

**THE CORPORATION OF THE TOWN OF EAST GWILLIMBURY  
FILL BY-LAW # 2013-066**

Being a by-law to Regulate and Prohibit the Placing or  
Dumping of Fill and Site Alterations in the Town of East Gwillimbury

**WHEREAS**, Section 142 of the Municipal Act, 2001, S.O. 2001, c. 25, permits the enactment of a by-law by the Council of the Corporation of the Town of East Gwillimbury to prohibit or regulate the placing or dumping of fill, prohibiting or regulating the site alteration of the grade of land in any defined area or on any class of land in the municipality, and requiring that a permit be obtained for the placing or dumping of fill or the site alteration of the grade of land; and

**AND WHEREAS** Council deems it in the public interest to regulate the dumping and placing of fill and site alterations in order to ensure that groundwater is protected, that existing drainage patterns are maintained and that any changes to existing drainage patterns are appropriate to protect environmental features and to prevent the importation of hazardous material; and

**AND WHEREAS** By-law No. 2010-55 was adopted by Council on May 3, 2010 and is hereby being replaced by this by-law;

**NOW THEREFORE** the Council of the Town of East Gwillimbury hereby enacts as follows:

**PART 1 - DEFINITIONS**

1.1 In this by-law:

- (a) “Agricultural lands” means lands used for the growing of crops, including nursery and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures
- (b) “Building” includes a structure occupying an area greater than ten square metres consisting of a wall, roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto, structures designated in the Building Code, a tent as specified in the Ontario Building Code and an on-site sewage disposal system;

- (c) “Commercial Fill Operation” means the placing or dumping of fill involving remuneration paid, or any other form of consideration provided, to the owner or occupier of the land, whether or not the remuneration or consideration provided to the owner is the sole reason for the placing or dumping of the fill.
- (d) “Community Programs and Infrastructure (CPI) Department” means the Town of East Gwillimbury Community Programs and Infrastructure Department
- (e) “Complete Application” means an application as described in Part 4 of this by-law;
- (f) “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;
- (g) “Drainage” means the movement of water to a place of suitable disposal, whether by way of the natural characteristics of the ground surface or by an artificial method;
- (h) “Dump” or “Dumping” includes the depositing of fill or any other deleterious material in a location other than where the said material was obtained and includes the movement and depositing of these materials from one location on a property to another location on the same property;
- (i) “Fill” means soil, stone, concrete, sod or turf either singly or in combination;
- (j) “Full Application” means the application referred to in Section 4.2 of this by-law;
- (k) “General Manager” means the General Manager of Community Programs and Infrastructure Department of the Town of East Gwillimbury and shall include any person authorized by the General Manager to carry out any of the powers and/or duties of the General Manager pursuant to this By-law;
- (l) “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 site alteration is proposed and includes abutting ground surface up to three metres wide surrounding such lands, except that where placing or dumping of fill or site alteration has occurred in contravention of this by-law or previous by-laws, existing grade shall mean the ground surface of the lands as it existed prior to the placing or dumping of fill or site alteration;
  - (ii) “Finished Grade” means the approved final elevation of ground surface of lands upon which fill has been placed or site alteration has occurred in accordance with this by-law;

- (iii) "Proposed Grade" means the proposed elevation of ground surface of land upon which fill is proposed to be placed or the site is proposed to be altered.
- (m) "Large Source Site" means proposed sources of fill material providing greater than 100m<sup>3</sup> of material;
- (n) "Normal Farm Practice" means any activity undertaken in accordance with the *Farming and Food Production Protection Act* that is part of an agricultural operation, and 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 may make use of innovative technology in a manner consistent with advanced farm management techniques, but does not include the removal of topsoil for sale, exchange or other disposition;
- (o) "Officer" means an individual appointed by the Town as an Inspector or a By-law Enforcement Officer;
- (p) "Operator" means any person, firm or corporation authorized by the Owner to manage or control any permitted works occurring on the owner's land and/or who alone or with others, operates, manages, supervises, runs or directs such business, activity or undertaking;
- (q) "Order" means an Order under Part 9 of this By-law;
- (r) "Other Applicable Law" means any Provincial or Federal statute or regulation and any by-law of the Regional Municipality of York or of the Town that addresses the matters of drainage or protection of the environment and it includes but is not limited to, the *Ontario Building Code Act*, the *Planning Act*, the *Oak Ridge's Moraine Conservation Act*, the *Greenbelt Protection Act*, the *Conservation Authorities Act*, the *Environmental Assessment Act*, the *Ontario Heritage Act*, the *Clean Water Act*, *Electricity Act*, *Aggregate Resources Act*, *Drainage Act*, *Tile Drainage Act*, *Environmental Protection Act*, *Public Transportation and Highway Improvement Act*, and the *Municipal Act*, each as amended from time to time, and to any regulation, official plan or other plan or similar document enacted or established under such legislation;
- (s) "Owner" means the registered owner of the lands;
- (t) "Permitted Works" are those works in receipt of a Town permit;
- (u) "Person" means any individual, association, firm, partnership, corporation, trust, incorporated company, corporation created under the *Condominium Act*, organization, trustee or agent and their heirs, executors or other legal representatives of a person to whom the context can apply according to law;

