

**THE CORPORATION OF THE TOWNSHIP OF HAMILTON**  
**BY-LAW 2005-25**  
**SITE ALTERATION BY-LAW**

A by-law to prohibit or regulate the placing or dumping of fill  
or the alteration of the grade of land in Hamilton Township

**WHEREAS** Sections 142 to 144 inclusive of the Municipal Act, 2001, S.O., c.25, as amended authorizes the Council of the Corporation of Hamilton Township to pass by-laws for prohibiting or regulating the placing or dumping of fill and for regulating the alteration of the grade of land in any area or areas in Hamilton Township.

**NOW THEREFORE** The Council of the Corporation of Hamilton Township enacts as follows:

**DEFINITIONS**

1. For the purposes of this by-law:
  - a) "Altering" or "Alter" means changing the grade of land either through the depositing of fill on or the excavation of land or a combination thereof;
  - b) "Applicant" means the owner, where such owner is an individual, or means any individual authorized in writing by the owner to apply for a permit on the owner's behalf;
  - c) "By-law Enforcement Officer" means the officer or employee of the Township of Hamilton appointed by the Corporation with the duty of administering and enforcing the provisions of all municipal by-laws;
  - d) "Chief Building Official" means the officer or employee of the Township of Hamilton appointed by the Corporation with the duty of administering the provisions of the Ontario Building Code, Building By-law and Zoning By-law;
  - e) "Clerk" means the Clerk of the Corporation of the Township of Hamilton;
  - f) "Drainage" means the movement of water to a place of disposal, whether by way of the natural characteristics of the ground surface or by an artificial method;
  - g) "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 of a property to another location on the same property;
  - h) "Fill" means any type of material deposited or placed on lands and includes, but is not limited to soil, stone, concrete, asphalt, rubbish, garbage, sod or turf either singly or in combination whether originating on the site or

- elsewhere, used or capable of being used to raise, lower, or in any way affect or alter the contours of the ground;
- i) "Floodplain" means the area, usually low lands, adjoining a watercourse which has been, or may be, covered by flood waters as determined in conjunction with the Conservation Authority;
  - j) "Grade" shall be defined as follows:
    - i. "existing grade" means the elevation of the existing ground surface of the lands upon which dumping and/or placing of fill or altering the grade of land is proposed and of abutting ground surface a minimum of three (3) metres wide surrounding such lands, except that where placing or dumping of fill or altering the grade of land has occurred in contravention of this by-law, existing grade shall mean the ground surface of the lands as it existed prior to the placing or dumping of fill or altering the grade of land.
    - ii. "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.
    - iii. "proposed grade" means the proposed elevation of ground surface of lands upon which fill is proposed to be placed or altering the grade of land is proposed;
  - k) "Inspector" means a person designated by the Township to inspect the placing or dumping of fill, or the alteration of the grade of land for compliance with a permit;
  - l) "Owner" means the registered owner of the land for which a permit is sought or obtained;
  - m) "Permit" means permission or authorization given in writing by the Planning Co-ordinator and/or By-law Enforcement Officer to perform work regulated by this by-law or part thereof;
  - n) "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;
  - o) "Placing" means the distribution of fill on lands to establish a finished grade higher or lower than the existing grade;
  - p) "Planning Co-ordinator" means the municipal employee charged with coordinating planning services for the Township of Hamilton;
  - q) "Ponding" means the accumulation of surface water in an 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;
  - r) "Removal" means excavation or extraction of any fill which lowers the existing grade, which includes soil stripping;
  - s) "Retaining Wall" means a concrete or concrete product wall or other material approved by the Chief Building Official designed to contain and support fill which has a finished grade higher than that of adjacent lands;

- t) "Site Alteration" means activities, such as grading, excavation and the placement fill or removal of material of fill that would change the landform characteristics of a site;
- u) "Soil" means any material commonly known as earth, topsoil, loam, subsoil, clay, sand or gravel;
- v) "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;
- w) "Township" means The Corporation of the Township of Hamilton.

## SCOPE

This by-law applies to all lands within the geographic limits of Hamilton Township.

