

BY-LAW NO. 2008-128

A BY-LAW TO PROHIBIT OR REGULATE THE PLACING OR DUMPING OF FILL, THE REMOVAL OF TOPSOIL, AND THE ALTERATION OF THE GRADE OF THE LAND WITHIN THE CITY OF KINGSTON.

PASSED: June 17, 2008

WHEREAS Section 142 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes that the Council of a local municipality may pass a by-law prohibiting or regulating the placing or dumping of fill, the removal of topsoil, and the alteration of the grade of the land in any defined area or on any class of land;

AND WHEREAS Council may also require that a permit be obtained for the placing or dumping of fill, the removal of topsoil, and the alteration of the grade of the land within the City of Kingston, and may prescribe the fees for the permit, the circumstances under which a permit may be issued, and the conditions to such a permit;

AND WHEREAS Council deems it in the public interest to enact a by-law for prohibiting or regulating the placing or dumping of fill, the removal of topsoil, and the alteration of the grade of the land in order to ensure that:

- (a) Existing drainage patterns are maintained;
- (b) Interference and damage to watercourses or waterbodies is limited;
- (c) Water quality is maintained;
- (d) Erosion and sedimentation are prevented;
- (e) Changes to drainage or grade are appropriate to protect natural heritage features and areas and archaeological resources;
- (f) The use of hazardous or improper fill is prevented; and,
- (g) Unanticipated drainage and site alteration changes are prevented.

AND WHEREAS it is in the interest of the community to protect significant cultural and natural heritage features and areas from unnecessary alteration or destruction until such time as a final determination has been made on the need for long-term protection;

NOW THEREFORE the Council of the Corporation of the City of Kingston hereby enacts as follows:

DEFINITIONS

1. In this By-Law, the following definitions apply:
 - (1) "Adjacent Lands" means those lands contiguous to a specific natural heritage feature or area or archaeological resource where it is likely that development or site alteration would have a negative impact on the feature, area, or resource.

- (2) "Agricultural Operation" means the conduct of Agriculture as a business activity that is carried out with the expectation of gain or reward, and includes the production of maple syrup, honey, eggs, milk or cream, and the operation of machinery and equipment, and may include a hobby farm.
- (3) "Agriculture" means the science, art, or practice of preparing and cultivating the soil; growing field crops, greenhouse crops, mushrooms, nursery stock, and turf grass; and growing, producing or raising livestock, poultry, ratites, fur-bearing animals, cultured fish, deer and elk, game animals and birds, and honey bees.
- (4) "Alter" means changing the grade of the land either through the depositing of fill or the excavation of land, or a combination thereof, and "altering" has a corresponding meaning.
- (5) "Applicant" means the person who submits an application to the Corporation of the City of Kingston for a Site Alteration Permit pursuant to the provisions of this By-Law.
- (6) "Archaeological Resources" include artifacts, archaeological sites, and marine archaeological sites. The identification and evaluation of such resources are based upon archaeological fieldwork undertaken in accordance with the Ontario Heritage Act.
- (7) "City" means the Corporation of the City of Kingston and Utilities Kingston.
- (8) "Control Plan" means a drawing(s) and supporting report detailing the existing conditions, the proposed work, the proposed grades, elevations and drainage pattern, the proposed erosion and sedimentation control, and the environmental protection measures for a property.
- (9) "Designate" means a person who is an employee of the Corporation of the City of Kingston and who has been appointed by the Director to administer all or part of this By-Law on behalf of the Director.
- (10) "Director" means the Director of Engineering for the City of Kingston, or his/her Designate, who is responsible for the administration and interpretation of the By-Law.
- (11) "Drainage" means the movement of water across a property, whether by way of the natural characteristics of the ground surface or by an artificial method.
- (12) "Dump" means depositing fill by any means, and includes the movement and depositing of fill from one location on a property to another location on the same property, and "dumping" and "dumped" have a corresponding meaning.
- (13) "Fill" means any type of material deposited or placed on lands and includes, but is not limited to soil, stone, concrete, asphalt, rubbish, garbage, turf, dirt, earth, aggregate, and binder either singly or in combination, whether originating on the site or elsewhere, used or capable of being used to raise, lower, or in any other way affect or alter the contours of ground.
- (14) "Floodplain" means the area, usually low lands adjoining a watercourse or waterbody, which has been or may be subject to the 1:100 year flood hazard.
- (15) "Grade" means the elevation of the ground surface, and shall be more particularly defined as follows:

