

THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

BY-LAW NO. 025-2022

(As Amended by By-law No. 016-2023)

Being a Site Alteration By-law to regulate the removal, placing or dumping of fill in the Township of Wainfleet.

WHEREAS sections 8, 9 and 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize a municipality to pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons, and the protection of persons and property;

AND WHEREAS section 142 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a local municipality may pass by-laws to prohibit or regulate the placing or dumping of fill, the removal of topsoil and the alteration of the grade of land, to require that a permit be obtained for the placing or dumping of fill, the removal of topsoil and the alteration of the grade of land and for imposing conditions to a permit, including requiring the preparation of plans acceptable to the municipality relating to grading, filling or dumping, the removal of topsoil and the rehabilitation of the site;

AND WHEREAS sections 23.1, 23.2, 23.3 and 23.5 of the of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize a municipality to delegate certain powers and duties;

AND WHEREAS section 425 of the of the *Municipal Act, 2001* S.O. 2001, c. 25, permits a municipality to pass by-laws providing that any person who contravenes any by-law of the municipality enacted under the statute is guilty of an offence;

AND WHEREAS subsection 426(4) of the of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that any person that hinders or obstructs, or attempts to hinder or obstruct, any person who is exercising or performing a duty under a by-law enacted under the statute is guilty of an offence;

AND WHEREAS subsection 444(1) of the *Municipal Act, 2001* S.O. 2001, c. 25, permits a municipality, if satisfied that a contravention of a by-law of the municipality passed under the statute has occurred, to make an order requiring the person who contravened the by-law or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity;

AND WHEREAS section 446 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides a municipality with the authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;

AND WHEREAS section 434.1 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a municipality may require a person to pay an administrative monetary penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under the statute;

AND WHEREAS Council of the Township of Wainfleet deems it expedient and in the public interest to enact this By-law;

NOW THEREFORE the Council of the Corporation of the Township of Wainfleet enacts as follows:

1. SHORT TITLE

1.1 This By-law may be cited and known as the "Site Alteration By-law".

2. DEFINITIONS

2.1 For the purposes of this By-law:

"Agricultural Lands" includes:

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

"Agricultural uses" means the growing of crops, including nursery, biomass 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; associated on-farm buildings and structures, including but not limited to livestock facilities, manure storages, value-retaining facilities and accommodation for full-time farm labour when the size and nature of the operation requires additional employment;

"Applicable Law" means all legislative laws, standards, codes, regulation or by-law as amended that may apply;

"Certified Lot Grading and Drainage Plan" means a lot grading plan that shows how water drains from the subject property and is prepared by a Certified Engineer or Ontario Land Surveyor. The plan must include elevations of the dwelling and the land including the swales which carry the water off the property.

"Commercial Fill Operation" means the removal, placing or Dumping of Fill involving remuneration paid, or other compensation, to an Owner of land whether or

not the remuneration or compensation to the Owner is the sole reason for the removal, placing or the Dumping of Fill;

“Complete Application” means an application for a Permit that includes the application form and all other plans, fees, securities, certificates, approvals and other documents required to be submitted in accordance Part VII of this By-law;

“Conservation Authority” means the Niagara Peninsula Conservation Authority;

“Council” means the Council of the Township of Wainfleet;

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

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

“Haul Route” means Roads designated or approved by the Township for the purposes of ingress or egress to a Site Alteration as a condition of a Permit;

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

“Manager” means the Manager of Operations for the Township of Wainfleet and shall include any Person authorized by the Manager to carry out any of the powers or duties of the Manager pursuant to this By-law;

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

“Normal Farm Practice” means a practice, as defined in the Farming and Food Production Protection Act, 1998, S.O. 1998, C.1, that is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances; or makes use of innovative technology in a manner consistent with proper advanced management practices. Normal farm practices shall be consistent with the Nutrient Management Act, 2002, S.O. 2002, c.4, and its regulations made under that Act;

“Officer” includes:

- a) a Police Officer employed by the Royal Canadian Mounted Police (RCMP), Ontario Provincial Police (OPP) or Niagara Regional Police Service (NRPS);

- b) a Municipal By-law Enforcement Officer of the Township or other Person appointed by or under the authority of a Township by-law to enforce Township by-laws including, but not limited to, the Manager of Operations for the Township and any Person authorized by the Manager to carry out any of the powers or duties of the Manager pursuant to this By-law;
- c) a Provincial Offences Officer designated as such under the *Provincial Offences Act, R.S.O. 1990, c.P.33*;
- d) a Peace Officer authorized to enforce the Highway Traffic Act;