- (v) “Placing” means the distribution of fill on lands to establish a finished grade different from the existing grade;
- (w) “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 site alterations;
- (x) “Preliminary Application” means the application referred to in Section 4.1 of this by-law;
- (y) “Qualified Person” means a person qualified as defined within Ontario Regulation 153/04 -“Qualified Person, other than Risk Assessment” as amended;
- (z) “Retaining Wall” means a wall designed to contain and support fill which has a finished grade higher than that of adjacent lands;
- (aa) “Security” means a certified cheque, cash or an irrevocable letter of credit in a form acceptable to the General Manager and the General Manager of Corporate and Financial Services;
- (bb) “Site Alteration” means altering of the grade of the land whether temporarily or permanently and not a Commercial Fill Operation as defined within this by-law;
- (cc) “Site Restoration” means the treatment of land from which aggregate has been excavated so that the use or condition of the land is restored to its former use or condition prior to extraction;
- (dd) “Small Source Site” means proposed sources of fill material providing less than 100m<sup>3</sup> of material;
- (ee) “Soil” includes material commonly known as earth, topsoil, loam, subsoil, clay, peat, sand or gravel;
- (ff) “Swale” means a shallow depression in the ground sloping to a place of suitable disposal of surface water for the purpose of providing a method of drainage;
- (gg) “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;
- (hh) “Town’s Operational Guideline” means the document prepared by Terraprobe Inc. titled “Operational Guideline”, as amended;
- (ii) “Town” means the Town of East Gwillimbury;
- (jj) “Watercourse” means a natural or man-made channel or swale in which water flows, either continuously or intermittently with some degree of regularity.

## **PART 2 - GENERAL REGULATIONS**

- 2.1 This By-law applies to the entire Town of East Gwillimbury other than those areas which are subject to regulations made by the Lake Simcoe Region Conservation Authority under Clause 28(1) of the *Conservation Authorities Act R.S.O 1990 c.c.27*.
- 2.2 No person shall place or dump fill or any other deleterious material, or cause or permit fill or any other deleterious material to be placed or dumped on any land except in accordance with the provisions of this by-law without first obtaining a permit under this by-law unless otherwise exempt under Part 3.
- 2.3 No person shall alter, or cause or permit to be altered, the existing grade of any land except in accordance with the provisions of this by-law without first obtaining a permit under this by-law unless otherwise exempt under Part 3.
- 2.4 Notwithstanding any other provision of this by-law, no person shall do anything, or permit or cause the doing of anything, which results in the alteration, modification, fouling or blockage of any swale, ditch, drainage course, watercourse, or part thereof, on any land unless authorized by the public authority or public agency with relevant jurisdiction.
- 2.5 No person shall place or dump fill or cause or permit fill to be placed or dumped on any land or alter or cause or permit to be altered the grade of any land except in accordance with this By-law, the Town's Zoning By-law, as amended, and where applicable, in accordance with *Greenbelt Plan* and the Town's Official Plan policies;
- 2.6 No person shall place or dump fill or cause or permit fill to be placed or dumped on any land or alter or cause or permit to be altered the grade of any land within the boundaries of the Oak Ridges Moraine except in accordance with Part 3 of this by-law and/or the Town's Zoning By-law;
- 2.7 No person shall place or dump fill or cause or permit fill to be placed or dumped unless such fill is tested, when applicable, in accordance with the Town's Operational Guideline;
- 2.8 All activity is restricted by the Town's Noise By-law which only permits operation between 7:00 am and 7:00 pm Monday to Friday (Saturday is excluded unless given written authorization save and except an exemption for maintenance of equipment);
- 2.9 No person shall perform any works during any period in which a wind warning for the area has been issued by Environment Canada;
- 2.10 This by-law is not intended to and shall not circumvent any development approval process which is required under the *Planning Act* and, without limiting the generality of the foregoing, the fill permit process shall not be used to allow for area grading and pre-servicing of subdivision lands, industrial or commercial development which would

otherwise be addressed through the site plan or subdivision approval process under sections 41, 51 or 53 of the *Planning Act*.

- 2.11 If two or more applications submitted within a three year period, create a project totaling more than 10,000 m<sup>3</sup>, the latter shall be processed under Section 7.1.
- 2.12 Notwithstanding any other provision of this by-law, the General Manager may at his/her discretion require any applicant to enter into an agreement with the Town.

