

**THE CORPORATION OF THE
TOWN OF NIAGARA-ON-THE-LAKE**

BY-LAW No. 2026-007

**A BY-LAW TO PROHIBIT OR REGULATE THE REMOVAL OF
TOPSOIL, THE PLACING OR DUMPING OF FILL, AND THE
ALTERATION OF THE GRADE OF LAND WITHIN THE ENTIRE
TOWN OF NIAGARA-ON-THE-LAKE**

WHEREAS the Town of Niagara-on-the-Lake deems it necessary to renew a by-law to ensure the proper drainage of land, to prevent the removal of topsoil, to prevent nuisance related to the removal and placement of soil or related to effects caused by the removal or placement of soil, to protect the environment and to protect the viability of the agricultural industry;

AND WHEREAS Section 142(2) of the Municipal Act, S.O. 2001, c. 25, as amended, provides that the Council of a local municipality may pass by-laws to:

- (a) Prohibit or regulate the placing or dumping of Fill;
- (b) Prohibit or regulate the removal of topsoil;
- (c) Prohibit or regulate the alteration of the grade of the land;
- (d) Require that a Permit be obtained for the placing or dumping of Fill, the removal of topsoil or the alteration of the grade of the land; and
- (e) Impose 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.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE ENACTS AS FOLLOWS.

DEFINITIONS

In this By-law:

- (a) "Applicant" means an Owner, or an Owner's agent, who is authorized by the Owner to act on behalf of the Owner.
- (b) "Building Permit" means a Permit issued pursuant to the Ontario Building Code.
- (c) "Contaminants" means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect.
- (d) "Council" means the Council of the Corporation of the Town of Niagara-on-the-Lake.
- (e) "Director" means Director of Public Works and Infrastructure or a person designated by the Director of Public Works and Infrastructure to serve in this capacity.
- (f) "Drainage" means the movement of water to a place of discharge, whether by way of the natural characteristics of the ground surface or by an artificial method.
- (g) "Dump", "Dumped" and "Dumping" means the depositing of Fill in a location other than where the Fill was obtained and includes the movement and depositing of Fill from one location on a property to another location on the same property.
- (h) "Dust" includes loose or blowing earth, sand, or soil that may be transported from the site.

- (i) "Engineered Fill" means fill that has been selected, placed and compacted to meet specified geotechnical properties.
- (j) "Environmentally Sensitive Area" means any area designated within the Town Official Plan for conservation, escarpment protection area, escarpment natural area, area of natural and scientific interest, any area identified to be within the regulation limit of Niagara Peninsula Conservation Authority, or any other area identified in the Schedules of this By-law as being an Environmentally Sensitive Area.
- (k) "Erosion" means the wearing away, detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity.
- (l) "Excess Soil" has the same meaning as in Ontario Regulation 406/19.
- (m) "Excess Soil Standards" has the same meaning as in Ontario Regulation 406/19.
- (n) "Existing Grade" means the elevation of the existing ground surface of the lands upon which dumping or placing of Fill, or both, is proposed and of abutting ground surface up to three (3) metres wide surrounding such lands, except that where placing or dumping of Fill has occurred in contravention of this By-law, existing grade shall mean the ground surface of the lands as it existed prior to the placing or dumping of Fill.
- (o) "Fill" means any type of material deposited or placed on lands and includes soil, stone, concrete, asphalt, sod or turf either singly or in combination.
- (p) "Finished Grade" means the approved elevation of the ground surface of lands upon which Fill has been placed or dumped, or the grade altered in accordance with this By-law.
- (q) "Incompatible soil" means, for example, clay or loam when placed on top of sandy or gravelly soils or impervious clay subsoil when placed on top of topsoil.
- (r) "Inspector" means the person or persons designated in Schedule "E" of this By-law.
- (s) "Large Site Alteration" means a Site Alteration that involves one or more of the following: placement of over 1,000 m³ of Fill at a property; the removal of over 1,000 m³ of Excess Soil from a property; the removal of soil or placement of Fill in excess of 50 m³ per 1 hectare of total property area; the storage of over 500 m³ of soil in stockpiles for a period of more than six (6) months; or the change in grade at any single location on the property by more than 1 m.
- (t) "Litter and debris" includes building materials, garbage, waste, vegetation or any other loose material that may be transported from the site by wind, persons, vehicles or other means.
- (u) "Liquid Soil" has the same meaning as provided in Ontario Regulation 406/19.
- (v) "Mud tracking" means the obstruction, encumbering, injuring or fouling of roads, boulevards as a result of the throwing, placing or depositing of Fill or other debris.
- (w) "Normal Farm Practice" means, subject to clarifications provided in Schedule "F", any activity performed on private lands by the Owner or Owner's agent that is considered to be routine or common procedure for the type of crop, soil type or general climatic conditions related to the subject property, and meets the definition of "Normal Farm Practice" given in the *Farming and Food Production Act, 1998*
- (x) "Owner" includes the registered Owner of the lands on which Fill is proposed to be placed or dumped or which lands are to be re-graded and any person, firm or corporation, whether alone or with others, that has the right to possess or occupy the lands or actually does occupy or possess the lands, including a lessee.

- (y) "Permit" or "Site Alteration Permit" means a Permit issued pursuant to this By-law.
- (z) "Place of Discharge" means a municipally-owned storm drainage sewer, roadside ditch, a natural watercourse, or an outlet for storm drainage approved by the Town.
- (aa) "Placing" or "Place" means the distribution of Fill on lands to establish a finished grade different from the existing grade.
- (bb) "Ponding" means the accumulation of surface water in an area not having drainage, where the lack of drainage is caused by the placing or dumping of Fill.
- (cc) "Proposed Grade" means the proposed elevation of ground surface of land upon which Fill is proposed to be placed or dumped or the grade altered.
- (dd) "Qualified Person" has the same meaning as provided in Ontario Regulation 406/19.
- (ee) "Retaining Wall" means a wall designed to contain and support Fill or soil which has a finished grade higher than that of adjacent lands.
- (ff) "Riparian Vegetation" means plants growing in a naturalized state on stream, creek and river banks excluding man-made drainage systems.
- (gg) "Site" means the lands which are the subject of Site Alteration or the subject of an application for a Permit pursuant to this by-law.
- (hh) "Site Alteration" means site grading, or the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere.
- (ii) "Site Alteration and Fill Management Plans" means drawings and associated reports clearly defining the features of the existing site, the intended changes to the property, and providing all required information as required in Schedule A.
- (jj) "Soil" means material commonly known as earth, topsoil, loam, subsoil, clay, sand or gravel.
- (kk) "Swale" means a shallow depression in the ground sloping to a place of discharge of surface water for the purpose of providing a method of drainage.
- (ll) "Temporary Storage" means the storage of soil in stockpiles in accordance with the Section C.1 of Part A of the *Rules for Soil Management and Excess Soil Quality Standards*, which specifies clearance distances, volumes, and other management conditions.
- (mm) "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.
- (nn) "Town" means the Corporation of the Town of Niagara-on-the-Lake.
- (oo) "Town Clerk" means the Town Clerk of the Town of Niagara-on-the-Lake.
- (pp) "Treasurer" means the Treasurer of the Town of Niagara-on-the-Lake.
- (qq) "Watercourse" means a defined channel having bed and banks in which a flow of water regularly or continuously occurs.
- (rr) "Wetland" means land that is seasonally or permanently covered in shallow water or has a water table close to or at its surface, directly contributes to the hydrological function of a watershed through connection with a surface watercourse, has hydraulic soils, has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water, but does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic as referred to in this section.

