



**TOWN OF AMHERSTBURG  
SPECIAL COUNCIL MEETING - PLANNING**

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**Monday, February 10, 2025**

**5:00 PM**

**Council Chambers**

**271 Sandwich Street South, Amherstburg, ON, N9V 2A5**

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**Pages**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. DISCLOSURE OF PECUNIARY INTEREST & GENERAL NATURE THEREOF**  
*(Public Council Meeting Agenda Items)*

#### 4. LAND ACKNOWLEDGEMENT

We will begin by acknowledging that the land on which we gather is the traditional territory of the Three Fires Confederacy of First Nations (comprising the Ojibway, the Odawa, and the Potawatomie Peoples), and of the Huron-Wendat and Wyandot Peoples. We recognize the land as an expression of gratitude to those whose traditional territory we reside on, and a way of honouring the Indigenous people who have been living and thriving on the land since time immemorial. We value the significant historical and contemporary contributions of local and regional First Nations and all of the Original Peoples of Turtle Island.

#### 5. PLANNING REPORTS

##### 5.1 Statutory Public Meeting – Excess Soil Strategy and Site Alteration By-law

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It is recommended that:

Comments from the public, municipal departments, agencies and Council with respect to the proposed Excess Soil Strategy and Site Alteration By-law **BE RECEIVED and SUMMARIZED** in a future report to Council.

#### 6. ADJOURNMENT

That Council rise and adjourn at     p.m.



## THE CORPORATION OF THE TOWN OF AMHERSTBURG

### OFFICE OF DEVELOPMENT SERVICES

**Mission Statement:** As stewards of the Town of Amherstburg, we strive to improve the quality of life of all residents through the delivery of effective, efficient, and affordable services.

<b>Author's Name: Christopher Aspila</b>	<b>Report Date: December 12, 2024</b>
<b>Author's Phone: 519 736-5408 ext. 2124</b>	<b>Date to Council: February 10, 2025</b>
<b>Author's E-mail: caspila@amherstburg.ca</b>	<b>Resolution #:</b>

**To: Mayor and Members of Town Council**

**Subject: Statutory Public Meeting – Excess Soil Strategy and Site Alteration By-law**

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#### **1. RECOMMENDATION:**

It is recommended that:

Comments from the public, municipal departments, agencies and Council with respect to the proposed Excess Soil Strategy and Site Alteration By-law **BE RECEIVED and SUMMARIZED** in a future report to Council.

#### **2. BACKGROUND:**

In the 2024 Capital Budget process Council approved Project PLN-002-24 "Howard Industrial Park District Implementation Studies". One of the studies approved for funding is the Excess Soil Strategy.

As background the Town of Amherstburg has received 2 Zoning By-law Amendment applications requesting the permission to allow the land use of excess soil processing. The goal of the Excess Soil Strategy is to protect public health and safety for Amherstburg residents and to minimize long-term adverse environmental impacts associated with illegal dumping and poor site management practices. This is in alignment with Ontario Regulation 406/19 (O.Reg 406/19) as amended. The implementation tool for the Excess Soil Strategy is a Site Alteration By-law.

In consultation with the Procurement Specialist the Town retained the services of Dillon Consulting Limited to undertake the preparation of the Excess Soil Strategy.

### **3. DISCUSSION:**

The Excess Soil Strategy and implementing Site Alteration By-law is applicable to the entire area of the Town of Amherstburg. It is noted that the policies of the Town of Amherstburg Official Plan and the provisions of the Comprehensive Zoning By-law limit the receipt and processing of excess soils to the area designated as “Space Extensive Industrial” generally located in the southern most portions of the Howard Industrial Park District Secondary Plan Area.

The ~700 acre Howard Industrial Park District Secondary Plan Area bound by Howard Avenue (County Road 9) to the west, North Townline Road (County Road 8) to the north, 8<sup>th</sup> Concession Road North to the east and North Side Road to the south is the focus for employment-related economic development in the Town of Amherstburg.

As this proposed By-law is applicable town-wide, notice of this Statutory Public Meeting is posted in the January 15, 2025 edition of the River Town Times and is also posted on the Town of Amherstburg website.

Following this public meeting, staff and our consultants will review all of the comments submitted and prepare a report for a subsequent Council meeting. The second staff report will summarize all of the comments received and make recommendations regarding the proposed Excess Soil Strategy and implementing Site Alteration By-law.