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

“Owner” means the registered owner of land;

“Permit” means a permit issued pursuant to the provisions of this By-law which is, subject to Part XI of this By-law, valid for a period of twelve (12) consecutive months from the date of issuance;

“Person” means an individual, firm, corporation, association or partnership and includes an Owner;

“Public Open House” means a meeting that is open to the public for the purposes of section 9.5 of this By-law;

“Qualified Person” means a Person who meets the qualifications as set out in section 5 or 6 of O. Reg. 153/04 - Records of Site Condition - Part XV.1 made under the *Environmental Protection Act, R.S.O. 1990, c. E.19*;

“Road(s)” means a common and public highway, and includes a street, bridge or other structure forming part of a highway over or across which a highway passes and includes the whole of a road allowance under the jurisdiction of the Township;

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

“Site” means the Lot or Lots altered or proposed to be altered by a Site Alteration;

“Site Alteration” means any temporary or permanent removal of Fill from the Site by any means or any temporary or permanent Dumping of Fill on the Site by any means, whether the Fill originates from lands or Lots appurtenant to the Site or from elsewhere;

“Site Alteration Agreement” means an agreement between an Owner and the Township required by the Manager as a condition of obtaining a Permit under this By-law;

“Site Plan” means a set of drawings that clearly indicates the area on the Site subject to Site Alteration along with the property lines of the Lot or Lots;

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

“Township” means The Corporation of the Township of Wainfleet;

“Zoning By-law” means a by-law passed under section 34 of the *Planning Act*, R.S.O. 1990, c. P.13 (“Planning Act”) and applicable to lands within the Township.

3. SCOPE

- 3.1 This By-law shall apply to all Site Alterations within the Township, unless the Conservation Authority has made a regulation under section 28 of the *Conservation Authorities Act*, R.S.O. 1990, c. C.27, applicable to the Site, or unless specifically excluded pursuant to this By-law.

4. ADMINISTRATION AND DELEGATED AUTHORITY

- 4.1 The Manager shall be responsible for the administration of this By-law.

- 4.2 The Manager is authorized and has the delegated authority to:

- a) approve, exempt, waive, issue, deny, refuse, revoke, extend, renew, amend, or close a Permit and/or grant approvals of Site Alteration;
- b) impose conditions on the issuance of a Permit;
- c) determine and deem an application for a Permit to be abandoned, expired, or closed;
- d) approve and coordinate any works required to remediate a Site as part of or subsequent to a Site Alteration;
- e) approve amendments to Site Alteration Agreements;
- f) appoint a peer review consultant or other engineering, scientific and/or technical experts to fulfill the role or duties of a Officer for purposes of this By-law;

- g) require or exempt any works from the requirements of this By-law;
- h) authorize any Person to carry out any of the powers or duties of the Manager pursuant to this By-law;
- i) approve forms and documents to be used under this By-law;
- j) authorize and/or hire such agents, contractors and other Persons to perform work, as required; and
- k) take any actions or steps incidental to or ancillary to the Manager's authority under this By-law.

5. GENERAL PROHIBITIONS

- 5.1. Subject to the exemptions prescribed under Part VI of this By-law, no Person shall cause, permit, perform or carry out a Site Alteration except in accordance with all Applicable Law and/or without first obtaining a Permit from the Township to do so.
- 5.2. No Person shall cause, permit, perform or carry out a Site Alteration except in accordance with this By-law and all Applicable Law.
- 5.3. Notwithstanding any other provision of this By-law, no Person shall import any Fill onto any land where the quality of the imported material is not acceptable for the intended use and betterment of the land.
- 5.4. Where a Permit has been issued under this By-law authorizing a Site Alteration, no Person shall undertake or permit a Site Alteration except in accordance with:
 - a) the plans, approvals, documents or other material filed in support of the issuance of the Permit;
 - b) the conditions attached to the Permit;
 - c) the terms of any Site Alteration Agreement or other agreement with the Township entered into under this By-law; and
 - d) the provisions of this By-law.
- 5.5. No Person shall modify an approved Site Alteration without approval of the Manager.
- 5.6. No Person shall operate a Commercial Fill Operation in the Township of Wainfleet.
- 5.7. No Person shall remove Fill, Dump Fill, or cause or permit the removal or Dumping of Fill unless such Fill complies with the Ministry of Environment standards for clean

Fill, as described in the *Environmental Protection Act*, R.S.O. 1990, c. E.19 (*“Environmental Protection Act”*).