- (i) "Existing Grade" means the elevation of the existing ground surface of the land as of the date that this By-Law is passed, including abutting ground surface up to three (3) metres wide surrounding such lands;
 - (ii) "Finished Grade" means the approved elevation of ground surface of land upon which fill has been placed or dumped, topsoil removed, or the grade altered in accordance with this By-Law; and,
 - (iii) "Proposed Grade" means the proposed elevation of ground surface of land upon which fill is proposed to be placed or dumped, topsoil removed, or grade altered.
- (16) "Natural Heritage Features and Areas" include significant wetlands, significant coastal wetlands, fish habitat, significant woodlands, significant valleylands, significant habitat of endangered species and threatened species, significant wildlife habitat, and significant areas of natural and scientific interest.
- (17) "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 proper advanced farm management techniques.
- (18) "Officer" means an individual appointed by the Corporation of the City of Kingston to enforce the provisions of this By-Law, and includes a municipal by-law enforcement officer.
- (19) "Owner" means the person(s) or corporation(s) registered on the title of the land in the Registry Office or Land Titles Office.
- (20) "Permit Holder" means the Owner or the person in possession of the property, and includes a lessee, a mortgagee in possession, or a person in charge of the property, to whom a valid Site Alteration Permit has been issued.
- (21) "Place" or "Placing" means the distribution of fill on lands to establish a Finished Grade higher or lower than the Existing Grade.
- (22) "Ponding" means the accumulation of surface water caused by the placing or dumping of fill, the removal of topsoil, or the alteration of the grade of the land.
- (23) "Removal" means the excavation or extraction of any fill that lowers the Existing Grade, and includes soil stripping.
- (24) "Retaining Wall" means a wall that is designed and used to contain and support fill between adjacent lands of different elevations.
- (25) "Rural Area" means the area defined as Rural in the applicable Official Plan.
- (26) "Site Alteration" means the placing or dumping of fill, the removal of topsoil or the alteration of the grade of land or any combination thereof;

- (27) "Site Alteration Permit" means the written authorization from the Director to perform work regulated by this By-Law.
- (28) "Soil" means any material commonly known as earth, topsoil, soil, loam, subsoil, clay, sand, or gravel.
- (29) "Swale" means a depression in the ground sloped for the purpose of providing drainage of surface water.
- (30) "Topsoil" means those horizons in a soil profile commonly known as the "O" and the "A" horizons, containing organic material, and including deposits of partially decomposed organic matter such as peat.
- (31) "Urban Area" means the area defined as Urban in the applicable Official Plan.

APPLICATION OF THE BY-LAW

- 2. (1) This By-Law applies to all lands within the geographic limits of the City of Kingston, other than that portion of any property that is subject to regulations made under Section 28 of the Conservation Authorities Act, R.S.O. 1990, c. 27, as amended.

PROHIBITIONS

- 3. (1) No person shall place or dump fill, remove topsoil, or alter the grade of the land in the City without having first obtained a Site Alteration Permit in accordance with this By-Law.
- (2) No person shall place or dump fill, remove topsoil, or alter the grade of the land in contravention of a Site Alteration Permit.

SPECIFIC EXEMPTIONS

- 4. Notwithstanding Section 3, a person may undertake Site Alteration without applying for a Site Alteration Permit provided that the Site Alteration is undertaken:
 - (a) on lots equal to or less than 1.0 hectare in size, with the exception of vacant lots and lands designated as, or adjacent to, Environmental Protection Areas or Open Space in the applicable Official Plan;
 - (b) for the installation of a swimming pool, provided a pool permit is obtained from the City;
 - (c) for the purpose of lawn dressing, landscaping, or adding to flower beds or vegetable gardens and provided that:
 - (i) No soil in excess of thirty (30) centimeters (12 inches) in depth is placed on the lands;
 - (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, waterbody, open channel, swale, or ditch used to drain land.