### **4. RISK ANALYSIS:**

The recommendation presents little to no risk to the municipality.

### **5. FINANCIAL MATTERS:**

The Excess Soil Strategy was approved in the 2024 Capital Budget as item PLN-002-24.

### **6. CONSULTATIONS:**

The Notice of Public Meeting was published in the local newspaper and on the Town website and circulated to the required agencies and municipal departments in accordance with the requirements of the Municipal Act, S.O. 2001, c. 25 and associated regulations and Ontario Regulation 406/19 issued under the Environmental Protection Act, R.S.O. 1990, c. E. 19.

### **7. CORPORATE STRATEGIC ALIGNMENT:**

*Vision: Preserving our past while forging our future.*

<i>Amherstburg Community Strategic Plan 2022 - 2026</i>	
<b>PILLAR 1</b> <b>Deliver Trusted &amp; Accountable</b> <b>Local Government</b>	<b>PILLAR 3</b> <b>Encourage Local Economic</b> <b>Prosperity</b>

<ul style="list-style-type: none"> <li><input type="checkbox"/> Improve trust between council and staff, and residents, by strengthening governance and internal accountability structures.</li> <li><input type="checkbox"/> Deliver transparent and efficient financial management.</li> <li><input type="checkbox"/> Increase effective communication and engagement with residents.</li> <li><input type="checkbox"/> Develop our staff team, resources, and workplace culture.</li> <li><input type="checkbox"/> Continue to deliver strong core municipal services.</li> <li><input type="checkbox"/> Ensure Amherstburg is an inclusive accessible and welcoming community committed to reconciliation.</li> </ul>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Encourage development of commercial and industrial lands.</li> <li><input type="checkbox"/> Continue to promote local tourism industry, especially overnight accommodation.</li> <li><input type="checkbox"/> Continue to facilitate downtown development for residents and visitors.</li> <li><input type="checkbox"/> Continue to leverage partnership opportunities with other provincial, federal, and local governments, agencies, and organizations.</li> </ul>
<p style="text-align: center;"><b>PILLAR 2</b></p> <p style="text-align: center;"><b>Invest in Community Amenities and Infrastructure</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Maintain safe, reliable and accessible municipal infrastructure and facilities.</li> <li><input type="checkbox"/> Increase access to recreation opportunities for all ages.</li> <li><input type="checkbox"/> Finalize and execute plans for town-owned lands (e.g. Duffy’s site, Belle Vue)</li> <li><input type="checkbox"/> Create public access to water and waterfront</li> <li><input type="checkbox"/> Prioritize opportunities to reduce environmental impacts of Town operations and increase Town resilience to climate change.</li> </ul>	<p style="text-align: center;"><b>PILLAR 4</b></p> <p style="text-align: center;"><b>Shape Growth Aligned with Local Identity</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Define and communicate a vision for the Town’s future and identity.</li> <li><input type="checkbox"/> Promote and plan for green and “climate change ready” development.</li> <li><input type="checkbox"/> Review and implement policies that promote greater access to diverse housing.</li> <li><input type="checkbox"/> Protect the Town’s historic sites and heritage.</li> <li><input checked="" type="checkbox"/> Preserve the Town’s greenspaces, agricultural lands, and natural environment.</li> </ul>

**8. CONCLUSION:**

The draft Excess Soil Strategy and Site Alteration By-law are attached for comments from Council and the public.




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Christopher Aspila  
**Manager of Planning Services**

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## Report Approval Details

Document Title:	Statutory Public Meeting - Excess Soil Strategy and Site Alteration By-law.docx
Attachments:	- Appendix A-DRAFT - Town of Amherstburg Excess Soils By-law_01282025-RM.pdf - Appendix B-DRAFT - Amherstburg Excess Soils Strategy_01282025-RM.pdf - Appendix C-DRAFT - Schedule or Guideline for Application for a Site Alteration Permit_01282025-RM.pdf
Final Approval Date:	Jan 30, 2025

This report and all of its attachments were approved and signed as outlined below:



Melissa Osborne



Tracy Prince

**No Signature - Task assigned to Valerie Critchley was completed by assistant  
Melissa Osborne**

Valerie Critchley



Kevin Fox

[Logo]

Town of Amherstburg

**The Corporation of the Town of Amherstburg  
Site Alteration By-Law # ####-###**

**Being a By-law to Regulate Site Alteration and the Removal, Placement and  
Movement of Fill in the Town of Amherstburg**