PURPOSE OF THE BY-LAW

2. No person shall remove topsoil, riparian vegetation, place or dump, or cause to be placed or dumped, Fill on land or alter the grade of land or cause the grade to be altered within the Town, unless they are exempt from the provisions of this By-law, or a Permit has been issued pursuant to this By-law.

APPLICATION OF BY-LAW

3. This By-law applies to the entire Town, including those areas which are subject to regulations made under Section 28 of the Conservation Authorities Act, R.S.O. 1990, or governed by the Niagara Escarpment Plan or its policies.

GENERAL PROHIBITIONS AND REGULATIONS

4. The Director will be responsible for the administration of this By-law.
5. No Person shall conduct, undertake, cause, permit or carry out Site Alteration unless the Fill:
 - (a) Complies with the requirements of Ontario Regulation 406/19, including but not limited to:
 - (i) The compatibility of soil with the land use and site conditions of the site receiving the soil as specified in the Excess Soil Standards.
 - (ii) The planning requirements, soil management requirements, and reuse rules as described in the *Rules for Soil Management and Excess Soil*.
 - (b) Complies with the requirements of Ontario Regulation 153/04, where applicable;
 - (c) Does not contain putrescible materials;
 - (d) Does not contain Contaminants; and
 - (e) Is free of termites, pests and Invasive Species including the eggs, seeds, rhizomes, and stem or root fragments of such species.
6. An Owner must obtain a Site Alteration Permit before undertaking a Site Alteration except where the Site Alteration works meets all of the following conditions:
 - (a) The placement of Fill or removal of Excess Soil is less than 20 m³ per hectare of total property area;
 - (b) The change of grade due to the works at any location on the property is less than 0.2 m;
 - (c) No Retaining Wall is proposed;
 - (d) There will be no impact to watercourses or drainage;
 - (e) The work is for the betterment of the Site and in keeping with the permitted use of the Site; and
 - (f) The work will not result in the change of grade of any property line.
7. An Owner must obtain a Site Alteration Permit before undertaking any works involving one or more of the following:
 - (a) The construction of a Retaining Wall, where the Retaining Wall:
 - (i) Is considered a “designated structure” under Section 1.3.1.1 of the Ontario Building Code; or
 - (ii) Is to be constructed at a distance less than three (3) times its maximum height from any property line, easement, right-of-way, watercourse, sewage works, well, building, existing tree exceeding a caliper measurement of 7.5 cm, or other structure.
 - (b) The temporary storage in stockpiles of soil or Fill exceeding a volume of 100 m³, whether singly or in combination.

8. The requirement for Site Alteration Permit regarding the construction of a Retaining Wall does not replace the requirement to obtain a Building Permit regarding that Retaining Wall.

DELEGATED AUTHORITY

9. The Director is authorized and has the delegated authority to:
 - (a) Approve, exempt/waive, issue, revoke, extend, renew, amend, or close a Permit and/or grant approvals of Site Alteration and impose Conditions for continuing to hold a Permit depending on the Site Alteration in addition to the requirements under this By-law;
 - (b) Determine when a Public Information Centre or a Meeting of Council is required or not required;
 - (c) Determine and deem an Application as abandoned, expired, or closed;
 - (d) Approve and coordinate any remediation works;
 - (e) Approve amendments to Site Alteration and Fill Management Plans;
 - (f) Approve and amend Application forms and Guidelines;
 - (g) Amend the Schedules of this By-law;
 - (h) Establish appropriate requirements for Permit applications requirements and appropriate Permit conditions;
 - (i) Appoint a peer review consultant or other engineering, scientific and/or technical experts to fulfill the role or duties of an Officer for purposes of this By-law;
 - (j) Require or exempt certain works from the requirements of this By-law; and
 - (k) Authorize and/or to hire such agents, contractors and other Persons to perform the work, as required.

MINIMUM STANDARDS

10. Every person who places or dumps Fill, or causes Fill to be placed or dumped, or alters the grade of land, shall:
 - (a) Ensure that the finished grade surface is protected by sod, turf, seeding of grass, greenery, asphalt, concrete or such other material as the Director may approve, either singly or in combination;
 - (b) Ensure that Fill is not placed around the perimeter of any existing building to an elevation higher than 150 millimeters (6 inches), or 200 millimeters (8 inches) for stucco and siding, below the top of foundation;
 - (c) Ensure that no piped connection to (Municipal or Regional) culverts, ditches or sewer system is covered and backfilled until the work has been inspected and approved by the Director;
 - (d) Ensure such protection for trees as may be required by the Director;
 - (e) Ensure that all Fill used is clean and free of rubbish, garbage, construction debris, macro and micro plastics, glass, termites, liquid and toxic chemicals, fragments or seeds of invasive species, and other contaminants;
 - (f) If Engineered Fill is specified, the Fill shall be free from debris and organic or deleterious material, and shall be selected, placed and compacted to meet geotechnical requirements;
 - (g) Ensure that Fill is placed or dumped in such a manner and any Retaining Wall containing such Fill is erected in such a manner that no ponding is caused on the subject lands or abutting lands and that adequate provision is made for proper surface stormwater drainage;
 - (h) Ensure that any Retaining Wall is constructed:

- (i) In accordance with a design sealed by a Professional Engineer in Ontario;
 - (ii) Under the inspection or supervision of the same Engineer or their designate; and
 - (iii) With provisions to prevent the erosion of Fill onto abutting lands.
11. No Person shall conduct, undertake, cause, permit or carry out a Site Alteration that may adversely affect the quality or quantity or any surface water or groundwater however it may exist including all water used for or available as a source of water for agriculture or human consumption.
12. No Person shall conduct, undertake, cause, permit or carry out a Site Alteration that could adversely affect any Watercourse, Drainage or Environmentally Sensitive Area on any Property without prior written approval from the Director.
13. No person shall place or dump Fill or cause or permit Fill to be placed or dumped at a Site unless the dumping or placement of such Fill adheres to the applicable "Soil Management Requirements and Reuse Rules for Specific Circumstances" given under Sections C and D, respectively, of Part I of the *Rules for Soil Management and Excess Soil Quality Standards* and the quality of such Fill complies with the Excess Soil Standards that apply to the Site on which it is placed or dumped.