- 5.8. No Person shall import any Fill onto any Lot, land or property with the use of a hydro excavation truck, being any truck that excavates, removes or moves Fill with water and/or air, except where approval has been given by the Township or by Council in accordance with the requirements with this by-law.
- 5.9. No Person shall carry out any Site Alteration works for which a Permit is required in a manner that contravenes Township By-law No. 042-2018 (Township’s Noise Control By-law) or at any time on a statutory holiday.
- 5.10. No Person shall fail to comply with an Order issued under this By-law.
- 5.11. No Person shall obstruct an Officer carrying out an inspection under this By-law.

6. EXEMPTIONS

6.1 This By-law is not applicable to the following:

- a) a Site Alteration:
- (i.) that involves the Dumping or placing of Topsoil on a Site for improving the soil capability for agricultural uses on Agricultural Lands as part of a Normal Farm Practice;
 - (ii.) that is incidental to a grading requirement under the *Ontario Building Code*, O. Reg. 332/12 (*“Building Code”*) for the construction or demolition of a building or structure for which a building permit has been issued or for the purpose of constructing a driveway, parking lot or assembly area reasonably accessory to the building or structure for which a building permit has been issued or is a septic disposal system where a permit has been issued by the Township, the Regional Municipality of Niagara or the Ministry in accordance with Part 8 of Division B of the *Building Code*;
 - (iii.) on lands that are used for the purpose of flood or erosion control to establish finished grade shown on a grading and drainage plan approved by the Conservation Authority; or
 - (iv.) on lands that are used for storage purposes either as a primary or accessory use provided that the use is permitted on the lands pursuant to the Zoning By-law;
- b) public sector related activities or matters undertaken by the Township or a local board of the Township;

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- c) the Dumping of Fill, removal of Topsoil or alteration of the grade of land for the purpose of lawn dressing, landscaping, or adding to flower beds or vegetable gardens and provided that there is no change in the location, direction, or elevation of any natural or artificial watercourse, waterbody, open channel, swale, or ditch used to drain land;
 - d) the Dumping of Fill, removal of Topsoil or alteration of the grade of land imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under sections 41, 51 or 53 of the *Planning Act*, RSO. 1990, c. P13 or as a requirement of a site plan agreement or subdivision/severance agreement entered into under those sections;
 - e) the Dumping of Fill, removal of Topsoil or alteration of the grade of land imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act*, RSO. 1990, c. P13 or as a requirement of an agreement entered into under that regulation;
 - f) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act*, 1998, S.O. 1998, c. 15, Sched. A, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - g) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8 ("*Aggregate Resources Act*");
 - h) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land;
 - (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that statute; and
 - (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*, RSO. 1990, c. P13;
 - i) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken as an incidental part of drain construction under the *Drainage Act*, R.S.O. 1990, c. D.17 or the *Tile Drainage Act*, R.S.O. 1990, c. T.8;
 - j) the use, operation, establishment, alteration, enlargement or extension of a waste management system or waste disposal site lawfully permitted under Part V of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, or a waste

disposal site or waste management system that is exempted by regulation from said Part V;

- k) the construction, extension, alteration, maintenance or operation of works under section 28 of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. P.50;
- l) the construction of a building or structure, including a driveway, parking pad or swimming pool, pursuant to a valid building permit which has been issued by the Township, where the Site Plan accompanying the building permit application provides sufficient information to ensure that the Site Alteration proposed therein meets the guidelines established by the Manager pursuant to this By-law;
- m) any filling of an excavation to the elevation of an existing grade following the demolition or removal of a building or structure for which a demolition permit has been issued, or for which no demolition permit is required under the *Building Code Act, 1992*, S.O. 1992, c. 23 or the *Building Code*;
- n) any Site Alteration that is:
 - (i) determined to be a Normal Farm Practice; and
 - (ii) carried on by Owners at properties that have an active registration as a “farming business” as defined in the *Farm Registration and Farms Organization Funding Act, 1993*, S.O. 1993, c. 21 and are in good standing under that statute;
- o) the stockpiling of Fill in the ordinary course of the operation of a garden supply establishment that is legally established under the Zoning By-law, provided that such activity does not result in the permanent alteration of the existing grade of the land of the garden supply establishment. For this exemption to apply, the Owner must:
 - (i) maintain records from the material source sites indicating that the imported Fill meets the requirements of the site condition standards for agricultural uses, and
 - (ii) demonstrate, to the satisfaction of the Manager, that the Fill is being exported regularly and not returning to the same Lot, land or property.