**Whereas** Section 11(2) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg to pass By-laws, respecting the following matters:

- a) Economic, social and environmental well-being of the municipality, including respecting climate change;
- b) Health, safety and well-being of persons; and
- c) Protection of persons and property, including consumer protection;

**And Whereas** Section 23.1 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg to delegate its powers to an officer, employee, or agent of the municipality;

**And Whereas** Section 128 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg to prohibit and regulate with respect to public nuisances, including matters that in the opinion of Council, are or could become or cause public nuisances;

**And Whereas** Section 129 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg to prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors;

**And Whereas** Section 142 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg 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;

**And Whereas** Section 425(4) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg to pass by-laws providing that a person who contravenes a by-law of the municipality passed under this Act is guilty of an offence;

**And Whereas** Section 436 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the Corporation of the Town of Amherstburg to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether a by-law of the municipality passed under this Act, a direction or order of the municipality made under this Act or made under a by-law of the municipality passed under this Act is complied with, and provide that for the purposes of an inspection the municipality may:

- a) Require the production for inspection of documents or things relevant to the inspection;
- b) Inspect or remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- c) Require information from any person concerning a matter related to the inspection; and
- d) Alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection;

**And Whereas** Council of the Corporation of Amherstburg deems it in the public interest to pass this by-law to regulate the dumping and placing of fill and site alterations in order to ensure that:

- a) Existing Drainage patterns are maintained and that any changes to existing Drainage patterns are appropriate to protect environmental features;
- b) Natural heritage features, landforms and archaeological and heritage resources are protected;
- c) There is no discharge of a contaminant to the natural environment that causes or may cause an Adverse Effect and the degradation of the pre-existing soil, surface water, and groundwater quality of the site and on adjacent properties is prevented;
- d) Damage to the municipality's roads, highways and infrastructure are minimized;
- e) Disturbances and nuisance impacts to the municipality's residences and businesses are minimized; and

- f) Costs and liabilities are borne by the Owners who undertake Site alteration within the Town of Amherstburg;

**And Now Therefore** the Council of the Town of Amherstburg hereby enacts as follows:

## **1.0 Definitions**

### 1.1 In this By-law:

- a) **“Adverse Effect”** means one or more of:
- i. impairment of the quality of the natural environment for any use that can be made of it;
  - ii. injury or damage to property or plant or animal life;
  - iii. harm or material discomfort to any person;
  - iv. an adverse effect on the health of any person;
  - v. impairment of the safety of any person;
  - vi. rendering any property or plant or animal life unfit for human use;
  - vii. loss of enjoyment of normal use of property; and
  - viii. interference with the normal conduct of business.
- b) **“Agreement”** means a written agreement between the Owner and the Town.
- c) **“Agricultural”** means the cultivation of land, the production of crops and the selling of such product on the premises, and the breeding and care of livestock and the selling of such livestock or the product of such livestock raised on the premises, and without limiting the generality of the foregoing includes aviaries, apiaries, fish farming, animal husbandry, and the raising and harvesting of field, bush, or tree crops, market gardening, nurseries, greenhouses and an accessory air strip. However, “Agricultural” use does not include facilities for the permanent or temporary housing of persons employed on the lot, an abattoir or any premises used for the killing of livestock or the processing of meat.
- d) **“Applicant”** means the Owner of a Property and includes a Person formally identified in writing on behalf of the Owner to apply for a Permit.
- e) **“Application”** means a submission to the Director made under Section 4 of this By-law.