## PROHIBITIONS

- 2. a) No person shall remove, place or dump fill on land, or cause fill to be removed, placed or dumped on land, or alter the grade of land in Hamilton Township without having first obtained a permit issued by the Planning Co-ordinator or Chief Building Official.
- b)
  - i. No person shall remove, place or dump fill on land, or cause fill to be removed, placed or dumped on land or alter the grade of land within any floodplain, except those works that, in the opinion of the Planning Co-ordinator or Chief Building Official, serve to protect buildings or structure from flooding or provide conservation benefits such as, but not limited to, shoreline protection, bank stabilization, improvement of wildlife habitat or improvement of flood control.
  - ii. No person shall remove, place or dump fill or cause fill to be removed, placed or dumped or alter the grade of the portion of the property within a provincially significant wetland, except for those exceptions noted in Section 2(c) (xii) and (xiii) of this by-law.
- c) The provisions of subsection (a) of this section do not apply in those areas of the Township where:
  - i. a regulation made under Section 28 of the Conservation Authorities Act, R.S.O. 1990, respecting the placing or dumping of fill is in force and applies to lands in question;
  - ii. the placing or dumping of fill or alteration of the grade of land 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, as those terms are defined in that Section;

- iii. a new septic system or replacement system is proposed that is regulated by Part 8 of the Ontario Building Code;
- iv. activities or matters prescribed by regulation;
- v. fill is being placed or the grade of land is being altered in conformity with a grading and drainage plan approved by Hamilton Township in conjunction with subdivision, pre-development, consent or site plan approvals under Sections 41, 51 or 53 respectively of the Planning Act and the requisite agreement that has been entered into;
- vi. a building permit has been issued by the Township for the erection of a building or structure, and the site plan accompanying the building permit application providing sufficient information in the opinion of the Chief Building Official to determine that the placing or dumping of fill or altering the grade of land conforms with provisions of this by-law;
- vii. soil no greater than 200 mm in depth is placed on lands for the purpose of lawn dressing, landscaping, adding to flower beds or vegetable gardens, provided that:
  - the elevation of the land within 600 mm of any property line is not changed; and
  - 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;
- viii. fill is placed or dumped in an excavation to the elevation of existing grade following the demolition or removal of a building or structure;
- ix. fill is dumped or placed on lands zoned Permanent Agriculture and Marginal Agriculture where there is an alteration to the grade of land as an incidental part of a commonly accepted agricultural practice.;  
or
- x. the use, operation, establishment, alteration, enlargement or extension of a waste management system or waste disposal site within the meaning of Part V of the Environmental Protection Act, R.S.O. 1990, c.E19, as amended, or a waste private disposal site or waste management system that is exempted by regulation from said Part V;
- xi. the construction, extension, alteration, maintenance or operation of works under Section 26 of the Public Transportation and Highway Improvement Act, R.S.O. 1990 c.P.50, as amended;
- xii. emergency measures taken by the Township, County of Northumberland or Ganaraska Region Conservation Authority to prevent erosion, slipping of soil, damage of trees or damage to property;

- xiii. the activities of the Township, a Ministry of the Provincial Government, the County of Northumberland, Ganaraska Region Conservation Authority, related in the establishment or maintenance of utilities and services, roads, bridges, flood and erosion control facilities, walkways, bicycle paths, fences, retaining walls, steps and lighting;
  - xiv. the activities of the Township, a Ministry of the Provincial Government, the County of Northumberland or Ganaraska Region Conservation Authority, or other conservation groups recognized by the Township that serves to enhance, restore or protect natural habitat;
  - xv. any activities of the Township or County of Northumberland not described in Section 2(c)(xi), (xii) and (xiii) of this by-law;
  - xvi. the placing or dumping of fill, removal of topsoil or alteration of grade of land undertaken of 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;
  - xvii. the placing or dumping of fill, or alteration of grade of land undertaken as an incidental part of drain construction and maintenance under the Drainage Act or the Tile Drainage Act.
- d) Where a permit has been issued pursuant to this by-law authorizing the placing or dumping of fill or altering the grade of land, no person shall remove, place or dump fill or cause fill to be removed, place or dumped or alter the grade of land except in accordance with the plans, documents and any other information on the basis of which such permit was issued.
  - e) Where a person has removed, dumped or placed fill or altered the grade of land or caused fill to be removed, dumped or placed, or the grade of land to be altered contrary to this by-law or not in conformity with an issued permit, that person, the owner and the permit holder will each be responsible for the reinstatement of the land to existing grade including the removal of fill.
  - f) No person shall place or dump, or cause to be placed or dumped, fill on any land for storage purposes, unless the outside storage of such fill on the land is permitted by the applicable zoning by-law of the Township or is a site approved by the applicable authority in relation to a subdivision, predevelopment, consent or site plan approval under Section 41, 51 or 53 respectively of the Planning Act.
  - g) Subject to Section 2(c), no person shall remove, place or dump fill or cause to be removed, place or dumped, fill on any land which results in the alteration of any grade established by a grading and drainage plan which has been approved by the Township as part of a subdivision, consent, rezoning or site plan approval, without a permit.