- (d) as part of a Normal Farm Practice, including, but not limited to, sod-farming, greenhouse operations, nurseries, and Agricultural Operations, but not including the removal of topsoil for sale, exchange, or other disposition;
- (e) as part of the excavation or restoration of the Existing Grade following the demolition or removal of a building or structure;
- (f) pursuant to a building permit for the erection of a building or structure, and provided that the drawings that accompany the building permit application provide sufficient information for the Director to determine that the placing or dumping of fill, removal of topsoil, or alteration of the grade of the land conforms to the provisions of this By-Law;
- (g) pursuant to a condition to the approval of a site plan, a plan of subdivision, or a consent under Section 41, 51, or 53 respectively of the Planning Act or as a requirement of a Site Plan Control Agreement or Subdivision Agreement entered into under those Sections;
- (h) pursuant to a condition to a development permit authorized by a regulation made under Section 70.2 of the Planning Act, or as a requirement of an agreement entered into under that regulation;
- (i) by the City, the Cataraqui Region Conservation Authority, a local municipal board, a utility provider, or a Ministry of the Provincial or Federal Government;
- (j) as part of a Cut Permit issued by the City; or,
- (k) for the purpose of placing fill on a property in the Rural Area for landscaping, provided the property is not designated as Environmental Protection Area or Open Space in the applicable Official Plan, and that the final grade has a maximum slope of 3:1.

STATUTORY LIMITATIONS

- 5. Notwithstanding Section 3, a person may undertake Site Alteration without applying for a Site Alteration Permit provided that the Site Alteration is undertaken:
 - (1) as part of any activity conducted under Provincial or Federal legislation;
 - (2) by a *transmitter* or *distributor* for the purpose of constructing and maintaining a *transmission system* or a *distribution system*, as defined in the Electricity Act, 1998, as amended;
 - (3) 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;
 - (4) on land in order to lawfully establish and operate or enlarge any pit or quarry on land:
 - (a) that has not been designated under the Aggregate Resources Act or a predecessor of that Act; and,
 - (b) on which a pit or quarry is a permitted land use under a By-Law passed under Section 34 of the Planning Act;
 - (5) as part of drain construction under the Drainage Act or the Tile Drainage Act;

- (6) as part of the use, operation, establishment, alteration, enlargement, or extension of a waste management system or waste disposal site within the meaning of Part V of the Environmental Protection Act, R.S.O. 1990, c. E19, as amended, or a private waste disposal site or waste management system that is exempted by regulations for that Part; or,
- (7) as part of 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.

PLANNING & DEVELOPMENT PROCESS

6. (1) The provisions of this Site Alteration By-Law, as amended from time to time, shall form part of the development approval process governed by the Planning Act.
- (2) An application for a Site Alteration Permit may be processed concurrently with an application submitted pursuant to the Planning Act and may form part of the technical information requested in order to consider the Planning Application complete.
- (3) Where there is a development application involving a Planning Approval, there shall be no Site Alteration as a result of any site preparation until the issuance of a Site Alteration Permit and/or the receipt of the final approval of the applicable Planning Applications.

APPLICATION FOR A SITE ALTERATION PERMIT

7. (1) Any person intending to undertake any Site Alteration within the limits of the City of Kingston, either through their own actions or through any other person, shall apply for and obtain a Site Alteration Permit in accordance with the provisions of this By-Law, unless otherwise exempted by Sections 4 or 5, prior to undertaking any Site Alteration.
- (2) An Applicant for a Site Alteration Permit shall submit the following to the Director:
 - (a) A completed application that includes:
 - (i) The names and addresses of the Owner of the land(s) upon which the fill is to be dumped or placed, topsoil removed, or grade altered, proposed Permit Holder and Applicant (if different), contractor, and consulting engineer (if applicable);
 - (ii) The municipal address and legal description of the land upon which the fill is to be dumped or placed, topsoil removed, or grade altered;
 - (iii) A schedule for the proposed works, including the start and end dates and the construction period;
 - (iv) A description of the proposed works;
 - (v) A description of the fill and source of the fill, where applicable;
 - (vi) Identification of any watercourse, waterbody, shoreline, fill or flood regulated area as determined after pre-consultation with the Cataraqui Region Conservation Authority;