- f) **“Conservation Authority”** means the Essex Region Conservation Authority (ERCA);
- g) **“Contaminant”** means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an Adverse Effect;
- h) **“Corporation”** means the Town of Amherstburg;
- i) **“Council”** means the Council of The Corporation of the Town of Amherstburg;
- j) **“Director”** means an employee of the Municipality authorized to administer and enforce the provisions of this By-law and shall include any person authorized by the Director or Municipal Council to carry out any of the powers and/or duties of the Director pursuant to this By-law;
- k) **“Drainage”** means the movement of stormwater and surface water, including but not limited to the movement of water along a swale from one location on the Property to another location on or off the Property, whether by way of the natural characteristics of the ground surface or by artificial means;
- l) **“Fill”** means any type of material that can be removed from (cut) or placed on (deposited) land and includes, but is not limited to, the following:
  - i. **“Soil”** means unconsolidated naturally occurring mineral particles and other naturally occurring materials resulting from the natural breakdown of rock or organic matter by physical, chemical or biological processes that are smaller than 2 millimetres in size or that pass the US #10 sieve;
  - ii. **“Excess Soil”** means soil, crushed rock or soil mixed with rock or crushed rock, that has been excavated as part of a project and removed from the project area for the project;
  - iii. **“Liquid Soil”** means soil that has a slump of more than 150 millimetres using the Test Method for the Determination of “Liquid Waste” (slump test) set out in Schedule 9 to Regulation 347;
  - iv. **“Rock”** means a naturally occurring aggregation of one or more naturally occurring minerals that is 2 millimetres or larger in size or that does not pass the US #10 sieve;
  - v. **“Crushed Rock”** means a naturally occurring aggregation of one or more naturally occurring minerals that is mechanically broken down

into particles that are smaller than 2 millimetres in size or that pass the US #10 sieve;

- vi. **“Topsoil”** means those horizons in a Soil profile, commonly known as the “A” and “O” horizons, containing organic material and includes deposits of partially decomposed organic matter such as peat;
  - vii. **“Sod”** means the upper stratum of soil bound by grass and plant roots into a thick mat (turf);
  - viii. **“Compost”** means a mixture of various decaying organic substances such as dead leaves or manure, used for fertilizing soil;
  - ix. **“Aggregate”** means gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite or other material, but excludes asphalt which can be placed on surface but not below grade; and
  - x. **“Clean concrete and brick”** means concrete, brick, block and other silica-based construction materials that are free of Contaminants.
- m) **“Fill Management Plan”** means a document prepared by, or on behalf of an Owner in accordance with the Guidelines detailing such things as existing Site conditions, proposed conditions, Site Alteration operations, and impact mitigation measures to be employed.
- n) **“Grade”** at any point on the land means the elevation of the ground surface of the land; and
- i. **“Existing Grade”** means the Grade as it existed prior to any Site Alteration.
  - ii. **“Approved Grade”** means the final ground surface elevation of a Site Alteration that has been approved by the Town;
- o) **“Guidelines”** means the guidance document that provides information for Application and documentation requirements for a Permit, as developed by the Director and updated from time to time, to be used for the purpose of administering this By-law;
- p) **“Haul Routes”** mean routes defined by the Director as part of a Permit or any Agreement made under this By-law that describe which routes must be followed when transporting Fill to or from the Site;
- q) **“Invasive Species”** means Invasive Species as defined in the *Invasive Species Act*, 2015, as amended;

- r) **“Large Site Alteration”** means any Site Alteration and Movement of Fill that does not meet the definition of a Minor Site Alteration. A Permit is required for a Large Site Alteration;
- s) **“Minor Amendment”** means an amendment to the Fill Management Plan that does not include any of the following:
  - a. Any change to the Approved Grade;
  - b. Any change to the total volume of Fill to be imported, exported, or moved;
  - c. Any change to the volume of Liquid Soil to be imported or moved; and
  - d. Any change to inbound truck traffic, including without limitation, the frequency or total amount of such traffic;
- t) **“Minor Site Alteration”** means a Site Alteration and Movement of Fill where the requirement for a Permit is based on a one-time maximum cumulative volume per Property, calculated from the area of Property suitable for Site Alteration and Movement of Fill, up to a maximum of 350 cubic metres), but does not include placement of any volume of Liquid Soils;
- u) **“Movement of Fill”** means any non-natural transfer of Fill from one location to another of any distance within the Town excluding Fill that is transported through the Town and is always contained within the transport vessel;
- v) **“Normal Farm Practice”** has the same meaning as defined in the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c.1, as amended;
- w) **“Officer”** means a Person employed by the Town to enforce the Town’s By-laws;
- x) **“Ontario Regulation 153/04”** as amended', means the Records of Site Condition regulation under Part XV.I of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 and any subsequent amendments to the Act or regulation;
- y) **“Ontario Regulation 406/19”** means the On-Site and Excess Soil Management regulation under the *Environmental Protection Act*, R.S.O. 1990, c. E.19 and any subsequent amendments to the Act or regulation;