EXEMPTIONS

14. Subject to the requirements of Section 15, the following activities are exempt from requiring a Permit:
- (a) The placing or 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 or as a requirement of an Agreement entered into under that regulation;
 - (b) 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, S.O. 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that Section;
 - (c) The placing or 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;
 - (d) The placing or 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 , R.S.O. 1990 or a predecessor of that Act; 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, R.S.O 1990;
 - (e) 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, R.S.O. 1990;
 - (f) The placing or dumping of Fill, removal of topsoil, or alteration of the grade of the land as an incidental part of drain construction under the Tile Drainage Act, R.S.O. 1990, on the condition of submission of written notice and a tile drainage plan to the Town Drainage Superintendent at least seven (7) days before the start of tile installation or before the delivery of any Fill to be used in the tile installation process;
 - (g) Any work pursuant to Normal Farm Practice with a setback of 3.05 m (10 ft) or greater from all property lines that does not change the direction,

- rate or quality of runoff that results in a detrimental effect on neighbouring properties;
- (h) 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, as amended, or a waste disposal site or waste management system that is exempted by regulation from said Part V;
 - (i) The construction, extension, alteration, maintenance or operation of works under Section 28 of the Public Transportation and Highway Improvement Act, R.S.O. 1990, as amended;
 - (j) Emergency measures taken by the Town to mitigate erosion, soil failure or damage of trees;
 - (k) The activities of a Ministry of the Provincial government, the Regional Municipality of Niagara, the Niagara Peninsula Conservation Authority, the Niagara Parks Commission, related to the establishment or maintenance of utilities and services, roads, ditches or drains, bridges, flood and erosion control facilities, walkways, bicycle paths, fences, Retaining Walls, steps and lighting providing that there is no change in the direction, rate or quality of runoff that causes a detrimental affect to neighbouring properties;
 - (l) To activities or matters undertaken by the Town or by any local board as defined in the Municipal Act, 2001, S.O. 2001, having jurisdiction within the Town providing that there is no change in the direction, rate or quality of runoff that causes a detrimental affect to neighbouring properties;
 - (m) To any action by any Crown agency as defined in the Crown Agency Act providing that there is no change in the direction, rate or quality of runoff that causes a detrimental affect to neighbouring properties;
 - (n) To any action by Niagara-on-the-Lake Hydro Inc. providing that there is no change in the direction, rate or quality of runoff that causes a detrimental affect to neighbouring properties;
 - (o) To any action by any person implementing a grading control plan or lot grading plan approved on behalf of the Town pursuant to a registered Site Plan Agreement, Subdivision Agreement, or Development Agreement pursuant to the provisions of the Planning Act duly executed by the Town and affecting the lands;
 - (p) To any action by any person implementing a grading control plan or lot grading plan pursuant to the Niagara Escarpment Plan and its policies;
 - (q) Any work with a setback of 1.52 m (5 ft) or greater from any property line where soil is placed or dumped on lands for the purpose of lawn dressing, landscaping or adding to flower beds or vegetable gardens, land disturbance associated with the installation of swimming pools incidental to a residential use, provided there is no change in the direction, rate or quality of runoff that causes a detrimental affect to neighbouring properties;
 - (r) The removal of soil as an incidental part of the repair of a building where the soil is removed and held on the Site for subsequent replacement; and
 - (s) Where the placing, dumping or removal of Fill or topsoil, or the alteration of grade is in conjunction with the construction of a building or structure for which a Building Permit has been issued in conjunction with a lot grading plan prepared by an Ontario Land Surveyor or professional engineer or where a Building Permit for the construction of a building or structure has been issued in compliance with the Town's Policy on lot grading plans.
15. Before engaging in the activities listed in subsections (a), (b), (f), (g), (h), (i), (k), (m), (n), (o), (p), (q), and (r) of Section 14, the Owner shall submit written notice to the Director at least forty-eight (48) hours prior to commencing the activity. The

notice shall contain the following information:

- (a) A description of the location of the activity, such as the civic address where the activity will be undertaken or a map showing the location and layout of the activity;
- (b) The anticipated start and end dates of the activity;
- (c) The phone number and mailing address of the Owner;
- (d) The estimated volume of soil to be removed from the properties subject to the activity; and
- (e) The estimated volume of soil to be brought to and placed on the properties subject to the activity.

REQUIREMENTS FOR ISSUANCE OF A PERMIT

16. As part of the application process for any Site Alteration Permit for a Large Site Alteration, or the Placing of Fill by a Hydro-Excavation Truck, a Public Information Centre must be held by the Applicant. After the application is submitted, and as part of the application process, the Applicant shall submit a request for a Public Information Centre. The Public Information Centre shall be held no more than six (6) months after such request is made, and it is acknowledged that such request may result in further refinement of the application. If a Public Information Centre is held, and more than six (6) months have elapsed, but no Site Alteration Permit has been issued, the Applicant shall hold an additional Public Information Centre. Notice of a Public Information Centre shall be sent by prepaid ordinary mail at least fourteen (14) days prior to the date of the Public Information Centre addressed to all Owners of properties as shown on the Town's assessment roll records within 1,000 metres of the subject Property.
17. The holder of a Permit shall ensure that machinery and vehicles used to excavate, load or move Fill do not transport plant material of invasive species or cause the spread or Deposit of noxious weeds or invasive plant species.
18. No Person shall import to any Site any Liquid Soil, any Fill generated by hydro excavation, or any Fill transported with the use of a Hydro Excavation Truck, except where approval has been given by Council.
19. Where the Site or a portion thereof intersects an area regulated by the Niagara Peninsula Conservation Authority, the Director shall not issue a Permit until receiving approval from the Niagara Peninsula Conservation Authority.

PERMIT APPLICATION

20. A person applying for a Permit shall submit to the Director all or any of the following materials at the discretion of the Director:
 - (a) A complete application in the form attached hereto as Schedule "B", which form may be amended from time to time by the Director;
 - (b) Site Alteration and Fill Management Plans providing the information detailed in Schedule "A";
 - (c) The fee prescribed for a Permit as set out in Schedule "C";
 - (d) Securities in accordance with Schedule "C" to secure the performance of the Applicant's obligation under this By-law and any Permit issued hereunder;
 - (e) A haulage plan, including:
 - (i) Maps of intended haul routes between the Site and any source of Fill that is to be brought to the Site;
 - (ii) Maps of intended haul routes between the Site and any disposal or reuse site that will receive excess soil generated at the Site;
 - (iii) The name of the trucking company that will haul material to or from the Site, whether that material is Fill, excess soil, or waste; and