6.2 A Permit is not required for a Site Alteration if the size of the Site and total amount of Fill is as follows:

- a) for a Site of 1 hectare or less, a maximum of 10 cubic metres of Fill, which shall be permitted only within a twelve (12) month period for betterment of the Site and the permitted use of the Site;
 - b) for any Site 1 hectares or larger, a maximum of 50 cubic metres of Fill, which shall be permitted only within a twelve (12) month period for betterment of the Site and the permitted use of the Site.
- 6.3 Any Site Alteration in which the amount or volume of Fill exceeds the maximum volumes prescribed by section 6.2 is prohibited unless a Permit is issued by the Manager and is subject to all other provisions and requirements of this By-law.
- 6.4 Notwithstanding the exemptions from the Permit requirement prescribed by section 6.2 of this By-law, every Person carrying out a Site Alteration to which section 6.2 applies shall provide written notice of the Site Alteration to the Manager.

7. ADMINISTRATION AND REQUIREMENTS FOR ISSUANCE OF A PERMIT

7.1 Every Owner applying for a Permit shall submit to the Manager:

- a) a completed application in the form prescribed by the Township from time to time;
- b) payment of the fee for a Permit shall be submitted in accordance with this By-law and shall be accompanied by the full Permit fee as set out in the Fees and Charges By-law;
- c) a Security in an amount satisfactory to the Manager;
- d) a description of the Fill proposed to be removed or Dumped including a detailed description of the destination or source of the Fill, the quantity of the Fill and the proposed placement of the Fill;
- e) a certificate of commercial general liability insurance in the owner's name, in the amount of \$2,000,000, naming the Township as an additional insured party, and maintain such insurance for the full period of time during which the Permit is valid, which certificate shall be in a form prescribed by the Manager from time to time;
- f) a Certified Lot Grading and Drainage Plan satisfactory to the Manager, which includes and accurately indicates the following:
 - (i) the property lines of the lands, with dimensions,
 - (ii) the location on the Site of the Site Alteration, with dimensions,

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- (iii) location and details of any proposed sediment control measures,
 - (iv) all existing storm sewers, ditches, swales, creeks, watercourses and wetlands on the lands and on abutting lands and public Roads,
 - (v) all woodlands on the Site,
 - (vi) all easements and rights of way over, under, across or through the Site,
 - (vii) proof of permission with respect to the removal, placement or Dumping of the Fill from the grantee of any easement on the Site impacted by a Site Alteration,
 - (viii) all existing buildings and driveways on the Site,
 - (ix) all existing elevations with sufficient buffer onto adjacent properties to assess existing drainage patterns,
 - (x) proposed grades and drainage systems upon completion of the Site Alteration,
 - (xi) proposed ground covering to be used upon completion of the Site Alteration,
 - (xii) location and composition of any temporary or permanent entrances and/or access roads that will be constructed to facilitate access to the Site, and
 - (xiii) location and composition of any temporary or permanent mud mat at the entrance to the Site to mitigate mud tracking onto the municipal right-of-way;
- g) where applicable, copies of any approval required from any other agency, including, but not limited to, the Conservation Authority;
 - h) the proposed Haul Route;
 - i) a certificate stating that the Fill contains no contaminants with the meaning of the *Environmental Protection Act*, which certificate shall be in a form prescribed by the Manager from time to time;
 - j) an executed unconditional release and indemnity to save harmless the Township, its elected officials, staff and agents, with respect to any and all liability which may arise directly or indirectly from the Site Alteration, including the presence of any fill that is determined to contain contaminants within the

meaning of the *Environmental Protection Act*, which release and indemnity shall be in a form prescribed by the Manager from time to time; and

- k) any other study, report, plan or material related to the application as deemed necessary by the Manager to constitute a Complete Application.

8. ISSUANCE OF A PERMIT BY THE MANAGER

8.1 The Manager shall review and assess or cause to be reviewed and assessed a Complete Application. In carrying out this review the Manager may seek comments from any other agency deemed necessary by the Manager for the purpose of reviewing and/or assessing a Complete Application.

8.2 The Manager shall issue a Permit where, in the assessment of the Manager, acting reasonably:

- a) The Person has fulfilled all of the requirements of this By-law, including the payment of all applicable fees, charges and Security;
- b) The Site is not within an area where the Site Alteration is prohibited under this By-law or any other Applicable Law;
- c) The issuance of the Permit:
 - (i.) will result in maintaining or improving the overall agricultural capability of the Site, or
 - (ii.) is incidental to a Normal Farm Practice, or
 - (iii.) is appropriate for the development and use of the Site and that maintains the general intent and purpose of the Zoning By-law, the Official Plan and this By-law.

