3) or greater but less than six (6) (ideally 4:1). Interior sides slopes should be 3:1 at a maximum and exterior slopes should be a maximum 2:1. Basin depth should be a minimum of 1.0 metres to avoid re-suspension of previously settled out sediment and less than 2.5 metres;
  - 6.2.5 other storm water management control functions required for the site shall be implemented by the owner as required in other permit approvals (e.g., flood and erosion controls);
  - 6.2.6 to maintain sufficient permanent pool volume during the land disturbance period, Site Alteration Plan should provide the maintenance schedule. The Sediment Control Pond should be cleaned once the designed permanent pool volume has been reduced by 50%. To verify sediment accumulation, the Sediment Control Pond should be measured at least once per year since the start of land disturbance; and
  - 6.2.7 a qualified inspector or inspection team should be assigned by the owner of the property to oversee ESC practices on the site and perform the necessary assessments through the duration of the construction and stabilization period. Records of all monitoring, inspections, and repair works should be documented to effectively identify and track areas of susceptibility and plan for future maintenance works, as well as, to share or report this information to other site personnel. The inspection forms/reports should be posted and presented for any agency staff

visiting the site as evidence that due diligence was afforded to the implementation and maintenance of the approved erosion and sediment control plan.

## **7.0 Land Disturbing Activities that Result in Runoff Leaving the Lot**

- 7.1 All the activities on the lot shall be conducted in a phased manner to minimize the area of bare soil exposed at any one time.
- 7.2 Concentrated runoff from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected by cut-off swales and/or silt fences being placed along channel edges to avoid sediment from disturbed areas reaching the channel.
- 7.3 Any topsoil or dirt storage piles containing more than one hundred cubic metres (100 m<sup>3</sup>) of material shall not be located less than ten (10) metres from or up the slope from a roadway or channel. If remaining for more than thirty (30) days, said soil or dirt storage piles shall be stabilized by mulching, vegetative cover, traps or other means. Erosion from topsoil or dirt storage piles which will be in existence for less than thirty (30) days should be controlled by sediment control fence (i.e., filter fence) barriers around the pile.
- 7.4 Runoff from the entire disturbed area on the site shall be controlled as follows:
  - 7.4.1 all disturbed ground that has been stripped of topsoil shall be stabilized by seeding, sodding, mulching or covering, or other control measure. The period of time of inactivity shall be at the discretion of the Director but shall not exceed thirty (30) days or such longer period as deemed advisable at the discretion of the Director;
  - 7.4.2 notwithstanding the above paragraph, a permit holder or applicant for a permit who has also applied for but not yet received a building permit or any other necessary permit may be granted an extension to the permitted period of inactivity, at the discretion of the Director, provided that the said applicant or permit holder provides satisfactory proof that he/she has made his/her best efforts to have said building or other necessary permit issued. Fees for the extension will be deferred for the period of inactivity if the site is secured in a manner satisfactory to the Town;
  - 7.4.3 for lots less than five (5) hectares disturbed at one time, sediment control fences and cut-off swales/channels or equivalent control measures shall be placed along all down-slope boundaries of the site;
  - 7.4.4 for lots adjacent to the existing residential areas, a fence and a cut-off swale/channel may be required around the entire perimeter of the site to prevent drainage onto private lands. A three (3) metres wide buffer strip and/or sediment control fence shall be provided along the perimeter of the down-slope boundaries of the site;
  - 7.4.5 the sediment control guidelines prepared by the TRCA and Ministry of Natural Resources for the Province of Ontario, or municipality standards are to be followed; and
  - 7.4.6 for lots with extensive fill requirements, the Director may waive the requirements for stabilization of disturbed land after thirty (30) days of inactivity provided that the sediment control measures have been implemented to the satisfaction of the Director.
- 7.5 All waste and unused building materials (including garbage, cleaning wastes, wastewater, toxic materials or hazardous materials) shall be properly disposed and not allowed to be mixed with and carried by runoff from the site into a receiving watercourse or storm sewer system.

- 7.6 Precautions shall be taken to ensure that mud will not be tracked offsite by any vehicle exiting the site.
- 7.7 Rehabilitation shall take the form of:
  - 7.7.1 levelling and regarding of the affected lands, the planting of trees or other landscaping; and
  - 7.7.2 the replacement of topsoil to a minimum depth of ten (10) cm and the stabilization by either sodding, hydro-seeding, mulching or such other methods as approved by the Director.
- 8.0 All topsoil stockpiled, prior to the passing of this By-law shall, be subject to the provisions of this By-law.

## **SCHEDULE "D"**

### **Permit Conditions**

All permit holders under this By-law shall:

- 1.1 Notify the Director within 48 hours of commencing any land disturbing activity;
- 1.2 Notify all residents, within 500 metres radius of site, three (3) weeks before the commencement of the work;
- 1.3 Notify the Director of the completion of any control measures, as soon as possible, after their installation;
- 1.4 Obtain permission in writing from the Director prior to modifying the Site Alteration Plan;
- 1.5 Install all site control measures, as identified in the approved control plan, prior to soil stripping;
- 1.6 Maintain all road drainage systems, stormwater drainage systems, control measures and other facilities identified in the Site Alteration Plan;
- 1.7 Repair any sedimentation or erosion damage to adjoining surfaces and watercourses resulting from land developing or disturbing activities;
- 1.8 Inspect the construction control measures at least once per week and after each rainfall which is deemed severe enough to cause erosion and sediment drainage to adjoining properties and complete repairs within 48 hours to the satisfaction of the Director;
- 1.9 Allow employees of the Town or any equivalent, and/or any person in the company of the aforementioned persons acting in the interest of the Town, to enter the site for the purpose of inspecting for compliance with the control plan or for performing any work necessary to bring the site into compliance with the control plan;
- 1.10 Maintain a copy of Site Alteration Plan and the Permit on the site, as well as, a record of inspections;
- 1.11 Be responsible for the activities of his agents, servants, employees, contractors and subcontractors who may create a situation of non-compliance of the permit;
- 1.12 Construct additional control measures, not identified in the Erosion and Sediment Control Report, as deemed necessary by the Director to ensure no erosion and sediment damage to the adjoining properties;
- 1.13 Not remove trees or other vegetation designated as environmentally significant unless permission is obtained from the Town; and
- 1.14 Restore ultimate SWM facility used as Erosion and Sediment Control Ponds during the construction/land disturbance period to the design condition prior to assumption by the Town (with as-built bottom survey).