- (iv) Plans of the Site showing staging, loading, unloading, and waiting areas and routes for the circulation of trucks on the Site;
 - (f) A Work Schedule;
 - (g) For any application which involves the placement at the Site of soil or Fill originating from a different property or project area, one of the following:
 - (i) a copy of a purchase order, agreement, or letter from the operator of the originating Site confirming that the origin of the soil or Fill is a licensed aggregate pit or a landscaping soil depot; or
 - (ii) where the origin of the soil or Fill is not a licensed aggregate pit or landscaping soil depot, a letter from a Qualified Person that:
 - provides appropriate documentation demonstrating that the soil or Fill is considered to be of quality consistent with the Excess Soil Standards applicable to the Site and
 - provides a statement as to whether or not the soil or Fill is Excess Soil originating from a project that is required to file notice under O.Reg. 406/19.
 - (h) For any application which involves the placement at the Site of Excess Soil that originated from a project that is or was required to file notice under O.Reg. 406/19, copies of any of the following documents that were required to be prepared in respect of that other project:
 - (i) Assessment of Past Uses
 - (ii) Sampling and Analysis Plan
 - (iii) Soil Characterization Report
 - (iv) Excess Soil Destination Assessment Report
 - (i) For any application which concerns a project that will generate Excess Soil and for which notice is required to be filed under O.Reg. 406/19, copies of any documents of any of the following documents that were required to be prepared in respect of the project:
 - (i) Assessment of Past Uses
 - (ii) Sampling and Analysis Plan
 - (iii) Soil Characterization Report
 - (iv) Excess Soil Destination Assessment Report
 - (j) A Sediment and Erosion Control Plan;
 - (k) A description of the measures proposed to control off-site movement of dust, litter and debris and related off-site maintenance;
 - (l) A description of the mud tracking control and road maintenance program;
 - (m) A description of the vegetative measures to be used, including, but not limited to mulches, types of seeds and fertilizers and their application rates;
 - (n) A written authorization, signed by the Owner, stating that the Director and their designates and/or any person in their company will be allowed to enter the Site for the purpose of inspecting for compliance with the approved Permit or for performing any work necessary to bring the Site into compliance with the approved Permit.
 - (o) All other information as may be required.
21. An Applicant for a Permit pursuant to this By-law shall:
- (a) Certify that the Fill contains no contaminants within the meaning of the Environmental Protection Act, R.S.O. 1990, as amended; and
 - (b) Forever and unconditionally release and indemnify the Town with respect to any and all liability which may arise in the event that the Fill contains contaminants within the meaning of the Environmental Protection Act, and

any successor legislation.

22. The certificate and release and indemnity required by subsections 21(a) and 20(b) respectively, shall be in the form prescribed by Schedule "B" attached hereto and forming part of this By-law.

ISSUANCE OF PERMITS

23. The Director may issue a Permit for Site Alteration on land within the limits of the Town, where the Director is satisfied with the application regarding the Site Alteration and where the proposed Site Alteration and application meet the requirements of this By-law. In all cases, the Town will inspect and evaluate the need for a Site Alteration Permit within ten (10) working days of receipt of the application form.
24. The provisions of this By-law and the issuance of a Permit do not absolve the Applicant from the responsibility to obtain other required approvals and to comply with all other restrictions governing the work imposed under laws by any authority having jurisdiction. Including areas identified as having archaeological resource potential as shown in the Town Official Plan. The Applicant is advised that should buried archaeological material be found the Archaeology Program Unit of the Ministry of Citizenship and Multiculturalism should be contacted immediately by email at archaeology@ontario.ca (include "Urgent" in the subject line). In the event that human remains are encountered, the Applicant should immediately contact the Niagara Regional Police Service, the Coroner, the Ministry of Public and Business Services Delivery Registrar, Funeral, Burial and Cremation Services Act (Toll-Free 1-800-889-9768), and the Archaeology Program Unit of the Ministry of Citizenship and Multiculturalism.
25. The Director may issue a Permit, imposing appropriate conditions, when:
- (a) The Director 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 is prohibited under this By-law, the Conservation Authorities Act or other applicable law;
 - (b) The Director is satisfied that the proposed final elevations, the resulting drainage patterns, the design of any Retaining Wall, the type of Fill to be used and the method of placing or dumping of Fill are all in accordance with proper engineering and environmental practices;
 - (c) The Director is satisfied that the placing or dumping of Fill will not result in:
 - (i) Soil erosion;
 - (ii) Blockage of a watercourse;
 - (iii) Siltation in a watercourse;
 - (iv) Pollution of a watercourse;
 - (v) Diversion of a watercourse;
 - (vi) A change in drainage patterns that will result in negative impacts;
 - (vii) Flooding or ponding on abutting lands;
 - (viii) Flooding or ponding caused by a watercourse overflowing its banks;
 - (ix) A detrimental effect on any trees of a caliper of 7.5 cm (2.9 in) or more, located on the lands. Caliper of a tree shall be measured at 15 cm (6 in) above ground level for trees up to and including 10 cm (4 in) caliper size, and 32 cm (12 in) above ground level for trees of larger size;
 - (x) A detrimental effect on sensitive ground or surface water features or on significant natural features or ecological functions;
 - (xi) Any contravention of regulations, standards or guidelines

- established pursuant to the Environmental Protection Act;
 - (xii) The fouling of, or physical damage to, the adjacent roadway or other municipal infrastructure; and
 - (xiii) The transport of invasive species to the receiving area.
 - (e) The Director is satisfied that the existing topsoil is not removed from the Site, destroyed or buried by the placement of incompatible soils;
 - (f) The Director is satisfied that the existing topsoil or riparian vegetation will only be removed from the Site of man-made facilities such as buildings or parking lots;
 - (g) The Director is satisfied that the issue of erosion has been satisfactorily addressed. An Erosion and Sediment Control Plan may be required. It would include:
 - (i) The location and dimensions of all proposed Site Alteration activities;
 - (ii) The location and dimensions of all temporary soil and dirt stockpiles; and
 - (iii) The location and dimensions of all required construction site management control measures.
 - (i) A schedule of anticipated starting and completion dates for each Site Alteration or land developing activity including the installation of construction site management control measures needed to meet the requirements of this By-law;
 - (h) Any security or letter of credit as prescribed in Schedule "C" to this By-law that is required to be deposited with or paid to the municipality to ensure that conditions are satisfied has been deposited or paid and that any Agreement required to implement conditions imposed by the Director has been signed;
 - (i) The Director is satisfied that the application documents demonstrate that the soil or Fill to be placed at the Site is of quality that is consistent with the Excess Soil Standards applicable to the Site; and
 - (j) All other concerns of the Director have been satisfied.
26. The Director shall not issue a Permit unless:
- (a) Where applicable, all requirements contained in the Greenbelt Act S.O. 2005, and regulations are complied with respecting to the proposed work;
 - (b) The land use to which the proposed work pertains is permitted by the applicable By-laws passed under the Planning Act, R.S.O. 1990;
 - (c) The work proposed under the Permit does not involve the contravention of the Environmental Protection Act, R.S.O. 1990, the Ontario Heritage Act, R.S.O. 1990 as amended, the Building Code Act, S.O. 1992, the Drainage Act, R.S.O. 1990, the Lakes and Rivers Improvement Act, R.S.O. 1990 and the Federal Fisheries Act, R.S. 1985, and any other applicable legislation or regulation including but not limited to O.Reg. 406/19; and
 - (d) Notwithstanding any other provision of this By-law, the Director shall not issue a Permit under this By-law with respect to lands in the Town of Niagara-on-the-Lake defined and designated as an Environmentally Sensitive Area without the approval of Council.