### **PART 3 - EXEMPTIONS**

#### **3.1 THIS BY-LAW IS NOT APPLICABLE TO THE FOLLOWING:**

- (a) the use, operation, establishment, alteration, enlargement or extension of a waste management system or waste disposal site within the meaning of the *Environmental Protection Act, R.S.O. 1990, c.E.19 as amended* or a waste, waste disposal or waste management system that is exempted by regulation from said Act;
- (b) 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*;
- (c) the placing or dumping of soil on lands for the purpose of lawn dressing, landscaping or adding to flower beds or vegetable gardens, provided that:
- (i) the ground elevation of the land is not increased by more than two hundred (200) millimeters;
  - (ii) the elevation of the land within sixty (60) centimeters (24 inches) of any property line is not changed; and,
  - (iii) there is no change in the location, direction, or elevation of any natural or artificial watercourse, drainage course, swale, or ditch used to drain land; and,
  - (iv) any material for deposition is within those parameters outlined in Table 1 of the Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the *Environmental Protection Act R.S.O. c.e. 19*; and,
  - (v) a maximum of 200m<sup>3</sup> of fill in total in each year is imported.
- (d) the placing or dumping of fill in an excavation to the elevation of existing grade following the demolition or removal of a building or structure for which a demolition permit has been issued;
- (e) the placing or 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*;

- (f) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken as an incidental part of drain construction under the *Drainage Act* or the *Tile Drainage Act*;
- (g) activities of the Town, the Regional Municipality of York, Lake Simcoe Region Conservation Authority, the Provincial Government and the Federal Government related 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;
- (h) the placing or dumping of fill, removal of topsoil or alteration of the grade of land imposed 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;
- (i) the placing or dumping of fill, removal of topsoil or alteration of the grade of land imposed as a condition of Pre-servicing Agreements, Topsoil Stripping Agreements and other similar instruments used by to the Town;
- (j) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distributions system, as those terms are defined in that section;
- (k) the placing or dumping of fill on lands for the purpose of flood erosion control to establish finished grade shown on a grading and drainage plan approved by the Lake Simcoe Region Conservation Authority and/or by the General Manager in conjunction with subdivision approval or site plan approval;
- (l) the removal of topsoil as an incidental part of a Normal Farm Practice including such removal as an incidental part of sod-farming, greenhouse operations and nurseries for horticultural products, but this by-law is applicable to the removal of topsoil and removal, placement or re-placement of sub-strata for sale, exchange or other disposition;
- (m) the placing or dumping of fill, removal of topsoil or alteration of the grade of land in any area of the municipality to which a regulation made by the Lake Simcoe Region Conservation Authority under Section 28 of the *Conservation Authorities Act* in respect of such activities is then in effect;
- (n) the placing of fill pursuant to the construction of a building or structure pursuant to a valid building permit which has been issued for the erection of a building or structure, if the documentation accompanying the building permit application provides sufficient information to determine that the placing or dumping of fill conforms with the provisions of this by-law; however, if no site plan

accompanies the building permit, then a Fill/Site Alteration permit application will be required;

- (o) construction of an on-site sewage system pursuant to a valid building permit provided the placement or dumping of fill is consistent with the approved design or as required by the Town.

#### **PART 4 - APPLICATION FOR COMMERCIAL FILL & ALTERATION PERMITS**

##### **4.1 PRELIMINARY APPLICATIONS SHALL INCLUDE:**

- (a) the name and address of the Owner
- (b) the municipal address of the land on which the fill is to be dumped or placed;
- (c) a general description of the proposed works including, but not limited to the following:
  - (i) purpose of the project
  - (ii) approximate total volume of material for importation or displacement
  - (iii) proposed approximate start and end dates
- (d) proposed end land use;
- (e) the applicable fees calculated in accordance with Schedule "A" to this by-law.
- (f) for a site alteration application, a signed letter noting that the proponent or owner will not be accepting remuneration, or any other form of consideration, for the placing and/or dumping of fill.

##### **4.2 FULL APPLICATIONS SHALL INCLUDE:**

- (a) the name and address of the Owner and Operator ;
- (b) the municipal address of the land on which the fill is to be dumped or placed, or site alteration is to occur;
- (c) the legal description of the land upon which the fill is to be dumped or placed, or site alteration is to occur;
- (d) the applicable fees calculated in accordance with Schedule "A" to this by-law;
- (e) an engineered and scaled drawing of any retaining wall that may be required and a description, including dimensions, of any materials to be used in the construction of such retaining wall;