- (vii) Confirmation of the requirement to conduct an Environmental Impact Statement as determined after pre-consultation with the Cataraqui Region Conservation Authority and the Director of the Planning & Development Department, or his/her designate;
 - (viii) Confirmation of the requirement to conduct a Stage 1 Archaeological Report as determined after pre-consultation with the Heritage Planner, or his/her designate;
 - (ix) Confirmation of existing Official Plan designations, zoning, and the status of any planning applications on the property as determined after pre-consultation with the Director of Planning and Development or his/her designate; and,
 - (vi) All required signatures as per Subsection (i) above.
- (b) Every Site Alteration Permit application shall be accompanied by the prescribed fee, payable in accordance with Schedule 'A' of this By-Law, as it may be amended from time to time.
- (c) A Control Plan including drawings and a supporting report to the satisfaction of the Director, and containing any information the Director deems necessary. At a minimum, the following information shall be provided on a drawing to a scale acceptable to the Director:
- (i) Property boundaries and easements;
 - (ii) Drainage routes and slopes;
 - (iii) Location of waterbodies or watercourses on, or within thirty (30) metres of, the property;
 - (iv) Existing buildings, roads, utilities, and vegetation;
 - (v) Areas to be filled or altered, with Existing and Proposed Grades; and,
 - (vi) Proposed erosion and sediment control and environmental protection measures.

REQUIREMENTS FOR PERMIT ISSUANCE

8. (1) All Applicants shall pre-consult with the City and the Cataraqui Region Conservation Authority prior to applying for a Site Alteration Permit.
- (2) Prior to the issuance of a Site Alteration Permit, where a security deposit does not exist under a separate agreement for the subject property, the Applicant or Owner shall provide a security deposit in accordance with the following:
- (a) Where works are valued in excess of Fifty Thousand Dollars (\$50,000.00), a security deposit in the form of cash, certified cheque, or irrevocable bank letter of credit in an amount approved by the Director shall be deposited with the City. The security may be drawn upon by the City at its sole discretion to remedy any deficiency in any work. Upon written application by the Applicant/Owner, and upon the satisfaction of the Director that all conditions and requirements of the Site Alteration Permit have been fulfilled, the City will return said security deposit or the remaining amount of any reduced security deposit.
 - (b) The amount of the security deposit:

- (i) Shall be valued at 10% of the first Two Hundred Thousand Dollars (\$200,000.00) estimated cost of the works and 1% of any additional amount in excess of Two Hundred Thousand Dollars (\$200,000.00); and,
 - (ii) May be reduced, at the discretion of the Director, by an amount equal to the value of any work completed to the date of the reduction request, provided that the value of work completed is certified by a Professional Engineer, or other qualified professional.
- (3) The Director may require the Applicant to undertake the following as part of the application for a Site Alteration Permit:
 - (a) Prepare and submit an Environmental Impact Statement (EIS), which shall be prepared by a professional qualified in the relevant environmental field of study and conform to the following requirements:
 - (i) The EIS shall be acceptable to the Director and other authorities having jurisdiction;
 - (ii) The EIS shall include, but is not limited to, the following:
 - (1) An outline of the location, the size of the property, and the amount of fill to be placed or dumped, topsoil to be removed, or grade to be altered;
 - (2) A description of the type of feature(s) present and their significance, including reference to all natural heritage features and ecological functions;
 - (3) A discussion and evaluation of the compatibility of the proposed placement or dumping of fill, removal of topsoil, or alteration of the grade of the land with the existing natural heritage features and ecological functions;
 - (4) The identification of any portion of the property where placing or dumping fill, removing topsoil, or altering the grade of the land should be precluded, and an outline of the need for and type of mitigation required to protect identified natural heritage features and areas and ecological functions; and,
 - (5) The impact that the site alteration would have on any adjacent lands.
 - (iii) The EIS shall demonstrate that there will be no negative impacts on the natural heritage features or area, its adjacent lands, or on their ecological functions.
 - (b) Where a property is identified as containing archaeological resources, or as being an area of archaeological potential, the Applicant or Owner shall be required to complete a Stage 1 Archaeological Assessment, as well as any subsequent assessments or recommendations as identified within the Stage 1 Archaeological Assessment. These assessments shall be prepared by an archaeologist holding a license from the Province of Ontario, in accordance with all relevant legislation and policy, including, but not limited to, the Ontario Heritage Act, the Archaeological Assessment Technical Guidelines, Standards and Guidelines for Consulting Archaeologists, or any superseding document(s) published by the Province of Ontario.
 - (c) Enter into a Site Alteration Agreement that may be registered on title to the affected lands. A Site Alteration Agreement shall include, but not be limited to:

- (i) Measures necessary to ensure that the placing or dumping of fill, the removal of topsoil, or the alteration of the grade of the land is undertaken in accordance with this By-Law, any approved control plan, and the supporting information provided thereto, and proper engineering principles;
 - (ii) Financial security requirements in accordance with Subsection 8(2) of this By-Law; and,
 - (iii) Requirements that a Professional Engineer, or other similarly qualified person, upon completion of the work, certify that that the Owner, Applicant, and/or proposed Permit Holder has complied with all of the obligations and conditions contained in the Site Alteration Permit.
- (d) Where required, submit a plan for a Retaining Wall. The plan submitted shall include construction details and be accompanied by a building permit where required. No Retaining Wall shall encroach, either above or below Existing Grade, upon abutting lands unless authorized in writing by the Owner of the abutting lands.
- (e) The Director may require that a Retaining Wall be constructed where:
- (i) Erosion of fill onto abutting lands may occur; or,
 - (ii) The Finished Grade of the lands at the property line is higher or lower than that of the Existing Grade of the abutting lands.
- (f) Provide any other information, document, or plan that may be required by the Director to determine if the proposed work conforms to this By-Law and/or any applicable statute, regulation, or by-law.
- (4) In reviewing a Site Alteration Permit application, the Director shall confer with such persons, staff, qualified professionals, and agencies as s/he considers necessary for the proper review of the application, the determination of whether or not a Site Alteration Permit should be issued, and the identification of any conditions thereto.

ISSUANCE OF A SITE ALTERATION PERMIT

9. (1) The Director may issue a Site Alteration Permit where:
- (a) The Owner, Applicant, and/or proposed Permit Holder have fulfilled all the requirements pursuant to this By-Law and have paid the fee prescribed in Schedule 'A';
 - (b) The Owner, Applicant, and/or proposed Permit Holder have entered into the Site Alteration Agreement referred to in Subsection 8(3)(c) of this By-Law, if required, and have performed all obligations that the Agreement requires to be performed prior to the issuance of a Site Alteration Permit;
 - (c) The Director is satisfied that the proposed final elevations and resulting drainage pattern, the design and construction details of any Retaining Wall, the type of fill to be used, and the method of placing or dumping of fill, are in accordance with proper engineering practices;

- (d) The Director is satisfied, after consultation with the appropriate environmental authority, where applicable, that the placing or dumping of fill, the removal of topsoil, or the alteration of the grade of the land will not result in:
 - (i) Soil erosion or negative impact on drainage;
 - (ii) Blockage of a watercourse;
 - (iii) Sedimentation in a watercourse or waterbody;
 - (iv) Pollution of a watercourse or waterbody;
 - (v) Flooding or ponding caused by a watercourse or waterbody overflowing its banks; or,
 - (vi) A detrimental effect on any environmentally sensitive natural heritage feature or area as defined in this By-Law; and,
 - (e) Any proposed dumping of fill complies with all provisions of the applicable Zoning By-Law and is clearly accessory or secondary to the uses permitted on a property, such that the proposed dumping of fill will not become or constitute the primary use of the subject property.
- (2) Where the Director refuses to issue a Site Alteration Permit pursuant to this By-Law, the Applicant shall be informed in writing of the refusal by the Director. The Director may reconsider the application if additional information or documentation is submitted by the Applicant, within 30 days of the decision to refuse.
 - (3) Where an Owner, Applicant or Permit Holder makes a material change to a plan, specification, document, or other information following the issuance of a Site Alteration Permit, the Owner, Applicant or Permit Holder, as the case may be, shall submit a revised application. The Director may require payment of up to one-half of the original Permit fee and submission of revised drawings or other information. Any revised application submitted pursuant to this sub-section shall be deemed to be a new application, which shall be approved by the Director in accordance with this By-Law.

TERM OF A SITE ALTERATION PERMIT

- 10. (1) Any Permit issued pursuant to this By-law shall be valid for a period of not more than two (2) years from the date the Permit was issued.
- (2) An Applicant, Owner, or Permit Holder shall apply to renew a Site Alteration Permit where the work authorized will not be complete prior to the expiration of the Site Alteration Permit. A Site Alteration Permit may only be extended where an application to renew is filed at least 30 days prior to its expiry. Every application to renew a Site Alteration Permit shall be accompanied by the applicable fee as set out in this By-Law.
- (3) No permit shall be renewed where the Permit Holder is in breach of any of the terms of this By-Law, the Site Alteration Permit, or the Site Alteration Agreement.