PERMIT EXPIRY, RENEWAL, REVOCATION, TRANSFER

- 27. A Permit issued pursuant to this By-law shall be valid for a period of six (6) months from the date of issuance.
- 28. A Permit shall expire upon the transfer of ownership of the site unless the new Owner provides written commitment to comply with all conditions under which the

Permit was issued, prior to the transfer of ownership of the site, and provide any required letter of credit.

29. A Permit which has expired may be renewed by the Director within a period of six (6) months from the date of expiry upon the submission of a written request to the Director accompanied by a payment of one-half of the original Application Fee, provided that the proposed work which was the subject of the Permit has not been revised.
30. A Permit for Site Alteration issued under this By-law shall expire and become null and void upon the issue of a Site Plan Approval regarding the Site. In such a case, the securities for the Permit will be returned to the Applicant.

SECURITIES AGREEMENT

31. Wherever the Director requires, as a condition of a Permit, that there be a written Agreement concerning the work contemplated by the Permit of this By-law, such Agreement shall be executed by the registered Owner of the site and the Town in a form determined by the Director in accordance with Schedule "D"; such Agreement shall be executed on behalf of the Town by the Town Clerk and may require that a letter of credit as prescribed in Schedule "C" be lodged with the Town for the work authorized by the Permit as approved by the Director to guarantee that the work is completed in accordance with the Permit and any related plans and documents and that the Owner may be required to pay the Town's costs of reviewing and approving the plans and work referred to in the Permit.

CONDITION FOR PERMITS

32. All Permits will require the Applicant to:
 - (a) Notify the Director twenty-one (21) working days prior to commencing any Site Alteration activity;
 - (b) Provide the Director with the name and phone number of an emergency contact person;
 - (c) Notify the Director of completion of any control measures within two (2) days after their installation;
 - (d) Obtain permission in writing from the Director prior to modifying the Site Alteration and Fill Management Plan;
 - (e) Maintain all road drainage systems, stormwater drainage systems, control measures and other facilities identified in the Site Alteration and Fill Management Plan;
 - (f) Repair any siltation or erosion damage to adjoining surfaces and drainageways and watercourses which have resulted from the Site Alteration activities;
 - (g) Inspect the construction control measures after each rain of 1 cm or more and at least once a week and undertake needed repairs;
 - (h) Ensure that during site activity a copy of the Permit and Site Alteration and Fill Management Plan (if required) is on site;
 - (i) Notify all sub contractors and suppliers of approved access routes to the site and ensure compliance;
 - (j) Maintain all roads in same or better condition than existed prior to the commencement of the work and keep all roads free from any materials or equipment arising from the work set out in the Permit; and
 - (k) Ensure that no construction machinery is operated in contravention of the Noise By-law.
33. Where a Permit has been issued under this By-law, no person shall move or remove topsoil or place or dump Fill or alter the grade of land except in accordance

with the plans, documents and any other information on the basis of which the Permit was issued and in compliance with any conditions imposed by the Director.

CONSENT OF OWNER

34. No person shall remove topsoil or place or dump, or cause to be placed or dumped, Fill on any land or alter the grade of land unless it is done at the request of, or with the consent of, the Owner of the land affected.
35. No person shall place or dump, or cause to be placed or dumped, Fill on any land for storage purposes unless the outside storage of such Fill on the land is permitted by a written Agreement between the landowner and the Town.

INSPECTION, ADMINISTRATION AND ENFORCEMENT

36. The administration and enforcement of this By-law shall be performed by the Director, or by those persons designated as Inspectors under Schedule "E" to this By-law or as may be designated for the purposes of this By-law under other By-laws of the Town. The Director and any duly designated Inspector shall have all powers necessary to carry out the administration and enforcement of this By-law including the power to enter upon and inspect, at any reasonable time, any lands to which this By-law applies, to determine compliance with the provisions of this by-law.
 - (a) Upon the failure by the Applicant to complete all or part of the works in the time stipulated in the Site Alteration Plan, the Town may draw the appropriate amount from the securities posted and use the funds to arrange for the completion of the said works, or any part thereof;
 - (b) Upon the failure by the Applicant to repair or maintain a specific part of the works as requested by the Town, and in the time requested, the Town may at any time authorize the use of all or part of the securities to pay the cost of any part of the works it may in its or their absolute discretion deem necessary; or
 - (c) In the case of emergency repairs or clean-up, the Town may enter upon land at any reasonable time and undertake the necessary works at the expense of the Applicant and reimburse itself out of securities posted by the Applicant.
37. If after inspection, an Inspector is satisfied that a contravention of this By-law has occurred, the Inspector shall notify the Owner and the Permit holder of the particulars with a 'Stop Work Order' and an 'Order to Comply', pursuant to Section 444(1) or 445(1) of the Municipal Act, 2001, and provide all occupants with copies of the 'Stop Work Order' and 'Order to Comply' and such orders shall contain:
 - (a) The municipal address and legal description of the land;
 - (b) Reasonable particulars of the contravention(s); and
 - (c) The period within which there must be compliance.
38. Orders issued pursuant to this By-law may require any person who has altered the grade of land, caused or permitted the grade to be altered contrary to the provisions of this By-law, placed, dumped, cut or removed Fill, caused or permitted Fill to be placed, dumped, cut or removed, or caused or permitted any other form of Site Alteration contrary to the provisions of this By-law to:
 - (a) Cease all work in respect of the Site Alteration until such time as conditions of the Stop Work Order and Order to Comply are met;
 - (b) Remove the Fill;
 - (c) Fill in any excavations or ponds; and/or
 - (d) Complete all the work necessary to:
 - (i) Eliminate any hazard resulting from the alteration of the grade or the

placing, dumping, cutting or removal of Fill and to restore the land to a condition of safety and/or its original environmental condition, to the satisfaction of the Director;

- (ii) Preserve the land pending any hearing of an appeal in respect of an application; or
 - (iii) Restore the land to its former condition prior to the alteration of the grade of the land or to the placing, dumping, cutting or removal of the Fill on the land or other Site Alteration to the satisfaction of the Director.
39. The Order referred to in Sections 37 and 38 of this By-law shall also contain the time frame in which the work contained in the order must be carried out
40. An Order issued pursuant to Section 37, 38, or 39 of this By-law shall be served personally or by prepaid registered mail.
41. An Order issued pursuant to this By-law that is sent by prepaid registered mail shall be sent to the last known address of the Owner of the land and Permit holder.
42. An Inspector who is unable to effect service pursuant to Section 40 of this By-law shall place a placard containing the terms of said 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 and Permit holder.
43. If the Owner or Permit holder fails to do the work required by an 'Order to Comply' issued pursuant to Sections 37 or 38 of this By-law within the period specified, 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 of the land and may be recovered by the Town in like manner as taxes or drawing on financial securities provided.

OFFENCE AND PENALTY

44. Any person or corporation who contravenes this By-law may be issued an administrative penalty in accordance with the AMPS By-law 5334-21 for Non-Parking Offences in accordance with Schedule "G" attached hereto and forming part of this By-law.