- (f) an accurate plan of the land to the satisfaction of the General Manager based on an identified legal survey showing;
- (i) the property lines of the lands on which the fill is to be placed or dumped, or the site is altered, with appropriate dimensions,
  - (ii) for Commercial Fill Operations less than 10,000 m<sup>3</sup> existing spot elevations on three (3) metre grids across the lands and six (6) metre grids beyond the property lines to clearly show the existing drainage patterns on the lands and on the abutting lands;
  - (iii) for Commercial Fill Operations greater than 10,000 m<sup>3</sup> a topographic survey at one metre contour intervals certified by an engineer or surveyor defining all material and manmade features, including top and bottom of slopes, drainage patterns, tree lines, buildings, and stockpiles on the lands and within thirty (30) metres on abutting lands,
  - (iv) for Site Alterations less than 5000 m<sup>3</sup> plan and profile drawings including top and bottom of slopes, drainage patterns, tree lines, buildings, and stockpiles on the lands and within thirty (30) metres on abutting lands,
  - (v) for Site Alterations between 5000 m<sup>3</sup> and 10,000 m<sup>3</sup> existing spot elevations on three (3) metre grids across the lands and six (6) metre grids beyond the property lines to clearly show the existing drainage patterns on the lands and within thirty (30) metres on the abutting lands,
  - (vi) for site alterations greater than 10,000 m<sup>3</sup>, a topographic survey at one metre contour intervals certified by an engineer or surveyor defining all material and manmade features, including all requirements noted in Section 4.2 (f) (v);
  - (vii) all existing storm sewers, ditches, swales, drainage course and watercourses on the lands and on abutting lands and public highways;
  - (viii) all existing buildings, the species and size in calliper of all trees greater than 20 cm, measured 1.37m from the base, the location of all driveways on the lands and of all easements and rights-of-way over, under, across or through the lands; and,
  - (ix) proposed grades and drainage systems upon completion of the filling operation; and,
  - (x) all proposed ground covering to be used upon completion of the filling operation,
  - (xi) soil erosion control measures and location.

- (g) a description of the fill proposed to be dumped in accordance with the Town of East Gwillimbury Operational Guideline;
- (h) a signed authorization by the Owner and Operator certifying the correctness of all the information in the application; and
- (i) a signed authorization by the Owner allowing the Operator to conduct the proposed works on the subject land; and
- (j) a signed authorization of a grantee(s) of any easements within the property accepting the placement of fill or site alteration on or in the vicinity of any easement;
- (k) the official plan designation and zoning of the property;
- (l) where the land is within the boundaries of the *Oak Ridges Moraine Conservation Plan* or the *Greenbelt Plan*, the application shall be accompanied by any and all documents, reports or studies required by such Plan to demonstrate compliance with its provisions;
- (m) where the land is within the boundaries of the *Greenbelt Plan*, the application shall be accompanied by an agricultural justification report(s) to address any potential effects on existing agricultural operations and the long term viability of the lands for agricultural use ;
- (n) written confirmation from the Lake Simcoe Region Conservation Authority or any Provincial or Federal Authority as to whether the fill operation is within a regulated area;
- (o) for post-extraction aggregate operations, copies of all drawings and schedules associated with the license issued by the MNR and a confirmation of surrender of license;
- (p) Notwithstanding Part 4 of this By-law and Schedule "A" attached the General Manager, in writing, may waive the requirement for certain submission criteria for an application for a fill/site alteration permit or any part thereof in appropriate cases, after taking into consideration the nature and scale of the proposed works and the anticipated impact on the site and the surrounding environment;
- (q) dust, mud and erosion control plan;
- (r) proposed truck routes.

**PART 5 - PERMIT CONDITIONS**

5.1 As a condition of the issuance of a permit the General Manager may require the Owner and/or Operator, either prior to or after the permit has been issued, to comply with one or more of the following:

- (a) Notify the General Manager in writing within forty eight (48) hours of commencing any work;
- (b) to construct a retaining wall including a safety fence which does not encroach upon land abutting the land on which the work is to be performed, (retaining walls one (1) metre or higher may be subject to a building permit pursuant to the *Building Code Act*);
- (c) to provide protection for the Finished Grade;
- (d) to provide that Fill shall not be placed around the perimeter of any existing building unless such building and its foundation walls are evaluated and reinforced in accordance with accepted engineering and construction practice; and an appropriate building permit has been issued;
- (e) to ensure that no trench in which drainage piping is laid, is covered and backfilled until the work has been inspected and approved by the General Manager;
- (f) to provide protection for trees as per the Town standards, install all agreed tree protection measures prior to commencing any work and maintain these tree protection measures throughout the duration of the work;
- (g) to prepare, submit for approval and operate in accordance with, a detailed hydrogeologic study prepared in accordance with the Town's Operational Guideline and subject to Town approval;
- (h) to prepare, submit for approval and comply with a well monitoring program developed and undertaken by a Qualified Person (QP) to include both onsite groundwater monitoring as well as offsite private well base studies as part of a detailed hydrogeologic study aligned with the Town's Operational Guideline and subject to Town QP review;
- (i) to provide siltation and erosion control measures, as per Town standards, and to obtain the approval of the Lake Simcoe Region Conservation Authority for siltation and erosion control measures when required;
- (j) to provide protection for environmentally significant lands identified by, but not limited to, the Town's Official Plan, the Oak Ridges Moraine Conservation Plan, Lake Simcoe Protection Plan, Greenbelt Plan and the Lake Simcoe Region Conservation Authority Regulations;