- h) Subject to Section 2(c), no person shall remove, place or dump, or cause to be removed, placed or dumped, fill or alter the grades of any land unless:
  - i. 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;
  - ii. all fill to be dumped or placed is clean and free of asphalt, trash, rubbish, glass, liquid or toxic chemicals, hazardous waste or garbage materials;
  - iii. the drainage system for the lands is provided in accordance with the Township's by-laws and the Township is satisfied that provision has been made for surface, stormwater drainage where such drainage is not provided by natural gradients or a swale; and
  - iv. 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 such that no ponding or alteration of existing flow is caused on abutting lands.

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

- 3. An applicant for a permit to dump, place or remove fill on the lands shall submit the following to the Planning Co-ordinator:
  - a) a completed application;
  - b) the applicable permit fee in accordance with Schedule 'A' to this by-law;
  - c) a security deposit if required in the form of cash, cheque or irrevocable bank letter of credit in an amount approved by the Township which may be drawn upon by the Township at its sole discretion to remedy any deficiency in any work or to correct any works completed under a permit issued under this by-law. Upon written application by the applicant/owner and upon the satisfaction of the Township that all conditions and requirements of the permit have been fulfilled, which may include a requirement for the signed seal of a Professional Engineer certifying that all conditions and requirements of the permit have been fulfilled, the Township will return said security deposit or the remaining amount of any reduced security deposit.
  - d) a fill plan including drawings and a supporting report containing any information prescribed in the application form;
  - e) a completed Environmental Impact Statement (EIS) prepared by a professional qualified in the relevant environmental field of study and acceptable to the Township and other authorities having jurisdiction for any property designated as Environmental Protection in the Township's Official Plan or any other area that has been identified as being a sensitive environmental feature by best available information supplied by a recognized environmental authority. The study, among other matters, shall:

- i. outline the location, size and amount of grade to be altered, fill to be placed, dumped or removed;
- ii. describe the type and degree of sensitivity of the area;
- iii. discuss and evaluate the compatibility of the proposed alteration of grade, filling or fill removal within the sensitive area with the pertinent features and ecological functions for which the area has been identified;
- iv. identify any portion of the sensitive area where development and filling should be precluded; and
- v. outline the need for and type of action required to resolve any incompatibility found;
- vi. evaluate the extent of flooding, erosion and dynamic beach hazards on the property where applicable, and discuss whether or not the proposed filling or alteration of grades will aggravate such hazards.

Any approved filling project shall comply with the recommendations of the study and by the directions of the Township and any other authority having jurisdiction.

The requirement for an EIS may be waived where the Township has consulted with the appropriate environmental authorities and it has been determined an EIS is not necessary. In the review of an EIS, the Township's Official Plan, relevant environmental authorities and the Provincial Policy Statement, including implementation guidelines, shall be consulted.

If the Environmental Protection area is a provincially significant wetland or floodplain, this section is superseded by Section 2(b) of this by-law.

4. a) The Township may, prior to the issuance of a permit, require the owner and/or proposed permit holder to enter into an agreement or similar arrangement which may be registered on title to the subject lands containing such requirements as deemed necessary to ensure that the placing, dumping or removal of fill or altering the grade of land is in accordance with prevailing Township design standards and proper engineering principles.
- b) Requirements contained in an agreement may include the owner and/or proposed permit holder posting with the Township, the security, in accordance with Section 3(c), certifications by a Professional Engineer or other similarly qualified person prior to the issuance of a permit and upon completion of the work. Such certifications shall state that the owner and proposed permit holder can and has complied with all of the obligations and conditions contained in the applied for and issued permit.