APPEAL TO ONTARIO LAND TRIBUNAL

45. An Applicant for a Permit under this By-law may appeal to the Ontario Land Tribunal:
- (a) If the Director refuses or neglects to issue a Permit under this By-law within forty-five (45) days after the Application is received by the Director and after the supporting plans and documents referred to in Schedule "A" are received by the Director;
 - (b) If the Director refuses to issue a Permit, within thirty (30) days of the refusal; or
 - (c) If the Applicant objects to a condition in the Permit, within thirty (30) days after the issuance of the Permit.

ASSISTANCE FOR DIRECTOR

46. The Director shall have the right to retain the services of a consulting engineer, at the Applicant's cost, for the purposes of determining whether the requirements of Schedule "A" or Schedule "B" have been complied with, and to assist with the administration of this By-law.

SEVERABILITY

47. In the event that any provision or part of this By-law is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or part thereof shall be deemed to be severed from the remainder of the By-law and all other provisions or parts thereof shall remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

GENERAL

48. That Town By-law 3941-05 is hereby repealed.
49. This By-law shall come into force and effect upon the passing of the By-law by Council.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 24TH DAY OF FEBRUARY 2026

LORD MAYOR GARY ZALEPA

TOWN CLERK GRANT BIVOL

SCHEDULE “A”

A person applying for a Permit pursuant to Section 20 of By-law 2026-007 shall provide to the Director the following information in addition to the information requested by the Director pursuant to Section 20:

<u>Yes</u>	<u>No</u>	
<input type="radio"/>	<input type="radio"/>	(a) A complete application in the form prescribed by the Director;
<input type="radio"/>	<input type="radio"/>	(b) A description of the Fill proposed to be dumped including the quantity and source of the Fill; and
<input type="radio"/>	<input type="radio"/>	(c) If the Director so requests, a set of accurate plans meeting some or all of the requirements set out below per consultation with the Town and other agencies as applicable.

To illustrate proposed changes, Site Alteration and Fill Management Plan Drawings prepared by an Ontario Land Surveyor or Professional Engineer are required. Plans should clearly show existing and proposed conditions. Should an application for a Permit be made retroactively, efforts should be made to show pre and post-alteration conditions as accurately as possible.

Plans for the alteration and grading or for the placing or dumping of Fill shall be prepared in accordance with the standard drawings and to the satisfaction of the Town, in accordance with the Town's Municipal Servicing Standards and include and/or note the following on the site and surrounding area:

- A title block - including lot and plan number and scale used,
- A location map with north arrow,
- Property lines and dimensions,
- The current and proposed use of the site,
- Dimensions and use of any existing or proposed buildings or structures on or adjacent to the site,
- Existing & proposed elevations with contours at 0.5 metre intervals or less,
- Spot elevations along property lines at 3 metres beyond the property,
- Spot elevations around existing structures, driveways, parking areas, septic systems and other features that may be impacted by changes to drainage patterns,
- The predominant soils,
- Any environmental contamination on the site,
- All water wells within 100 m of the Site,
- Woodlots,
- Vegetative cover,
- Drainage features, including drains, channels, ditches and swales,
- All wetlands, watercourses, or water bodies within 30 m of the Site,
- Fish habitat,
- Regulatory floodline and Conservation Authority Fill regulation lines,
- Utilities,
- Roads,
- Easements, existing and proposed,
- The proposed stormwater management system and the existing and final elevations of the site with direction of flow arrows,
- Temporary erosion control measures to be in place during the

construction period, e.g. silt fence, sedimentation traps, etc., and permanent erosion control works to be left in place after construction and lot grading is completed, e.g. siltation ponds, etc.,

- Delineation of any areas identified as having archaeological resource potential,
- Compliance with all lot grading requirements specified in Ontario Building Code.

The Applicant shall also submit Fill Management Plan documents and drawings, as applicable, providing the following:

- Details of proposed locations of soil storage on-site, including the estimated maximum volume to be stored in each location.
- A haulage plan, including:
 - Maps of intended haul routes between the Site and any source of Fill that is to be brought to the Site;
 - Maps of intended haul routes between the Site and any disposal or reuse site that will receive excess soil generated at the Site;
 - The name of the trucking company that will haul material to or from the Site, whether that material is Fill, excess soil, or waste; and
 - Plans of the Site showing staging, loading, unloading, and waiting areas and routes for the circulation of trucks on the Site.
- A Work Schedule outlining the proposed start and completion of proposed Site Alteration activities.
- For any application which involves the placement at the Site of soil or Fill originating from a different property or project area, one of the following:
 - A copy of a purchase order, agreement, or letter from the operator of the originating site confirming that the origin of the soil or Fill is a licensed aggregate pit or a landscaping soil depot; or
 - Where the origin of the soil or Fill is not a licensed aggregate pit or landscaping soil depot, a letter from a Qualified Person that provides appropriate documentation demonstrating that the soil or Fill is considered to be of quality consistent with the Excess Soil Standards applicable to the Site and provides a statement as to whether or not the soil or Fill is Excess Soil originating from a project that is required to file notice under O.Reg. 406/19.
- For any application which involves the placement at the Site of Excess Soil that originated from a project that is or was required to file notice under O.Reg. 406/19, copies of any of the following documents that were required to be prepared in respect of that other project:
 - Assessment of Past Uses;
 - Sampling and Analysis Plan;
 - Soil Characterization Report;
 - Excess Soil Destination Assessment Report.
- A Sediment and Erosion Control Plan;
- A description of the measures proposed to control off-site movement of dust, litter and debris and related off-site maintenance.
- A description of the mud tracking control and road maintenance program.
- A description of the vegetative measures to be used, including, but not limited to mulches, types of seeds and fertilizers and their application rates.
- A written authorization, signed by the Owner, stating that the Director

Site Alteration By-law 2026-007

and their designates and/or any person in their company will be allowed to enter the site for the purpose of inspecting for compliance with the approved Permit or for performing any work necessary to bring the site into compliance with the approved Permit.

- A Tree Management Plan and drawings showing proposed landscaping restoration as required.
- All other information as may be required or requested by the Director.