PERMIT CONDITIONS

11. (1) All Site Alteration Permits shall contain the following conditions:
- (a) The issuance of a Site Alteration Permit by the Director does not relieve the Owner, Applicant, and/or Permit Holder from any responsibility to obtain all other approvals that may be required by any level of government or authority having jurisdiction or agencies thereof.
 - (b) A Site Alteration Permit is not transferable to another property.
 - (c) The work shall be done at the request of, or with the consent of, the Owner of the lands where fill is to be placed or dumped, the topsoil removed, or the grade of the land altered.
 - (d) If the ownership of the lands for which a Site Alteration Permit has been issued is transferred while the Permit remains in effect, the Permit Holder shall advise the Director and the new Owner in writing prior to property transfer and the new Owner of the lands shall forthwith advise the Director that such a transfer has been completed and either:
 - (i) Provide the City with an undertaking to comply with all the conditions under which the existing Site Alteration Permit was issued; or,
 - (ii) Apply for and obtain a new Site Alteration Permit in accordance with the provisions of this By-Law.
 - (e) All fill to be dumped or placed shall be clean and free of waste, asphalt, trash, rubbish, glass, liquid or toxic chemicals, hazardous waste or contamination.
 - (f) No ponding or alteration of existing surface water flow resulting directly or indirectly from the site alteration shall be caused on abutting lands.
 - (g) Where required, the Finished Grade surface shall be protected by sod, turf, seeding for grass, greenery, asphalt, concrete, or other means either singly or in combination, within two months of completion of the work, or as specified by the Director.
 - (h) All trenches in which piping is laid, forming part of the drainage system shall be inspected by the Director prior to back-filling the excavation.
 - (i) Erosion and sedimentation control measures shall be provided around all disturbed areas in a manner satisfactory to the Director prior to the commencement of the placing or dumping of fill, the removal of topsoil, or the alteration of the grade of the land, and shall maintain such measures in good working order until the site has stabilized.
 - (j) All fill shall be properly compacted using acceptable engineering practices, unless being stockpiled on site for future use.
 - (k) Ensure that natural drainage or any natural or human-made watercourse or waterbody is not altered in such a manner that will negatively affect other property or the environment.
 - (l) If Archaeological Resources are discovered or identified during the placement of any fill, the removal of any topsoil, or the alteration of the grade of the land, even after the issuance of a

Site Alteration Permit, the Owner, Applicant and/or Permit Holder shall immediately cease all activity on the property and contact the Director.

- (2) The Director may impose conditions on any Site Alteration Permit requiring the Permit Holder, Owner, and Applicant to comply with all recommendations or conclusions of all or any parts of the studies, control plan and reports submitted as part of the application for a Site Alteration Permit, and such other conditions that are imposed by the Director after the consultation required by Section 8.

PERMIT POSTING

12. (1) A copy of the Site Alteration Permit, issued by the Director, shall be posted in a conspicuous place on the subject property that is adjacent to a public road and visible to all persons, or at such other location designated by the Director, prior to the placement of any fill, the removal of any topsoil, or the alteration of the grade of the land allowed by the Permit.

REVOCATION OF A PERMIT

13. (1) A Site Alteration Permit may be revoked by the Director under any of the following circumstances:
 - (a) If it was issued on mistaken, misleading, false, or incorrect information;
 - (b) If it was issued in error;
 - (c) If the Owner, Applicant, or Permit Holder requests, in writing, that it be revoked;
 - (d) If the terms of an Agreement under this By-Law are not complied with; or,
 - (e) If an Owner fails to comply with any provision of the Site Alteration Permit or this By-Law.
- (2) When a Site Alteration Permit is revoked, the Owner, Applicant, and/or Permit Holder shall immediately cease all operations being conducted under the authority of the revoked Permit and shall immediately rehabilitate and stabilize the land so as to prevent adverse impacts from erosion and sedimentation.