5. Every person who removes, places or dumps fill or alters the grade of land, or causes fill to be removed, placed or dumped or the grade of land to be altered shall:
- a) when required by the Township, provide a retaining wall, which does not encroach upon abutting lands, unless authorized in writing by the owner of the abutting lands, either above or below existing grade, such retaining wall to be constructed to satisfaction of the Chief Building Official. The Township may require that a retaining wall be constructed where:
    - i. erosion of fill onto abutting lands may occur; or
    - ii. the finished grade of the lands at the property line is higher than that of the existing grade of the abutting lands;
  - b) ensure that the finished grade surface be protected by sod, turf, seeding for grass, greenery, asphalt, concrete or other means, either singly or in combination within an expedient timeframe;
  - c) ensure that fill shall not be placed around the perimeter of any existing building to an elevation higher than 150 mm below the top of foundation wall of such building, and in conformity with Sentence 9.15.4.3(1) of the Ontario Building Code, as amended;
  - d) ensure that no trench in which piping is laid forming part of the drainage system shall be covered until the work has been inspected by the Township, and authorization is given to backfill the installation; and
  - e) provide erosion and sedimentation control measures around all disturbed areas, prior to the commencement of the placing, dumping or removal of fill or altering the grades of land, and shall maintain such measures in good working order to the satisfaction of the Township until the site has stabilized in accordance with Section 5(b);
  - f) provide any other measures that are deemed appropriate by the Township to protect the environment or fully implement the recommendations of an EIS;
  - g) ensure that fill is properly compacted using accepted engineering practices and in a manner satisfactory to the Township, with special considerations where the fill is to be used to support buildings, structures, paving, piping or other similar features;
  - h) ensure that the fill stockpiled or placed and any excavations or alteration of the grade of land or property has at a minimum the legal angle of repose as specified by the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1, as amended, and corresponding regulations for construction;
  - i) ensure that natural drainage or any natural or man-made watercourse is not altered in such a manner that will negatively affect other property or the environment.



**ISSUANCE OF A PERMIT**

6. A permit may be issued where:
- a) the owner and the applicant and the proposed permit holder have fulfilled all requirements pursuant to this by-law;
  - b) the owner and proposed permit holder have entered into the agreement referred to in Section 4(a) of this by-law, if required, and have performed all obligations which the agreement requires to be performed prior to the issuance of a permit;
  - c) the Township is satisfied that the proposed final elevations and resulting drainage pattern, the design of any retaining wall, the type of fill to be used and the method of placing or dumping of fill, are all in accordance with prevailing design standards and proper engineering practice;
  - d) the Chief Building Official is satisfied that the height of any retaining wall to be constructed either shall not exceed one metre from the low side of the finished grade or in height has been certified by a qualified consulting engineer and is in compliance with any applicable legislation or by-law;
  - e) the Planning Co-ordinator is satisfied after consultation with the appropriate environmental authority where applicable that the placing, dumping or removal of fill or the altering of the grade of land will not result in:
    - i. soil erosion or negative impact on drainage;
    - ii. blockage of a watercourse;
    - iii. sedimentation in a watercourse;
    - iv. pollution of a watercourse;
    - v. flooding or ponding caused by a watercourse overflowing its banks;
    - or
    - vi. a detrimental effect on any environmentally sensitive area or areas as defined in the Township's Official Plan or other area that has been identified as a sensitive environmental area or feature by a recognized environmental authority;
    - vii. violation of other applicable law;
  - f) the proposed dumping, place of or removal of fill complies with all provisions of the applicable zoning by-law and is clearly accessory or secondary to the uses permitted on a property by zoning by-law such that the proposed site alteration, placing or dumping of fill will not become or constitute the primary use of the subject property.
7. a) The permit issued pursuant to this by-law shall be valid for a period not to exceed one year from the date the permit was issued.
- b) A permit which is no longer valid, or which has expired pursuant to this by-law and the terms and conditions of such have not been fulfilled, must be renewed upon the making of written application accompanied by payment of

the original permit fee, failing which the Township shall remedy any deficiencies pursuant to the provisions of this by-law.

- c) The issuance of a permit does not relieve the owner or the permit holder from any responsibility to obtain all other approvals, which may be required by any level of government and agencies thereof.
- d) If the lands for which a permit has been issued are transferred while the permit remains in effect, the permit holder shall advise the Township and the new owner in writing prior to property transfer and the new owner of the lands shall forthwith advise the Township that such transfer has been completed and either:
  - i. provide the Township with an undertaking to comply with all the conditions under which the existing permit was issued; or
  - ii. apply for and obtain a new permit in accordance with the provisions of this by-law.

#### **REVOCAION OF PERMIT**

- 8. A permit may be revoked by the Planning Co-ordinator or Chief Building Official under any of the following circumstances:
  - a) if it was issued on mistaken, false or incorrect information;
  - b) if it was issued in error;
  - c) if the owner or permit holder requests, in writing, that it be revoked;
  - d) if the terms of an agreement under this by-law have not been complied with;
  - e) if the work authorized under the permit has not been commenced prior to its expiry date; or
  - f) if an owner fails to comply with Section 7(d) of this by-law.

#### **APPEALS**

- 9. Any applicant for a permit pursuant to this by-law may appeal to the Ontario Municipal Board by filing a letter of appeal with both the Clerk and the Ontario Municipal Board:
  - a) where the applicant objects to a condition in the permit within thirty (30) days after the issuance of a permit; or
  - b) where the Township fails to make a decision on the application within forty-five (45) days after the completed application is received by the Township;
  - c) where the Township refuses to issue a permit, within 30 days after the written decision.