- z) **“Order”** means a mandatory requirement for action within a specified time period specifically issued by an Officer or the Director to address issues of non-compliance with the By-law and/or the Conditions of a Permit;
- aa) **“Owner”** includes the registered owner of the lands to which a Site Alteration is proposed and any person, firm or corporation in charge, management or control of such lands and shall include an Applicant, operator or property owner;
- bb) **“Permit”** means a Site Alteration Permit issued pursuant to this By-law and includes any agreements entered into by the Municipality and the Owner of the land to which the Site Alteration applies;
- cc) **“Person”** includes Owners, individuals, sole proprietorships, partnerships, corporations, trustees, agents, or legal representatives.
- dd) **“Project Area”** means, in respect of a project, a single property or adjoining properties on which the project is carried out.
- ee) **“Property”** means land and includes: a parcel or tract of land capable of being conveyed as a separate parcel pursuant to the provisions of the *Planning Act* or is described in accordance with a registered Plan of Condominium, or if approved by the Director, a combination of two or more such parcels of Property that are adjacent to each other;
- ff) **“Public Information Centre”** means an informal open meeting to which all members of the public are welcome, the purpose of which is to inform the public of the intent of a proposed Site Alteration project and to receive comments from the public;
- gg) **“Site”** means the lot or lots of a Property altered or proposed to be altered by means of a Site Alteration;
- hh) **“Site Alteration”** means any alteration to the Existing Grade of a Property through the movement, removal, placement or relocation, either temporarily or permanently, of any Fill;
- ii) **“Town”** means The Corporation of the Town of Amherstburg;

- jj) **“Watercourse”** means a natural or man-made channel or swale in which a flow of water occurs, either continuously or intermittently with some degree of regularity.

## **2.0 General Provisions and Regulations**

- 2.1 No Person shall conduct Site Alteration and Movement of Fill within the Town other than in compliance with this By-law.
- 2.2 Compliance with this By-law does not relieve the Owner from any responsibility to obtain all other approvals as required from any other government or authority, or compliance with any other obligation.
- 2.3 No Person shall fail to obey an Order issued under this By-law.
- 2.4 No Person shall do anything, or permit or cause the doing of anything, which results in the alteration, modification, fouling or blockage of any swale, ditch, Drainage course, Watercourse, or part thereof, on any land unless authorized by the public authority or public agency with relevant jurisdiction.
- 2.5 No Person shall undertake, cause, or permit Site Alteration and Movement of Fill that may adversely affect the quality or quantity of 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.
- 2.6 No Person, in the performance of a Site Alteration, shall injure or destroy a tree or other tree which is subject to tree protection measures as a condition under this By-law except to the extent that such injury or destruction is specifically authorized in writing in accordance with the provisions of this By-law and any other applicable By-laws of the Town of Amherstburg or the County for the protection of trees.
- 2.7 All activity is restricted by the Town’s Noise By-law No. 2001-43, as amended, which outlines prohibited periods of time.
- 2.8 No Person shall undertake, cause, or permit Site Alteration unless the Owner maintains the Property in accordance with the Town’s Property Standards By-law No. 1999-28, as amended.
- 2.9 No Person shall undertake, cause, or permit any Site Alteration and Movement of Fill on any Property unless the activity is in accordance with:

- a) The Zoning By-Law No. 1999-52, as amended;
- b) The requirements of a Conservation Authority; and
- c) All other laws, policies and By-laws.

2.10 No person shall perform any works during any period in which a wind warning for the area has been issued by Environment Canada.

2.11 No person shall undertake, cause or permit any Site Alteration and Movement of Fill that will result in an Adverse Effect.

2.12 No Person shall conduct any Site Alteration and Movement of Fill unless the Fill:

- a) Complies with the requirements of Ontario Regulation 406/19 and Ontario Regulation 153/04;
- b) Does not contain putrescible materials;
- c) Does not contain Contaminants; and
- d) Is free of termites, pests and Invasive Species including the eggs and seeds of such species.

2.13 This By-law is not intended to and shall not circumvent any development approval process which is required under the *Planning Act* and, without limiting the generality of the foregoing, the Fill permit process shall not be used to allow for area grading and pre-servicing of subdivision lands, industrial or commercial development which would otherwise be addressed through the site plan or subdivision approval process under sections 41, 51 or 53 of the *Planning Act*.

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

2.15 Notwithstanding any other provision of this By-law, the Director may at his/her discretion require any applicant to enter into an Agreement with the Town.