8.3 The Manager may require as a condition of the Permit that the Person to whom the Permit is issued enter into a Site Alteration Agreement in the form prescribed by the Township from time to time, which may include a requirement to provide additional Security.

8.4 Where the Manager refuses to issue a Permit, an applicant may appeal the decision of the Manager to Council, and Sections 9.4 through 9.8 shall apply, with necessary modifications to the appeal process.

8.5 The Manager shall not issue a Permit or accept an application for a Site Alteration within a twelve (12) month period of the expiry date of any previous Permit.

9. CONSIDERATION BY COUNCIL OVER 1000 CUBIC METRES

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- 9.1 Where the amount or volume of Fill to be removed or Dumped in relation to a Site Alteration exceeds one thousand (1000) cubic metres within any twelve (12) month period, the Permit for such Site Alteration may not be issued by the Manager unless and until the Complete Application has been reviewed and assessed by Council and the issuance of the Permit has been approved by Council.
- 9.2 In reviewing and assessing a Complete Application in accordance with section 9.1 of this By-law, Council shall have the same powers as the Manager pursuant to this By-law.
- 9.3 In addition to the all other requirements of this By-law, every Person to whom a Permit is issued under section 9.1 shall be required to enter into a Site Alteration Agreement prescribed by the Township from time to time, which may include a requirement to provide additional Security.
- 9.4 Upon receipt of a Complete Application for a Site Alteration that exceeds one thousand (1000) cubic metres of Fill:
- a) the Manager shall:
 - (i.) schedule a Public Open House,
 - (ii.) provide the Person submitting the Complete Application with notice of the Public Open House at least thirty (30) days prior to the date of the meeting,
 - (iii.) provide notice of the Complete Application to all registered Owners of Lots, land or property within one hundred and twenty (120) metres of the boundaries of the Site, and
 - (iv.) post notice of the Public Open House on the Township's website at least ten (10) days prior to the Public Open House date; and
 - b) the Person submitting the Complete Application shall post a placard on the Site as provided by the Township at least ten (10) days prior to the Public Open House so that it is clearly visible to the public, provide proof of the placement of the placard to the Manager and leave the placard on the Site until the Permit is issued or denied.
- 9.5 The written notice required under this section of this By-law shall be sent to the Applicant by registered or regular mail, personal service or email and shall be deemed to have been served on the fifth day after it was mailed or, in the case of email, on the day that it was sent.

- 9.6 Comments received at the Public Open House shall form part of a technical report provided by the Operations Department to Council and shall form part of the review by Council.
- 9.7 Consideration of the Complete Application shall be held in public and the Person submitting the Complete Application may request to be a delegate.
- 9.8 Upon reviewing and assessing the Complete Application, reviewing the technical report described in section 9.6 and hearing from any delegation described in section 9.7, Council shall consider whether the Complete Application meets the requirements of this By-law and shall approve or deny the issuance of the Permit.
- 9.9 The decision of Council to approve or deny the issuance of the Permit is final.

10. CONDITIONS ON PERMITS AND HAUL ROUTES

- 10.1 The Manager shall, as a condition of a Permit, require an Owner of the Site which is the subject of the Permit either prior to the Permit being issued or after the Permit has been issued, to comply with the following:
- a) notify the Manager in writing:
 - (i.) at least seventy-two (72) hours before commencing any Site Alteration under the Permit; and
 - (ii.) of the completion of the Site Alteration under the Permit no later than seventy-two (72) hours following completion of the Site Alteration;
 - b) maintain the Roads providing ingress and egress to the Site in the same condition that existed prior to the commencement of the Site Alteration;
 - c) keep all Roads providing ingress and egress to the Site free from any damage, equipment or material or mud tracked onto the Road arising from any Site Alteration undertaken as a result of the Permit;
 - d) remediate and clean up forthwith any material or mud tracked onto the Roads where required to do so by Township staff;
 - e) ensure that dust control measures are in place so as to restrict and limit the blowing of dust onto any adjacent lands;
 - f) install temporary signage in accordance with Ministry of Transportation's Ontario Traffic Manual (OTM) Book 7 regulations on all Roads immediately adjacent to the Site where Fill is being Dumped;

- g) inspect and maintain sediment control measures to ensure they are kept in good working order;
- h) ensure that any machinery operating on a Road or any Person directing traffic on a Road does so in a manner acceptable to the Manager and in accordance with all other Applicable Law;
- i) ensure that Fill that is Dumped on the Site is in accordance with the Permit, the Site Plan and all other Applicable Law;
- j) provide the Manager or an Officer a report from a Qualified Person, qualified engineer or environmental consultant possessing an expert or special knowledge in respect to the source and nature of the Fill to be Dumped that the Fill meets the standards prescribed by the Ministry; and
- k) provide Security satisfactory to the Manager or secure the maintenance of the Roads that are used by trucks delivering or removing Fill in a state of good repair and free from dust and mud.