- (k) to remove the topsoil prior to the performance of the work in the alteration of the grade or the placing or dumping of fill and to restore the surface in accordance with Ministry of Environment regulations;
- (l) to provide financial security in a form and amount to be determined by the General Manager to secure performance of the work for which the permit is to be issued and to secure the maintenance of the highways that are used by the trucks delivering the fill in a state of repair and free from dust and mud. The security may be drawn upon by the Town at its sole discretion to remedy any deficiency in any work;
- (m) to provide adequate drainage from the land on which the work is to be performed in accordance with Town standards;
- (n) to develop and submit to the CPI Department for approval an Operations Schedule/Fill Management Plan that conforms to the Town's Operational Guideline as amended and shall include but not be limited to the following:
- (i) to keep and maintain the following records in a good and businesslike manner;
- the full and complete legal name and business name, if different from the legal name, of each hauler,
  - the commercial vehicle registration number of each hauler,
  - the motor vehicle permit number of the motor vehicles owned and operated by each hauler,
  - the date and time of each delivery of fill,
  - the volume of each delivery of fill,
  - the content of material of each delivery of fill, and
  - any other information required by the General Manager,
- (ii) the point of origin of each delivery of fill including verification as outlined within the Town's Operational Guideline;
- (o) The data referred to above shall be made available for inspection upon the request of the General Manager or his/her designate;
- (p) to provide to the General Manager a report from a Qualified Person in respect of the source and nature of the fill to be placed or dumped to ensure the fill is clean as per *Ministry of the Environment* criteria and the Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act*, as amended, in particular;
- (q) to restrict truck daily volumes and/or set the location of truck and/or access routes or staging and storage areas;

- (r) to notify the General Manager of the commencement, the completion, and of the various stages of performance of the work in the alteration of the grade of the land and/or in placing or dumping of fill on the land and to make the site available for inspection by his/her designate at all times;
  - (s) to notify adjacent property owners within 250 metres of the subject property by written notice, of any subsequent application for works less than 10,000 m<sup>3</sup> and repeat notification as detailed in Section 8.1 for those greater than 10,000 m<sup>3</sup>;
  - (t) to indemnify the Town for any liability, costs, damages or losses incurred directly or indirectly by the work contemplated in the permit and provide insurance satisfactory to the Town;
  - (u) to enter into an Agreement with the Town where applicable;
  - (v) to pay any and all costs incurred by the Town for Peer Review, quality control/assurance and operational compliance including a 15% administration fee.
- 5.2 The issuance of any permit by the Town shall not relieve the permit holder from compliance with this By-law, any other applicable law or legislation;
- 5.3 The General Manager shall issue a permit when:
- (a) The General Manager is satisfied that the lands which are the subject of the application for a permit are not within an area where the placing or dumping of fill or the alteration of the grade of land is prohibited by legislation, Official Plans and Zoning by-laws or other applicable law as noted in this By-law;
  - (b) all other permits, agreements and documentation have been received to the satisfaction of the Town; and
  - (c) the applicant has fulfilled all requirements of this by-law and all other applicable law.
- 5.4 Where a permit has been issued under this by-law authorizing the placing or dumping of fill, or alteration of the grade of land, no person shall place or dump fill except in accordance with:
- (a) the plans, documents and any other information required for the approval of the permit;
  - (b) the terms and conditions of the permit;
  - (c) in compliance with any agreement entered into with the Town as a condition of obtaining the permit; and
  - (d) all other provisions of this by-law.

- 5.5 No person shall undertake any works or allow works to occur on any land for storage purposes unless the outside storage of such fill on the land is permitted by the Town's Zoning By-law, as amended.

## **PART 6 - PERMIT REVOCATION, EXPIRY AND TRANSFER OF PERMITS**

- 6.1 The General Manager may revoke a permit for the following reasons:
- (a) it was obtained on mistaken, false or incorrect information;
  - (b) it was issued in error;
  - (c) the Owner and/or Operator requests in writing, that it be revoked;
  - (d) the terms of an agreement under this by-law have not been complied with;
  - (e) work authorized under the permit has not been commenced prior to its expiry date; or
  - (f) an Owner or Operator has failed to comply with the provisions of this by-law.
- 6.2 If the work has commenced before a permit for that work has been issued, the fees for an application for each permit required shall:
- (a) double the amount otherwise specified in this by-law; and
  - (b) include engineering site inspection(s) fees as defined in Schedule A for each inspection that was made, required or requested prior to a permit being issued.
- 6.3 Permits for designated Commercial Fill Operations issued under this by-law shall be valid for a period of not less than one year and not more than three years from the date of issuance, unless otherwise authorized by Council.
- 6.4 Notwithstanding Section 6.3 permits issued under this by-law shall expire six (6) months after the date of issuance of the permit if work is not commenced under the permit.
- 6.5 A permit which has expired may be renewed at the sole discretion of the General Manager within a six month period from the date of expiry upon the making of written application to the General Manager and payment of the prescribed fees in Schedule A to this by-law.
- 6.6 If title or lease of the land for which a permit has been issued is transferred while the permit remains in effect, the permit shall be deemed cancelled unless the new Owner of the lands, at a minimum of 30 days prior to the transfer,

- (a) provides the Town of East Gwillimbury with an undertaking to comply with all the conditions under which the existing permit was issued; or
  - (b) applies for and obtains a new permit in accordance with the provisions of this by-law.
- 6.7 If a permit is expired, cancelled or revoked after work has commenced and prior to the completion of the site alteration, the Owner and Operator, at their cost, shall forthwith restore the site to its original condition or stabilize the site, including but not limited to topsoil, grading and sodding, to the satisfaction of the General Manager.