APPEALS TO COUNCIL

14. (1) An Applicant for a Site Alteration Permit pursuant to this By-Law may appeal in writing to the Council of the City of Kingston where:
 - (a) The City refuses to issue a Site Alteration Permit, within thirty (30) days after the refusal; or,
 - (b) The Applicant objects to a condition in the Site Alteration Permit, within thirty (30) days after the issuance of the Permit.
- (2) On appeal, the Council has the same powers as the Director under this By-Law, and may:
 - (a) Confirm the refusal to issue the Site Alteration Permit;
 - (b) Issue a Site Alteration Permit, with or without conditions; or,
 - (c) Affirm, vary, or add any conditions to the Site Alteration Permit.

ENFORCEMENT

15. (1) The enforcement of this By-Law shall be performed by the Director, any persons designated by the Director for the purpose of delegating the power to issue Site Alteration Permits and impose conditions on the Site Alteration Permits, and Officers of the City, as may be appointed by By-Law.
- (2) An Officer may, during daylight hours and upon producing the appropriate identification, enter and inspect any land to which this By-Law applies to determine whether the By-Law, an Order, a Permit, a Permit condition, or a Court Order under this By-Law is being complied with.
- (3) The power of entry in Subsection 15(2) does not allow an Officer to enter any building.
- (4) No person shall obstruct an Officer who is carrying out an inspection pursuant to this By-Law, and any person who so obstructs an Officer is guilty of an offence pursuant to this By-Law.

ORDERS

16. (1) If after inspection, the Officer is satisfied that there is a contravention of this By-Law, the Officer may make an Order requiring the Owner, Applicant, or Permit Holder or the person who caused or permitted the placing or dumping of fill, the removal of topsoil, or the alteration of the grade of the land in contravention of this By-Law to discontinue the activity and reinstate the land or otherwise correct the contravention. The Order shall set out:
 - (a) The municipal address and the legal description of the land;
 - (b) The reasonable particulars of the contravention and the work required to be done to correct the contravention and the period within which there must be compliance; and,
 - (c) A notice stating that if the work is not done in compliance with the Order within the specified period, the City may have the work done at the sole expense of the Owner.
- (2) If the work required by an Order under Subsection 16(1)(b) is not done within the specified period, the City and its agents, in addition to all other remedies it may have, may do the work at the Owner's expense, and may enter upon the land at any reasonable time for this purpose.
- (3) An Order pursuant to Subsection 16(1) of this By-Law shall be served personally or by prepaid registered mail to the last known address of the Owner, Applicant, and/or Permit Holder.
- (4) An Officer who is unable to effect service pursuant to Section 16(3) of this By-Law shall place a placard containing the terms of the Order 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, Applicant, and/or Permit Holder.
- (5) Costs incurred by the City under Subsection 16(2), plus interest accrued to the date payment is made at the rate of fifteen (15) percent per annum or such lesser rate as may be approved by the City, may be recovered from the Owner by action in a like manner as taxes, and such costs are considered a lien on the land upon the registration in the proper land registry office of a notice of a lien, and:

- (a) The lien is in respect of all costs that are payable at the time the Notice is registered, plus interest accrued to the date of payment; and,
- (b) Upon payment of all costs payable, plus interest accrued to the date of payment, a discharge of the lien shall be registered by the City in the proper land registry office.

OFFENCE

- 17. (1) Any person who breaches any provision of this By-Law, contravenes the terms or conditions of any Site Alteration Permit, or contravenes an Order issued under this By-Law, is guilty of an offence.
- (2) Any officer or director of a corporation who knowingly concurs in the contravention of a provision of this By-Law, contravention of any terms or conditions of any Site Alteration Permit, or contravention of an Order issued under this By-Law, is guilty of an offence.

PENALTIES

- 18. (1) Any person who contravenes any provision of this By-Law, any term or condition of a Site Alteration Permit, or an Order issued under Section 16 of this By-Law is guilty of an offence and is liable:
 - (a) On first conviction, to a fine of not more than Ten Thousand Dollars (\$10,000.00); and,
 - (b) On any subsequent conviction, to a fine of not more than Twenty Five Thousand Dollars (\$25,000.00).
- (2) Despite Subsection 18(1), where the person convicted is a corporation:
 - (a) The maximum fine in Subsection 18(1)(a) shall be Fifty Thousand Dollars (\$50,000.00); and,
 - (b) The maximum fine in Subsection 18(1)(b) shall be One Hundred Thousand Dollars (\$100,000.00).
- (3) If a person is convicted of an offence for contravening this By-Law, any term or condition of a Site Alteration Permit, or an Order issued under Section 16 of this By-Law, the Court in which the contravention has been entered, and any Court of competent jurisdiction thereafter, may order the person, in such a manner and within such a period as the Court considers appropriate to:
 - (a) Rehabilitate the land;
 - (b) Remove the fill dumped or placed contrary to this By-Law or to a Site Alteration Permit issued under this By-Law; and/or,
 - (c) Restore the grade of the land to its original condition.