SCHEDULE "B"

**SITE ALTERATION PERMIT APPLICATION FORM
TOWN OF NIAGARA-ON-THE-LAKE**

Owner's Name: _____
 Address: _____
 Telephone: _____ Business: _____
 Home/Mobile: _____
 Applicant/Agent's Name (if different from Owner): _____
 Address: _____
 Telephone: _____ Business: _____
 Home/Mobile: _____

Owner's Authorization - (Required when the Owner is not the Applicant)
 I/We _____ (Name(s) of the Owner(s)), being the registered Owner(s) of the subject lands, hereby authorize _____ (Name of Agent) to act as my/our agent(s) in the submission and processing the Site Alteration Permit Application.
 Signature: _____ Date: _____

 Witness: _____ Date: _____

DESCRIPTION OF PROPERTY
 Municipal Address: _____
 Brief Legal Description: Lot _____ Plan _____
 Other _____
(Attach survey if available)

DESCRIPTION OF PROPOSED WORK	
What is the size of the property (in hectares)?	_____ hectares
Do you propose to add Fill to the property?	Yes / No
If so, what volume of Fill do you propose to add?	_____ m ³
Do you propose to remove soil from the property?	Yes / No
If so, what volume of soil do you propose to remove?	_____ m ³
Do you propose to alter the grading of the property?	Yes / No
If so, what is the maximum proposed change in grade of any location on the property?	<input type="checkbox"/> Less than 0.2 m <input type="checkbox"/> Between 0.2 m and 1 m <input type="checkbox"/> 1 m or greater
Will the elevations be altered at any property boundary?	Yes / No
Will there be any changes to watercourses or drainage? Refer to: NPCA Watershed Explorer	Yes / No
Do you propose to construct one or more retaining walls?	Yes / No
Describe the purpose and details of the works (attach separate sheets as required)	

If Fill or soil is to be brought and added to the property, list all sources of soil and the anticipated quantities:

Source Site Address or Location	Source Site Operator Contact Information	Property Use of Source Site ¹	Anticipated Quantity to be Brought (m ³)

1 – Licensed Aggregate Pit, Landscaping Soil Depot, Agricultural, Institutional, Residential, Parkland, Community, Industrial, or Commercial

Is there a registered flood and/or Fill line on or adjacent to the property? Refer to: NPCA Watershed Explorer	Yes / No
Is there significant natural area or fish habitat on or adjacent to this property? Refer to: NOTL Official Plan Schedule A.pdf and NPCA Watershed Explorer	Yes / No
Has the property ever been used for industrial, commercial or institutional purposes? Refer to Niagara Air Photo Index to see historical images of your site	Yes / No
Is the land or portion of land within the archeological resource potential area? Refer to Schedule H of Town Official Plan	Yes / No
Has there been consultation with NPCA or other Agencies? If Yes, provide: Agency Name: _____ Name of Staff: _____ Date of Consultation: _____	Yes / No

I certify that any Fill to be placed on the site contain no contaminants within the meaning of the Environmental Protection Act, R.S.O. 1990, as amended; and

I forever and unconditionally release and indemnify the Town with respect to any and all liability which may arise in the event that the Fill contains contaminants within the meaning of the Environmental Protection Act, and any successor legislation.

Applicant's Signature: _____ Date: _____

Witness _____ Date: _____

FOR OFFICE USE ONLY- STAFF COMMENTS	
Date Received: _____	Date Inspected: _____
Agreement Required: Yes/No	
(Attach agreement if applicable)	
Permit Issued: Yes/No	
More Information Required: Yes/No	
(Attach requesting information if applicable)	
Security Required: Yes/No	
Conditions Added: Yes/No/Attach	
Permit Agency Review & Conditions:	

*****Should buried archaeological material be found the Archaeology Program Unit of the Ministry of Citizenship and Multiculturalism should be contacted immediately by email at archaeology@ontario.ca (include “Urgent” in the subject line). In the event that human remains are encountered, the Applicant should immediately contact the Niagara Regional Police Service, the Coroner, the Ministry of Public and Business Services Delivery Registrar, Funeral, Burial and Cremation Services Act (Toll-Free 1-800-889-9768), and the Archaeology Program Unit of the Ministry of Citizenship and Multiculturalism.**

SCHEDULE "C"

PERMIT APPLICATION FEES

1. The initial application fee for processing, administration and inspection for a six (6) month Permit is:
 - (a) \$750.00 for Permit for Site Alteration that is not a Large Site Alteration
 - (b) \$1,500.00 for a Large Site Alteration, plus \$25.00 for each hectare (or part thereof) of site area over 5 hectares
2. In addition to the Permit fee, the Applicant shall be responsible to pay fees to cover the entire cost that the municipality would incur in retaining the services of professionals, consultants, or other subject matter experts to review or support the review of the application materials.

PERMIT EXTENSION FEES

3. The fee for processing, administration and inspection for a six (6) month Permit extension is 50% of the initial application fee.

LETTER OF CREDIT (to guarantee site control measures)

4. The Applicant shall provide an irrevocable Letter of Credit or other security (the Security) acceptable to the Town Treasurer in the amount of:
 - (a) \$15,000.00 for a Site Alteration that is not a Large Site Alteration; or
 - (b) Up to 5% of the assessed property value of the Site at the time of receipt of the Site Alteration Permit application for a Large Site Alteration.
5. The Security is intended to cover the cost of site control measures or rectification of impacts associated with the failure or insufficiency of site control measures including measures related to Erosion and Sediment Control, mud tracking control, litter and debris control, and dust control.
 - (a) The security must remain in effect for the full duration of the Permit with an automatic renewal clause in the document. Any Letter of Credit and its subsequent renewal forms shall contain a clause stating that thirty (30) days written notice must be given to the Town prior to its expiry or cancellation. All calculations to be supplied by the Owner or their representative and verified by the Town.
 - (b) In the event that the Town receives notice that a Letter of Credit is expiring and will not be renewed, or, if further or additional securities are not provided within the said thirty (30) days, the Town may draw on the current Letter of Credit at the discretion of the Treasurer. The Permit holder agrees that any interest accruing on the realized security shall belong to the Town and not to the Applicant.
6. To obtain release of the security, the Applicant must:
 - (a) Provide evidence satisfactory to the Director that the site has been adequately reinstated and stabilized in accordance with this By-law and the Erosion and Sediment Control Plan accompanying the Permit; and
 - (b) Notify the Town no later than two (2) working days of the completion of works set out in the Permit and to request that the Town carry out an inspection to confirm that all relevant terms of this By-law have been complied with.
7. When the provisions of subsections (a) and (b) of section 6 of this Schedule have been fully complied with, the Treasurer shall release the Applicant's security.
8. Regardless of changes in ownership of the Site while a Site Alteration Permit is open,

Site Alteration By-law 2026-007

the Security will be returned to the original Applicant (i.e., the party that posted the Security) unless that Applicant authorizes, in writing, the return of the Security to another person.

9. The security may be reduced from time to time by the Treasurer to the satisfaction of the Director.

10. In the event that the final inspection for Permit close-out reveals a need for follow-up inspections to confirm compliance, the Town will retain from the Security \$250 for each follow-up inspection.