10.2 The Manager may, as a condition of a Permit, require an Owner of the Site which is the subject of the Permit, either prior to the Permit being issued or after the Permit has been issued, to comply with one or more of the following:

- a) keep, maintain and make available to the Manager the following records:
 - (i.) the full and complete legal name and business name if different from the legal name of each hauler,
 - (ii.) the commercial vehicle registration number of each hauler,
 - (iii.) the motor vehicle permit number of the motor vehicles owned and operated by each hauler,
 - (iv.) the date and time of delivery of Fill,
 - (v.) the point of origin of each delivery of Fill,
 - (vi.) the volume of each delivery of Fill,
 - (vii.) the content of material of each delivery of Fill,
 - (viii.) any other information required by O. Reg. 153/04 - Records of Site Condition - Part XV.1 made under the *Environmental Protection Act*, R.S.O. 1990, c. E. 19; and
 - (ix.) any other information required by the Manager; and

- b) to comply with any other conditions imposed by the Manager.
- 10.3 The Manager may, as a condition of a Permit, designate one or more Haul Routes to be used for ingress or egress to the Site for the Site Alteration.
- 10.4 Where Haul Routes are not within the jurisdiction of the Township, the Manager may require that the Owner of the Site that is the subject of the Permit provide proof of permission to use the Roads.
- 10.5 Every Owner who is issued a Permit under this By-law shall be responsible for ensuring that the designated Haul Routes are used by any Person coming to or from the Site under the Permit and any failure to do so is a contravention of this By-law.
- 10.6 The Township may engage such legal, engineering or other technical consultants the Manager deems necessary in order to evaluate and/or review studies and/or agreements or to provide assistance to the Manager in respect of an application and ensuing Site Alteration and the costs incurred by the Township in so doing shall be charged back to the Owner.
- 10.7 The Township may draw on any Security provided under this By-law in order to remedy any breach of the provisions of this By-law, the conditions of a Permit, or any other obligation of the Owner relating to the Permit.
- 10.8 The issuance of a Permit under this By-law does not relieve an Owner or any other Person from compliance with the By-law or any other Applicable Law.

11. SUSPENSION, REVOCATION, TRANSFER AND EXPIRY OF A PERMIT

- 11.1 A Permit issued pursuant to the provisions of this By-law may be revoked by the Manager at any time and without notice under any of the following circumstances:
 - a) if no work has been commenced after three (3) months from the date of issuance;
 - b) if the Permit was issued on mistaken, misleading, false or incorrect information;
 - c) if the Permit was issued in error; or
 - d) where the Owner of the Site that is the subject of the Permit is in contravention of a condition to the Permit, a provision of this By-law, or a provision of any Site Alteration Agreement that has been entered into.
- 11.2 No refund of any fees paid pursuant to this By-law shall be provided if a Permit expires or is revoked.

11.3 A Permit issued under this By-law may be renewed or extended prior to expiry where the following conditions are met:

- a) work has been commenced or completed under the Permit;
- b) the work previously approved under the Permit has not been and will not be revised;
- c) the Person to whom the Permit was issued or the Owner of the Site that is the subject of the Permit submits a renewal or extension application to the Manager that is accompanied by the applicable Permit fee; and
- d) the renewal or extension application is submitted at least sixty (60) days prior to the expiry of the Permit.

11.4 A renewal or extension of a Permit issued pursuant to this By-law shall be valid for a period of six (6) months from the date of issuance, but shall expire after three (3) months from the date of issuance if work has not been commenced by that date.

11.5 If title to the Site for which a Permit has been issued is transferred while the Permit remains in effect, the Permit is automatically cancelled unless the new Owner, within thirty (30) days prior to the transfer:

- a) provides the Township with written undertaking to comply with all conditions under which the existing Permit was issued, an executed assumption agreement satisfactory to the Manager and an executed release and indemnity as required by subsection 7.1(j) of this By-law; or
- b) applies for and obtains a new Permit in accordance with the provisions of this By-law.