ADMINISTRATION

- 19. (1) The administration of this By-Law shall be performed by the Director, or any persons so designated by the Director.

- (2) Schedules 'A' and 'B' shall form part of this By-Law.
- (3) If any Section or Sections of this By-Law or parts thereof are found by any Court to be invalid or beyond the power of the Council to enact, such Section or Sections or parts thereof, shall be deemed to be severable and all other Sections or parts of this By-Law shall be deemed to be separate and independent there from and continue in full force and effect unless and until similarly found invalid.
- (4) The short title of this By-Law is the "Site Alteration By-Law".
- (5) This By-Law shall come into force and take effect on the date of its passing.

TRANSITIONAL PROVISIONS

20. (1) Notwithstanding any other provision of this By-Law, any site that was receiving fill on any day within fifteen (15) days prior to the day this By-Law was passed may continue to be used only for the purpose of receiving fill without first obtaining a Site Alteration Permit in accordance with Section 3, provided that:
 - (a) the owner of the site applies for a Provisional Site Alteration Permit by submitting the prescribed form to the Director no later than thirty (30) days after this By-Law is passed;
 - (b) the owner of the site submits all information required by the Director to issue a Provisional Site Alteration permit;
 - (c) the owner of the site receives a provisional Site Alteration Permit within fifteen (15) days of making application for the Provisional Site Alteration Permit;
 - (d) the Provisional Site Alteration Permit is not appealed or challenged in a court of competent jurisdiction;
 - (e) the owner complies with all terms and conditions of the Provisional Site Alteration Permit; and,
 - (f) a copy of the provisional Site Alteration Permit, issued by the Director, shall be posted in a conspicuous place on the subject property that is adjacent to a public road and visible to all persons, or at such other location designated by the Director.
- (2) The Provisional Site Alteration Permit shall expire on the earlier of the day that the Permit is revoked by the Director, or a permanent Site Alteration Permit is issued, or six (6) months from the date it was issued.
- (3) The Director may revoke the Provisional Site Alteration Permit at any time where the Director has reasonable and probable grounds to believe that any of the following may be occurring or may be likely to occur as a result of the filling activities:
 - (a) negative impacts on the natural heritage features or area, its adjacent lands, or on their ecological functions;
 - (b) negative impacts on archaeological or cultural resources; or,

- (c) negative impacts on adjacent properties related to altered drainage patterns or runoff, including downstream properties.
- (4) The owner shall make application for a permanent Site Alteration Permit, including submitting all required studies and information in accordance with this By-Law no later than five (5) months from the date this By-Law comes into force.
- (5) The Director may, in writing, extend the term of the Provisional Site Alteration Permit where the owner has complied with all requirements of the Provisional Site Alteration Permit, has made an application for a permanent Site Alteration Permit, and is awaiting the completion of any technical studies.

GIVEN ALL THREE READINGS AND PASSED June 17, 2008

SIGNED ORIGINAL IN CLERK'S OFFICE

CITY CLERK

SIGNED ORIGINAL IN CLERK'S OFFICE

MAYOR

Schedule 'A'

PERMIT FEES

The following shall be paid to the City at the time of application for a Site Alteration Permit pursuant to this By-Law:

Fee Type	Fee	Renewal Fee*
Permit (includes administrative fee and 3 hours of staff review / inspection)	\$300	\$150
Review/Inspection in excess of 3 hours	Will be based on the City's Rates & Fees By-Law	Will be based on the City's Rates & Fees By-Law

* Renewal fee valid only if a Site Alteration Permit is renewed thirty (30) days before the original expiry date.

Note: Rates and Permit Fees may increase annually in accordance with the Consumer Price Index (CPI).