#### **PART 7 - PERMIT AGREEMENT FOR COMMERCIAL FILL OPERATIONS OR SITE ALTERATION PROJECTS GREATER THAN 10,000M<sup>3</sup>**

- 7.1 Where more than 10,000 m<sup>3</sup> of material is proposed to be placed or dumped in either a Commercial Fill Operation or Site Alteration Project, the Owner or Operator will provide a full application under Section 4.2 and enter into an agreement with the Town which shall be registered on title to the land on which the work is to be performed and the Owner and Operator shall agree to the following conditions, including but not limited to:
- (a) retain a Qualified Person (QP), approved by the General Manager, who shall be responsible for ensuring that the placing and dumping of fill or alteration of the site is in accordance with reasonable engineering and environmental practices, based on Regulation 153/04 as amended and is in accordance with the plan submitted by the proponent and approved by the General Manager for the permit and section 5.1 of this by-law;
  - (b) place or dump the fill in accordance with this by-law, the permit and agreement;
  - (c) require the Qualified Person (QP) to report in writing on a regular basis or as determined by the General Manager that the placing and dumping of fill is in accordance with this by-law as well as report on the overall compliance of site operations with the approved Operations Schedule/Fill Management Plan;
  - (d) require that the placing or dumping of fill be completed by a specified date;
  - (e) not to contaminate the natural environment and to abide by all applicable environmental laws and regulations;
  - (f) provide a report from the Qualified Person that he/she is satisfied that the placing or dumping of fill will not result in;
    - (i) soil erosion,
    - (ii) blockage of a swale, ditch, drainage course or watercourse,
    - (iii) siltation in a swale, ditch, drainage course or watercourse,

- (iv) pollution of a swale, ditch, drainage course or watercourse,
  - (v) flooding or ponding of abutting lands,
  - (vi) flooding or ponding caused by a swale, ditch, drainage course or watercourse overflowing its banks,
  - (vii) a detrimental effect on any trees of a caliper of 20 cm or more, measured 1.37m up from the base, located on the lands,
  - (viii) detrimental effect on matters of inherent biological sensitivity such as aquifer recharge, water quality, unusual plants or wildlife and overwintering habitats, or
  - (ix) contamination of the aquifer
- (g) acknowledge that the Town may engage legal, engineering, hydrology, environmental and landscape consultants to evaluate studies and or agreements in which case the costs incurred will be charged back to the applicant plus a 15% administrative charge;
- (h) provide security satisfactory to the Town to be used to remedy any breach of Federal legislation, Provincial legislation, this by-law or agreement;
- (i) indemnify the Town for any liability, costs, damages or losses incurred directly or indirectly by the issuing of a permit or the work undertaken pursuant to the permit and provide insurance satisfactory to the Town.

## **PART 8 - NOTICE TO PUBLIC AND CONSIDERATION OF COUNCIL**

- 8.1 An application for Commercial Fill Operations or Site Alteration Projects greater than 10000m<sup>3</sup> shall not be approved until Council has considered the application at a public meeting at which the applicant or any interested members of the public will have a fair opportunity to make representation. Notice of the public meeting is to be provided to property owners and agencies in a similar manner as a Zoning By-law under the Planning Act or an alternative approved by the General Manager.

## **PART 9 - ADMINISTRATION AND ENFORCEMENT**

- 9.1 This by-law applies to all the lands within the Town of East Gwillimbury but it shall have no effect on those lands which are subject to a regulation made by the Lake Simcoe Region Conservation Authority respecting the placing or dumping of fill, removal of topsoil or alteration of the grade of land under Section 28 of the *Conservation Authorities Act, R.S.O. 1990, c. C.27*, as amended.
- 9.2 The administration and enforcement of this by-law shall be performed by the General Manager and/or Officer and/or any Qualified Person assigned by the General Manager or Council.



- 9.3 No person shall obstruct a person referred to in Section 9.2. who is carrying out an inspection pursuant to this by-law.
- 9.4 Upon completion of the work pursuant to a permit, the Owner and/or Operator shall so advise the General Manager within thirty days of project completion.

## **ORDERS**

### 9.5 Order to Discontinue Activity/Notice of Contravention

If a person is placing fill or altering a site in contravention of any of the provisions of this by-law, including an agreement entered into under Part 7 of this by-law, the Town may issue an order to the person, and to the owner of the lot on which the activity is occurring to discontinue the contravening activity.

The order shall set out:

- i) the reasonable particulars of the contravention adequate to identify the contravention,
- ii) the location of the land on which the contravention occurred, and
- iii) the date by which there must be compliance with the order.

The order may be served in accordance with the service provisions contained in this by-law.