12. ORDERS

12.1 For the purpose of ensuring compliance with this By-law, the Manager or any Person authorized by the Manager or an Officer may, at all reasonable times, enter upon and inspect any Site to determine whether or not the following are being complied with:

- a) this By-law;
- b) any condition of a Permit;
- c) a provision of any Site Alteration Agreement, direction or Order made under this By-law; or
- d) a prohibition order made under section 431 of the *Municipal Act, 2001*.

12.2 The Manager or an Officer may, for the purposes of the inspection under this Part:

- a) require the production for inspection of documents or things relevant to the inspection;
- b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- c) require information in writing or otherwise as required by the Officer from any Person concerning a matter related to the inspection; or
- 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.

12.3 Any cost incurred by the Township in exercising its authority to inspect under this Part including but not limited to the cost of any examination, test, sample or photograph necessary for the purposes of the inspection, shall be paid by the Owner of the Site where the inspection takes place or the Person to whom the Permit was issued in relation to the Site where the inspection takes place.

12.4 If the Manager or an Officer is satisfied that:

- a) a contravention of this By-law has occurred, they may make an Order requiring the Owner of the Site where the contravention occurred or the Person who caused or permitted the contravention to immediately discontinue the contravening activity. Such the Order shall set out:
 - (i.) the municipal address or the legal description of the Site,
 - (ii.) reasonable particulars of the contravention, and
 - (iii.) the period of time within which there must be compliance; or
- b) a Person has caused or permitted a Site Alteration in contravention of the provisions of this By-law, they may make an Order requiring the Owner of the Site where the contravention occurred or the Person who caused or permitted the contravention to carry out work to correct the contravention. Such Order shall set out:
 - (i.) the municipal address or the legal description of the Site,
 - (ii.) reasonable particulars of the contravention,
 - (iii.) the period of time within which there must be compliance, and

- (iv.) that if the work is not done in compliance with the Order within the specified period, the Township may have the work completed at the expense of the Owner of the Site where the contravention occurred.

- 12.5 Any Order issued under this Part shall be served Personally or by registered mail to the last known address of the Owner of the Site and to any other Person to be served. If an Order is served by registered mail, the service shall be deemed to have been made five (5) days after the date of mailing.
- 12.6 Upon completion of the work to correct the contravention by or on behalf of the Township under this Part, the Township shall have a lien on the Site for the amount spent in excess of any Security applied to remedy or rectify the contravention and the amount may be added to the tax roll and collected in the same manner and with the same priority as municipal property taxes.
- 12.7 No work of any kind shall be done under a permit or an exemption of this by-law that causes a negative effect on a neighboring property;
 - a) the Township may issue an Order to rectify the negative effect by requiring the owner to obtain a certified lot grading and drainage plan, and require the recommendations of the certified lot grading and drainage plan to be completed.

13. OFFENCES AND PENALTIES

- 13.1 Every Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to such penalties as provided for in the *Municipal Act, 2001* and the *Provincial Offences Act*.
- 13.2 Where an Officer is satisfied that a Person has failed to comply with any provision of this By-law, the Officer may issue a penalty notice imposing an Administrative Monetary Penalty. The Administrative Monetary Penalties for failures to comply with this By-law are set out in Schedule "B", which is attached hereto and forms part of this By-law.
- 13.3 Township By-law No. 027-2019, being a By-law to Establish an Administrative Monetary Penalty System for Non-Parking Related Offences, applies to each Administrative Monetary Penalty issued pursuant to this By-law.
- 13.4 Every Person who contravenes any provision of this By-law, a condition of a Permit or an Order issued under this By-law, is guilty of an offence and upon conviction is liable:
 - a) on a first conviction, to a fine of not more than \$10,000; and

- b) on any subsequent conviction, to a fine of not more than \$25,000.

13.5 Notwithstanding section 13.4, where the Person convicted is a corporation, the maximum penalty that may be imposed is,

- a) on a first conviction, to a fine of not more than \$25,000; and
- b) on any subsequent conviction, to a fine of not more than \$50,000.

13.6 In addition to any fine or any other penalty, any Person who is convicted of contravening a provision of this By-law, the terms or conditions of a Permit issued pursuant to this By-law or any Order issued pursuant to this By-law, may be ordered by a court of competent jurisdiction at the expense of the Person to:

- a) rehabilitate the Site and surrounding lands;
- b) remove the Fill; and/or
- c) restore the grade of the Site and surrounding lands to its original condition.