SCHEDULE "D"

SITE ALTERATION SECURITY AGREEMENT

THIS AGREEMENT made, in triplicate, this day of

BETWEEN:

The Corporation of the Town of Niagara-on-the-Lake

(hereinafter may be referred to as the "Town")

OF THE FIRST PART

And

(hereinafter may be referred to as the "Owner")

OF THE SECOND PART

WHEREAS the Owner is the registered Owner of the property municipally known as _____ in the Town of Niagara-on-the-Lake, Ontario and described in Schedule "A" attached hereto (hereinafter referred to as the "Property") in this Agreement;

AND WHEREAS Sections 142 through 144 of the Municipal Act, 2001, (hereinafter referred to as the "Act") authorizes Council of municipalities to pass a By-laws prohibiting or regulating the placing or dumping of Fill, the removal of topsoil, the alteration of the grade of land and requiring the a Permit and requiring restoration and rehabilitation of the site in the event of contravention of the By-law;

AND WHEREAS the Owner intends to alter the grade of the Property in accordance with the Site Alteration By-law and has applied for a Permit pursuant to that Site Alteration By-law;

NOW, THEREFORE that in consideration of the application for the Permit and after review of the application and of the covenants hereinafter set forth the parties hereto mutually covenant and agree as follows:

1. ALTERATION OF PROPERTY GRADES

- 1.1 The Owner agrees that, within six (6) months from the date of the Permit, issued pursuant to the Site Alteration By-law (hereinafter referred to as the "Permit"); all placing or dumping, or alteration of the grade of the Property shall be completed in accordance with the Site Alteration By-law and the approved Site Alteration and Fill Management Plans as previously approved.
- 1.2 It is the responsibility of the Owner:
 - 1.2.1 To obtain the approval of the Director, Public Works and Infrastructure Department of the Town (hereinafter referred to as the "Director ") that the Property has been adequately reinstated and stabilized in accordance with the Site Alteration By-law, the approved Site Alteration and Fill Management Plans and the terms and conditions of the Permit; and
 - 1.2.2 To request the Town to carry out a final inspection of the Property and to obtain the approval of the Director that this By-law and the terms and condition of the Permit have been complied with.
- 1.3 The Owner agrees that the works described in clause 1.1 and 1.2 above will be completed on or before _____, 20_____.

2.0 SITE ALTERATION PERMIT

- 2.1 No Permit will be issued by the Town:
 - 2.1.1 Until the Owner has paid all required fees;
 - 2.1.2 If the Owner is in default under the Site Alteration By-law or any other applicable law.

3.0 SECURITIES FOR PERFORMANCE

- 3.1 The Owner is to deposit with the Town at the time of execution of this Agreement, securities, cash, or a Letter of Credit satisfactory in form to the Town, and for a

term of not less than one year, in the amount of Dollars (\$) (hereinafter referred to as "Security") as security for;

- 3.1.1 All work which is the subject of the application including all site siltation control measures and Retaining Walls necessary to meet the requirements of the Site Alteration By-law; *and*
 - 3.1.2 Performance of any other provision of this Agreement.
- 3.2 The described Security is to be renewed by the Owner until the Town deems it is no longer required to guarantee the:
- 3.2.1 Completion of the said works in conformity with the provisions of this Agreement; *and*
 - 3.2.2 Performance of any other provision of this Agreement.
- 3.3 In the event the Owner:
- 3.3.1 Fails or is negligent in performing the work required under the Site Alteration By-law to the satisfaction of the Director; *or*
 - 3.3.2 Fails to do any other act, matter or thing required to be done, including a renewal of the Security, under the provisions of this Agreement, the Town at its discretion, at any time and from time to time, may realize upon the security described in subsection 3.1 of this section and may employ the same or the proceeds thereof, or any part thereof, in doing or completing any or all of the work or for any act, matter or thing required to be done under this Agreement and may employ the proceeds thereof to hire legal counsel to prosecute any contravention of this Agreement or any other law.
- 3.4 In the event of default, the Owner agrees and consents to permit forces hired by the Town to enter upon the Property and undertake the works to be done under this Agreement, unencumbered and without restriction in any manner.

4.0 COVENANTS TO RUN WITH THE LANDS

- 4.1 All covenants and conditions set forth in this Agreement are and shall be deemed to be covenants running with the Property and it is hereby agreed between the parties of the First and Second Parts:
- 4.1.1 That every covenant and condition herein to the benefit of and is binding upon the parties of the First and Second Parts hereto and their heirs, executors, administrators, successors and assigns; and
 - 4.1.2 That when the context so requires or permits the singular number is to be read as if the plural were expressed and the masculine gender as if the feminine or neuter, as the case may be, were expressed.

5.0 RELEASE OF LETTER OF CREDIT

When the obligations set out in this Agreement have been fulfilled, including receipt, satisfactory to the Director, of a Letter of Compliance from the Professional Engineer or other qualified person responsible for the preparation of the Site Alteration and Fill Management Plans as previously approved, and when the Director is satisfied that the provisions of this Agreement have been fully complied with, the Owner's Security shall be released.

6.0 MUNICIPAL FREEDOM OF INFORMATION

The Owner acknowledges that this Agreement and any information or documents provided by it to the Town may be released pursuant to the provisions of the Municipal Freedom of Information and Protection of Privacy Act. This acknowledgement shall not be construed as a waiver of any right to object to the release of this Agreement or any information.

IN WITNESS WHEREOF the parties hereto have duly set their hands and seals as of the day and year first above written.

SIGNED, SEALED AND DELIVERED

In the presence of:

THE CORPORATION OF THE TOWN of
NIAGARA-ON-THE-LAKE:

Per:

TOWN CLERK

WITNESS

OWNER

I,
have authority to bind the Corporation.
(Schedule "A"
Site Alteration Agreement
Legal description of land)

SCHEDULE "E"

1. The following Town employees or agents are hereby designated as Inspectors for the purposes of this By-law and are authorized to carry out the administration and enforcement of this By-law:
 - (a) The Director and their designate(s) for the purposes of this By-law;
 - (b) Persons appointed by Council as Municipal Law Enforcement Officers.

SCHEDULE "F"

EXCLUDED ACTIVITIES

1. For the purposes of this By-law, the following activities are not considered to be Normal Farm Practices:
 - (a) Construction or installation of tile drains;
 - (b) Construction of ditches to convey or control surface drainage;
 - (c) Construction of ponds;
 - (d) Construction of berms, whether for the control of drainage, the impoundment of water, the creation of a visual obstruction, or any other purpose; or
 - (e) Removal of topsoil or aggregate for sale, exchange or other disposition.

ENVIRONMENTALLY SENSITIVE AREAS

2. Pursuant to the definition of "Environmentally Sensitive Areas" given in this By-law, the Director also defines the following areas as Environmentally Sensitive Areas:
 - (a) Provincially Significant Wetlands
 - (b) Floodplains identified by Niagara Peninsula Conservation Authority

SCHEDULE "G"

By-Law No. ####-## Site Alteration			
Item	Designated Provision	Short Form Wording	Set Penalty
1.	Section 2	Failure to obtain a Site Alteration Permit (Person)	\$1,500
2.	Section 2	Failure to obtain a Site Alteration Permit (Corporation)	\$5,000
3.	Section 11	Altering grade such that it affects surface water or groundwater	\$2,500
4.	Section 12	Altering grade such that it affects Watercourse, Drainage or Environmentally Sensitive Area	\$2,500
5.	Section 33	Failure to comply with the regulations, stipulations or conditions as identified in a Site Alteration Permit (Person)	\$1,500
6.	Section 33	Failure to comply with the regulations, stipulations or conditions as identified in a Site Alteration Permit (Corporation)	\$5,000
7.	Section 37	Fail to comply with an Order (Person)	\$1,500
8.	Section 37	Fail to comply with an Order (Corporation)	\$5,000