### **3.0 Exemptions**

3.1 Notwithstanding Section 2 of this By-law, Site Alterations are permitted in the following circumstances:

- a) 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.
- b) Activities of the Town, Essex County, a Conservation Authority, a local board of a municipality or the Provincial or Federal government.



- c) Removal of Topsoil incidental to a Normal Farm Practice that is legally established under the Town's Zoning By-law, including such removal as an incidental part of sod farming, greenhouse operations, and nurseries for horticulture. This exception respecting the removal of Topsoil as an incidental part of a Normal Farm Practice does not include the removal of Topsoil for sale, exchange or other disposition.
- d) 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 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 agreement or subdivision agreement entered into under those sections.
- e) 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.
- f) The placing or dumping of Fill, removal of Topsoil or alteration of the Grade of land undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act*, 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section.
- g) 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*.
- h) 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* 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*.
- i) The placing or dumping of Fill, removal of Topsoil or alteration of the Grade of land undertaken as an incidental part of drain construction under the *Drainage Act* or the *Tile Drainage Act*.
- j) 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.E.19, as amended.
- k) Construction of a building or structure including a driveway and parking pad, pursuant to a valid Building Permit which has been issued by the Town for the erection of the building or structure, where the Site Plan accompanying the

Building Permit application provides sufficient information to ensure that the Site Alteration proposed conforms with the provisions of this By-law.

- l) Site Alterations incidental to a Normal Farm Practice that is legally established under the Town's Zoning By-law, including the application of Topsoil for spreading over Agricultural Property provided that the Existing Grade of the Property is not increased by more than 200 millimetres at any given point. This exception is only available to those Owners or Properties that have an active registration as a "farming business" as defined in the Farm Registration and *Farms Organization Funding Act* ("FRFOFA"), and are in good standing under the FRFOFA.
- m) Site Alterations undertaken as an emergency measure with the approval of the Director, under the Town's Emergency Management Plan, or under the direction of the Town, Essex County, Conservation Authority, or any other governmental agency with jurisdiction.

3.2 No Person shall undertake, cause, or permit any Site Alteration without a Site Alteration Permit issued under this By-law, unless the Property is:

- a) 0.1 hectares or less, in which case the Owner may Place a maximum of 10 cubic metres of Fill once onto or within the Property without a Site Alteration Permit;
- b) 0.1 to 0.2 hectares, in which case the Owner may Place a maximum of 50 cubic metres of Fill once onto or within the Property without a Site Alteration Permit;
- c) 0.2 to 0.5 hectares, in which case the Owner may Place a maximum of 100 cubic metres of Fill once onto or within the Property without a Site Alteration Permit;
- d) 0.5 hectares or larger, in which case the Owner may Place a maximum of 350 cubic metres of Fill once onto or within the Property without a Site Alteration Permit;

3.3 The maximum volumes noted above are a one-time allowance and does not apply to placement of any Liquid Soil. Any Site Alteration involving Fill that exceeds the maximum volumes is prohibited unless a Site Alteration Permit is issued by the Director.

3.4 Notwithstanding Sections 3.1 and 3.2, the Site Alterations set out remain subject to the provisions of Section 2, and Sections 4 to 11 inclusive of this By-law.

#### **4.0 Requirements for Issuance of a Permit / Applications for a Permit**

- 4.1 Except as otherwise provided herein, a Site Alteration Permit is required for any Site Alteration. All Site Alteration Permits shall be issued by the Director.
- 4.2 Unless exempt in accordance with the provisions of Section 3, no Person(s) shall conduct a Site Alteration within the Town without first applying for and obtaining a Permit.
- 4.3 Any Person applying for a Site Alteration Permit shall complete an Application for a Site Alteration Permit in a form established from time to time by the Director and the said Application for Site Alteration Permit shall be accompanied by such supporting documentation, payment of all fees and providing all information as required by the Director and by the Guidelines. The Application will not be reviewed until enough documentation has been provided to the satisfaction of the Director to deem the Application complete.
- 4.4 An Application for Large Site Alteration Projects greater than 10,000 cubic metres or involving the placement of Liquid Soils greater than 100 cubic metres shall not be approved until Council has considered the Application at a public meeting at which the Applicant and any interested members of the public will have a fair opportunity to make representation.
  - a) Notice of the public meeting is to be provided to property owners and agencies in a similar manner as a Zoning By-law under subsection 17(15) of the *Planning Act* or an alternative approved by the Director.
  - b) In the case of a public meeting, all comments and concerns received must be addressed by the Applicant and submitted to the Town for evaluation as part of the Application.
- 4.5 Fees as referenced under this By-law are payable under the Town's User Fee Schedule, as amended from time-to-time.
- 4.6 Notwithstanding any other provisions of this By-law, after taking into consideration of the proposed works and whether the Applicant otherwise has conformed with this By-law, the Director, or as appropriate, Council, may waive certain requirements of Section 4, and/or reduce or waive the Permit fee and/or the refundable security deposit.