### 9.6 Work Order/Order to Comply

If a person is placing fill or altering a site in contravention of any of the provisions of this by-law, including an agreement entered into under Part 7 of this by-law, the Town may issue a work order to the person who contravened or permitted the contravention of this by-law, as well as to the owner of the land on which the contravention occurred, to do work to correct the contravention. The order shall set out

- i) the reasonable particulars of the contravention adequate to identify the contravention,
- ii) the location of the land on which the contravention occurred, and
- iii) the work to be done and the date by which the work must be done.

The order may also provide that if the person or owner fails to correct the contravention, the Town may do the work to correct the contravention, including the removal of the fill material, the regrading of the land, or both, at the expense of the person and/or the owner. The order may be served in accordance with the service provisions contained in this by-law.

### 9.7 Order to Remove

Where a permit has not been issued and any person is in contravention of this by-law the Officer and/or General Manager may issue an Order for Removal requiring the person to restore the property to the condition it was in prior to commencement of such work to the satisfaction of the General Manager within the time set out in the Order at the Owner/Operator's cost.

### 9.8 Remedial Action

If the Town has issued an order directing or requiring a person or an owner to do a matter or thing to correct a contravention of this by-law, and the person or the owner has failed to correct the contravention, the Town may enter upon the land between the hours of 9:00 am and 5:00 pm Monday to Friday to do all work necessary to correct the contravention, including the removal of all or part of the fill material, the re-grading of the land, or both, and the Town may recover the cost of doing the matter or thing from the person directed or required to do it by action or by adding the costs to the tax roll of the owner and collecting them in the same manner as property taxes.

9.9 An order issued under this by-law may be served personally or may be served by registered mail sent to the last known mailing address of the person as indicated on the Town's assessment roll. If an order is served on a person by registered mail, it shall be deemed to have been served on the person on the 5<sup>th</sup> day after mailing of the order, which deemed service may be rebutted by the person proving, on a balance of probabilities, that they did not receive the order.

9.10 An Owner and/or Operator who has received a Notice of Contravention or an Order to Comply shall comply with the Notice of Contravention or the Order to Comply within the time frame specified in the Notice of Contravention or the Order to Comply;

9.11 If the Owner and/or Operator do not comply with an Order to Comply, the General Manager may draw on financial securities as required and as provided in the Agreement under Subsection 7.1 (h) of this by-law;

9.12 The Town may draw on financial securities as required to complete the work;

9.13 An Officer who is unable to effect service to this by-law shall place a placard containing the terms of the Notice of Contravention or a Work Order/Order To Comply in a conspicuous place on the property and the placing of the placard shall be deemed to be sufficient service of the Order on the Owner and Operator;

9.14 If the Owner or Operator fails to do the work required by the Order within the period it specifies, the Town, 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 agents. The costs incurred by the Town in so doing shall be paid by the Owner and/or Operator and may be recovered by the Town in like manner as taxes or drawing on financial securities provided.

**PART 10 - PENALTY**

- 10.1 Any person, including a corporation, who contravenes any provision of this by-law, the terms or conditions of a Permit, an Agreement, a Fill Management Plan or an Order under section 444 or section 445 of the *Municipal Act, 2001*, or an order issued under this by-law, is guilty of an offence:
- 10.2 If a corporation has contravened any provision of this by-law, the terms or conditions of a Permit, an Agreement, a Fill Management Plan or an Order under section 444 or section 445 of the *Municipal Act, 2001*, or an order issued under this by-law, every director and officer who concurred in such a contravention is guilty of an offence.
- 10.3 Every person who is guilty of an offence under this by-law shall be subject to the following penalties:
- (a) upon a first conviction, to a fine of not less than \$100 and not more than \$50,000;
  - (b) Upon a second or subsequent conviction for the same offence, to a fine of not less than \$400 and not more than \$100,000;
  - (c) Upon conviction for a continuing offence, to a fine of not less than \$100 and not more than \$10,000 for each day or part of a day that the offence continues. The total of the daily fines may exceed \$100,000;
  - (d) Upon conviction of a multiple offence, for each offence included in the multiple offence, to a fine of not less than \$100 and not more than \$10,000. The total of all fines for each included offence is not limited to \$100,000.
- 10.4 For the purposes of this by-law, an offence is a second or subsequent offence if the act giving rise to the offence occurred after a conviction had been entered at an earlier date for the same offence.
- 10.5 If fill has been placed or a site altered in contravention of any provision of this by-law, and the contravention has not been corrected, the contravention of the provision shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected.
- 10.6 If an order has been issued under this by-law, and the order has not been complied with, the contravention of the order shall be deemed to be a continuing offence for each day or part of a day that the order is not complied with.
- 10.7 For the purposes of this by-law, “multiple offence” means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this by-law.
- 10.8 A special fine may be imposed in addition to the fine under Section 10.3 above in circumstances where there is an economic advantage or gain from the contravention of

this by-law and the maximum amount of the special fine may exceed \$100,000. A special fine shall be calculated on the basis of:

- i) \$10.00 for each cubic metre of Fill deposited in excess of the amount allowed in a Permit, or deposited beyond the geographic limits of the Permit;
- ii) \$100.00 for each cubic metre of Fill that is found to exceed Ministry of the Environment criteria and the Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act*, as amended.