#### **ADMINISTRATION AND ENFORCEMENT**

- 10. The administration and enforcement of this by-law shall be performed by the Planning Co-ordinator and Chief Building Official, by such persons authorized by

the Planning Co-ordinator, and by the Provincial Offences Officers of the Township, as may be appointed by by-law.

11. Upon completion of the works pursuant to a permit, the owner or permit holder shall so advise the Planning Co-ordinator or Chief Building Official. If the Planning Co-ordinator or Chief Building Official is satisfied, based on the information provided by the owner or permit holder and/or any information the Planning Co-ordinator or Chief Building Official deems relevant, that the works have been completed in conformity with the permit and this by-law, the Planning Co-ordinator or Chief Building Official shall issue a Certificate of Completion to the owner.
12. An inspector may, during reasonable daylight hours, and upon producing the appropriate identification, enter and inspect any land to which the by-law applies.
13. No person shall obstruct an inspector who is carrying out an inspection pursuant to this by-law, and any person who so obstructs an inspector is guilty of an offence pursuant to this by-law.
14. If, after inspection, the inspector is satisfied that there is a contravention of this by-law, the owner or permit holder shall be notified of the particulars of the contravention by personal service or prepaid registered mail and may, at the same time, provide all occupants with a copy of the notice.
15. After giving any persons served with a notice pursuant to Section 14 of this by-law an opportunity to appear before the inspector and make representations in connection with it, the inspector may make an order setting out:
  - a) the municipal address or the legal description of the land;
  - b) reasonable particulars of the work to be done to correct the contravention and the period in which there must be compliance with the order;
  - c) notice that if the work is not done in compliance with the order within the specified period, the Township may have the work done at the expense of the owner.
16. An order pursuant to Section 15 of this by-law shall be served personally or by prepaid registered mail.
17. A notice or order pursuant to this by-law when sent by prepaid registered mail shall be sent to the last known address of the owner of the land and permit holder.
18. An inspector who is unable to effect service pursuant to this by-law shall place a placard containing the terms of the notice or order in a conspicuous place on the

property and the placing of the placard shall be deemed to be sufficient service of the notice or order on the owner and permit holder.

19. If the owner or permit holder fails to do the work required by the order within the period it specifies, the Township, in addition to all other remedies it may have, may do the work and for this purpose may enter on the land with its employees and agent and assess costs.
20.
  - a) Costs incurred by the Township pursuant to this by-law may be recovered by the Township, including interest accrued to the date of payment at the rate of 15 percent, from the owner of the land by action or in a like manner as taxes and are a lien on the land upon the registration in the proper land registry office of a notice of lien.
  - b) The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date of payment.
  - c) Upon payment of all costs payable plus interest accrued to the date of payment by the owner of the land, the discharge of the lien shall be registered by the Township at the County of Northumberland Land Registry Office.
21. No person, after receiving proper notice, shall disobey an order made pursuant to this by-law.

#### **PENALTY**

22. Pursuant to Section 144(16) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, any person who contravenes any provision of, or order issued under, this by-law is guilty of an offence and 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 or not more than \$25,000.
23. Pursuant to Section 144(17) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, despite Section 22 where the person convicted is a corporation, the maximum fines in Clauses 22(a) and (b) are \$50,000 and \$100,000 respectively.

#### **CONFLICT**

24. If there is a conflict between this by-law and a by-law passed by The Corporation of the County of Northumberland, the by-law of The Corporation of the County of Northumberland prevails.

25. If there is a conflict between this by-law and any policies of the Oak Ridges Moraine Conservation Act, the Oak Ridges Moraine Conservation Act prevails.
26. Should a court of competent jurisdiction declare any section of this by-law invalid, such section shall be construed, as being severed herefrom, and the remainder of the by-law shall continue in full force and effect.
27. This by-law shall come into force and take effect on the date of its passing.

**THIS BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED  
THIS 19<sup>TH</sup> DAY OF APRIL, 2005.**

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**MAYOR**

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**CLERK**

SCHEDULE 'A'

The following fees shall be paid to the Township at the time of application for a fill permit:

- |     |   |   |
|-----|---|---|
| (a) | Fill/alteration of grade on property<br>hectare | \$100 plus \$50 per hectare or part<br><br>(overall maximum fee of \$500) |
| (b) | Renewal   | Same as (a)   |