14. OBSTRUCTION

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

14.2 No Person shall provide false information in any statement, whether orally, in writing or otherwise, made to an Officer or the Manager.

14.3 No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Officer or Manager who is exercising a power or performing a duty under this By-law.

15. SEVERABILITY

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

16. INTERPRETATION

16.1 Any reference to a statute, regulation, by-law or other statutory instrument shall be deemed to refer to the legislation as amended, consolidated, replaced or modified.

16.2 This By-law shall come into force on the date it is passed.

BY-LAW READ AND PASSED THIS 31st DAY OF MAY, 2022

K. Gibson, MAYOR

M. Ciuffetelli, DEPUTY CLERK

PART I PROVINCIAL OFFENCES ACT

Township of Wainfleet

Schedule "A" to By-law NO. 025-2022, Site Alteration By-law

Set Fine Schedule

<u>Item</u>	<u>Column 1</u> Short Form Wording	<u>Column 2</u> Offence Creation Provision or defining Offence	<u>Column 3</u> Set Fine
1.	Site Alteration without a Permit	Section 5.2	\$500
2.	Importing Fill not intended for use or betterment of Land	Section 5.3	\$500
3.	Site Alteration not in accordance with approved plans	Section 5.4 (a)	\$500
4.	Not following conditions on Site Alteration Permit	Section 5.4 (b)	\$500
5.	Violation of Site Alteration Agreement	Section 5.4 (c)	\$500
6.	Violation of Provisions of the Site Alterations By-law	Section 5.4 (d)	\$500
7.	Modify an Approved Site Alteration Plan without Authorization	Section 5.5	\$500
8.	Operating a Commercial Fill Operation in the Township	Section 5.6	\$500
9.	Removal or dumping of Fill not approved by the Ministry of Environment	Section 5.7	\$500
10.	Importing Fill by Hydro Excavation Truck without approval	Section 5.8	\$500
11.	Site Alterations Conducted on a Statutory Holiday	Section 5.9	\$500
12.	Failing to comply with an Order Issued	Section 5.10	\$500
13.	Hindering or Obstructing an Officer carrying out an inspection	Section 5.11	\$750

Note: The general penalty provision for the offences listed above is section 6, section 7, section 8, section 9, section 10, section 11, section 12, section 13, section 14 and section 15 of By-law No.025-2022, a certified copy of which has been filed.

Schedule "B" to By-law No. 025-2022

Site Alteration By-law

Short Form Wording for Administrative Monetary Penalties

Section	Short Form Wording	Penalty
5.2	Site Alteration without a Permit	\$500.00
5.3	Importing Fill not Intended for use or Betterment of Land	\$500.00
5.4 (a)	Site Alteration not in Accordance with Approved Plans	\$500.00
5.4 (b)	Not following Conditions on Site Alteration Permit	\$500.00
5.4 (c)	Violating a Site Alteration Agreement	\$500.00
5.4 (d)	Violating Provisions of the Site Alterations By-law	\$500.00
5.5	Modifying an Approved Site Alteration Plan without authorization	\$500.00
5.6	Operating a Commercial Fill Operation in the Township	\$500.00
5.7	Removing or dumping of Fill not approved by the Ministry of Environment	\$500.00
5.8	Importing Fill by Hydro Excavation Truck without Approval	\$500.00
5.9	Conducting Site Alterations on a Statutory Holiday	\$500.00
5.10	Failing to comply with an Order Issued	1 st Offence: \$500.00 2 nd Offence: \$1,000.00 3 rd & Subsequent Offences: \$2,000.00
5.11	Hindering or Obstructing an Officer carrying out an Inspection	\$750.00
12.7	Work done causing a negative effect on a neighbouring property	\$1,000
12.7 a)	Failing to obtain a Lot Grading Plan/Following Lot Grading Plan	\$5,000

Note: The above Penalties are per Registered Property Owner(s) as listed on the latest returned Municipal Tax Roll and may be issued for every day that a property is in violation.

Schedule "C" to By-law No. 025-2022

Fees and Charges

Section	Description	Amount of Fee/Charge
7.1 b)	Application Fee for Less than 500m ³	\$500
7.1 b)	Application Fee (500m ³ up to 1000m ³)	\$1,000
7.1 b)	Application Fee for greater than 1000m ³	\$1,500
7.1 c)	Road Damage Security (Deposit)	\$10,000
9.3	Additional Security	As provided for in the Site Alteration Agreement

Note: This schedule shall be deemed to form part of Appendix "A" of the Township of Wainfleet General Fees and Charges By-law and which may be amended by Council from time-to-time.