The Town may:

- 2.1 Inspect the site periodically to ensure compliance with the By-law, particularly the Site Alteration Plan, submitted as a part of the permit;
- 2.2 Upon the failure by the permit holder to complete all or part of the works in the time stipulated in the Site Alteration Plan, draw the appropriate amount from the securities deposited and use the funds to arrange for the completion of the said works, or any part thereof;
- 2.3 Upon failure by the permit holder to install, repair or maintain a specific part of the works as requested by the Town, and in the time requested, authorize the use of all or part of the securities to pay the cost of any part of the works it may in its or their absolute discretion deem necessary at any time; or
- 2.4 In the case of emergency repairs or clean-up, undertake the necessary works at the expense of the permit holder and reimburse itself out of securities posted by the applicant; and
- 2.5 Inform the applicant, where necessary, that additional information is required to ensure that erosion and sediment damage does not occur to adjoining property from the activities on the lot.

SCHEDULE "E"



THE CORPORATION OF THE TOWN OF MARKHAM  
DEVELOPMENT SERVICES COMMISSION  
101 TOWN CENTRE BOULEVARD, MARKHAM, ONTARIO L3R 9W3  
Tel (905) 475-4861, Fax (905) 479-7768

**APPLICATION FOR SITE ALTERATION PERMIT**

Pursuant to the Town of Markham By-law No: 2006-97

*Please complete all applicable sections of the application form. An incomplete application will be returned to the applicant.*

OWNER / APPLICANT INFORMATION				
<b>PROPERTY OWNER: (check one)</b>		<input type="checkbox"/> Person (s)		<input type="checkbox"/> Company
Registered Land Owner:	Surname:	First Name:	Initial:	
Name (if Company)	Company Officer:			
Address:				
Contact Nos.	Tel.	Cell	Fax	Email
Application Contact Person:	Surname:	First Name:	Position:	
Contact Person's Address:				
Contact Nos.	Tel.	Fax	Email	

PROPERTY INFORMATION	
Address:	
Registered Plan No:	Lot / Block Numbers:
Roll Number:	Conc. & Lot Number:
Site Area:	19TM Number:

DESCRIBE PROPOSED WORK BRIEFLY			
CONSULTANT INFORMATION			
Company Name			
Contact Person:	Surname:	First Name:	Position:
Address:			
Contact Nos.	Tel.	Fax	Email
Legal Name for Use with Agreements:			
Designate to Which All Correspondence Will be Sent:			



CONTRACTOR INFORMATION			
Company Name			
Contact Person:	Surname:	First Name:	Position:
Address:			
Contact Nos.	Tel.	Fax.	Email.
Legal Name for Use with Agreements:			
Designate for all Correspondences:			

REQUIREMENTS			
Proposed Start Date:			
Proposed Completion Date:			
	Required & Included	Not Required	Notes of Explanation
Application Permit Fees (as per latest Fee By-law)	<input type="checkbox"/>	<input type="checkbox"/>	
Letter of Credit (as per Schedule "A")	<input type="checkbox"/>	<input type="checkbox"/>	
Proof of Liability Insurance (minimum. \$ 5,000,000)	<input type="checkbox"/>	<input type="checkbox"/>	
Site Alteration Plan (2 copies) (as per Schedule "B" and "C")	<input type="checkbox"/>	<input type="checkbox"/>	
Site Alteration Report (as per Schedule "B")	<input type="checkbox"/>	<input type="checkbox"/>	
Document regarding Archaeological Studies	<input type="checkbox"/>	<input type="checkbox"/>	
Authority Letter for Inspection	<input type="checkbox"/>	<input type="checkbox"/>	
Soil Fertility Report (If Agricultural Lands)	<input type="checkbox"/>	<input type="checkbox"/>	
Oak Ridges Moraine (if applicable, Schedule F)	<input type="checkbox"/>	<input type="checkbox"/>	

OWNER'S AUTHORIZATION (If an Agent is used)	
<p>The owner must complete this section. For more than one owner, a separate authorization from for each individual or corporation is required. Attach an additional page or pages in the same format as this authorization, if necessary.</p>	
<p>I, _____ being the registered owner of the subject lands, hereby authorize (print agent's name) _____, to submit the above application to the Town of Markham for approval thereof.</p>	
Signature:	Date:
Name of Signatory:	Title:

APPLICANT'S CERTIFICATION	
<p><b>THE APPLICANT certifies to have read the Site Alteration By-law and Schedules and agrees to abide by all the conditions therein.</b></p>	
<p>I, hereby make the above application for Site Alteration, declaring that all information contained herein is true and correct, and acknowledging the Town of Markham will process the application based on the information provided.</p>	
Signature:	Title:
Printed Name of Signatory:	Date:

<b>FOR OFFICE USE ONLY</b>	
<i>Completed Application Received on:</i>	
<i>Date Application Approved for Receipt:</i>	<i>Approved By:</i>
<i>Site Alteration Permit Issue On</i>	
<i>Entered Into AMANDA by:</i>	<i>Date:</i>

## Map of Oak Ridges Moraine