### Rebuttable Presumption

10.9 In a prosecution by the Town for a contravention of this bylaw, unless rebutted by evidence to the contrary on a balance of probabilities a person who owns, is in occupation of or who is in charge of management or control of a property on which fill has been placed or site alteration has occurred

- i) shall be presumed to have placed such fill or altered the site, or permitted the placement of fill or site alteration.
- ii) shall be presumed to have achieved an economic gain of at least \$10.00 for each cubic metre of Fill deposited in excess of the amount allowed in a Permit, or deposited beyond the geographic limits of the Permit
- iii) shall be presumed to have achieved an economic gain of at least \$100.00 for each cubic metre of Fill that is found to exceed *Ministry of the Environment* criteria and the Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act*, as amended.

### Power of Entry

10.10 The Town may enter on a lot at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) the provisions of this by-law;
- (b) an order issued under this by-law; or
- (c) an order made under section 431 of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended.

- 10.11 Where an inspection is conducted by the Town, the person conducting the inspection 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 from any person concerning a matter related to the inspection including their name, address, phone number and identification; 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.
- 10.12 The Town may undertake an inspection pursuant to an order issued under s 438 of the Municipal Act, 2001, S.O. 2001, c. 25 as amended.
- 10.13 The Town's power of entry may be exercised by an employee, officer or agent of the Town or by a member of the York Regional Police force, as well as by any person under his or her direction.
- 10.14 Where an authorized officer has reasonable grounds to believe that an offence has been committed by a person, the authorized officer may require the name, address and proof of identity of that person, and the person shall supply the required information.
- 10.15 Where an authorized officer has reasonable grounds to believe that an offence has been committed by a person, the authorized officer may require the name, address and proof of identity of that person, and the person shall supply the required information.

## **11. SEVERABILITY**

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

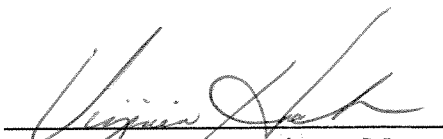
**12. SCHEDULES**

12.1 Schedule "A" attached to and forms part of this by-law.

**13. REPEALING SECTION**

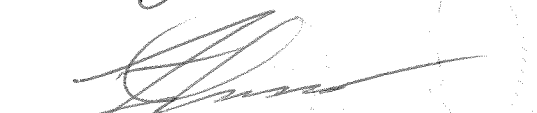
13.1 By-law 2010-55 is hereby repealed.

ENACTED and PASSED this 6th day of May, 2013.



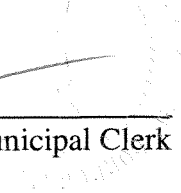
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Virginia Hackson, Mayor



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Fernando Lamanna, Municipal Clerk



**SCHEDULE "A"****FEES****(1 Load Equals 10m<sup>3</sup>)**

<b>PRELIMINARY APPLICATION PROCESSING</b>	
Proposed Works less than 2500m <sup>3</sup>	\$75.00
Proposed Works between 2500m <sup>3</sup> and 5000m <sup>3</sup>	\$200.00
Proposed Works between 5000m <sup>3</sup> and 10,000m <sup>3</sup>	\$350.00
Proposed Works greater than 10,000m <sup>3</sup>	\$500.00

<b>FULL APPLICATION PROCESSING</b>	
<b>DESCRIPTION</b>	<b>APPLICATION FEE</b>
Permitted Works less than 1000m <sup>3</sup>	\$125 + \$0.80/m <sup>3</sup> proposed volumes (Maximum \$925)
Permitted Works between 1000m <sup>3</sup> and 5000m <sup>3</sup>	\$250 + \$0.70/m <sup>3</sup> proposed volumes (Maximum \$3750)
Permitted Works between 5000m <sup>3</sup> and 10,000m <sup>3</sup>	\$500.00 + \$0.60/m <sup>3</sup> proposed volumes (Maximum \$6500)
Permitted Works greater than 10,000m <sup>3</sup>	\$1750 + \$0.50/m <sup>3</sup> proposed volumes (Maximum \$15,000)

**SCHEDULE "A"****Municipal Tipping Fee:  
To be determined by the Town as part of the application process**

Engineering Site Inspection \$250 per inspection (post application approval)

Expired Permit Renewal Fee \$200

The Town may engage legal, engineering, hydrology, hydrogeology, environmental and landscape consultants to evaluate studies and/or agreements in which case the costs incurred will be charged back to the applicant plus a 15% administrative charge.

Inflation Clause: All figures within this schedule are based on April 2013 dollars. Starting in April of every year these figures will be increased based on the January Consumer Price Index, year over year, by an escalation factor derived from Statistics Canada Catalogue # 62-001-X PE or XIE, Ontario ALL-ITEMS index CANSIM vector number (v41691919)

Notes: Refer to section 3.1 for exemptions to the by-law such as landscaping and topdressing, building construction, etc.