- 4.7 If two or more Applications submitted within a three year period, create a project totaling more than 10,000 cubic metres, the latter shall be processed under Section 4.4.

## **5.0 Abandonment, Expiry, Renewal, Amendment, Transfer, Revocation, and Closure of Permits**

- 5.1 An Application for a Permit will be deemed abandoned when a period of twelve months has elapsed during which:
- a) The Person applying for a Site Alteration Permit has not provided any additional information, documents, reports, drawings, fees or other items as required by the Director to process or consider the Application; or
  - b) The Application has been placed on hold or in abeyance, at the request of the Applicant or at the discretion of the Director; or
  - c) The Application has not seen meaningful progress through submissions towards the issuance of a Permit.
- 5.2 A Permit shall remain valid for a period of one year from the date of issuance, unless otherwise specified as a Condition of the Permit by the Director.
- 5.3 A Site Alteration Permit will be issued for the period of one year, provided that where such Site Alteration Permit is issued for a Large Site Alteration, an expiry date shall be specified by the Director as a condition of the Site Alteration Permit or as set out in any Agreement.
- 5.4 A Site Alteration Permit for a Large Site Alteration will be subject to an annual review conducted by the Director to determine whether such Site Alteration Permit should be varied, extended or revoked.
- 5.5 An Applicant or Owner may submit a request in writing to the Director for an amendment to a Permit based on proposed changes to the details of the original Application as reflected in the Conditions.
- 5.6 An Applicant or Owner may submit a request to the Director for a Renewal to a Permit for which the only change from the original Application and Conditions is the timeline and expiry date.

- 5.7 If title to the Property for which a Permit has been issued is transferred while the Permit is in effect, the Permit shall be revoked unless the new Owner, before or at the time of the transfer:
- a) Provides the Town with an undertaking to transfer the Permit and comply with all Conditions under which the Permit was issued; and
  - b) In the case where there is an Agreement, enters into an Agreement with the Town to comply with all terms and conditions of the existing Agreement.
- 5.8 Upon receipt of the Application to amend, renew or transfer by the Director, the Director shall determine:
- a) Whether there are any substantial changes from the original Application submitted in support of the Site Alteration Permit;
  - b) Whether there are any outstanding Orders or other items of non-compliance relating to the existing Site Alteration Permit and/or Agreement;
  - c) Whether there are any new requests and/or regulations imposed by Council relating to the issuance of Site Alteration Permits under this By-law;
  - d) Whether the Guidelines and the requirements established in Section 4 by the Director from time-to-time require the provision of further documentation and information and, if such documentation and information is required, whether same is reasonable and should be submitted to the Town; and
  - e) Whether there have been any other legislative changes which may require the review, revocation or amendment of the existing Site Alteration Permit.
- 5.9 Where an Owner makes a material change to a plan, specification, or document or other information following the issuance of a permit, the Director may require submission of revised drawings, plans, and/or reports, which shall be approved by the Director prior to any dumping, placing or removal of Fill or alteration of Grade.
- 5.10 Upon the completion of the reviews contemplated herein by the Director, the Director shall be entitled to amend, renew, transfer or revoke the Site Alteration Permit.
- 5.11 The Director may, at their discretion, approve Minor Amendments to Site Alteration Permits.
- 5.12 The Director may at any time and without notice revoke a Site Alteration Permit for any one of the following reasons:
- a) It was obtained based on mistaken, false or incorrect information;
  - b) It was issued in error;
  - c) The Owner or any Person on their behalf requests in writing that it be revoked;

- d) Work authorized under the Site Alteration Permit has not commenced within six months of the Site Alteration Permit issue date;
- e) Work authorized under the Site Alteration Permit has not been performed for any period of six consecutive months;
- f) The Site Alteration Permit holder has failed to comply with any of the conditions of the Site Alteration Permit and/or Agreement; or
- g) The Site Alteration Permit holder is unwilling or unable to comply with the conditions of an Order.

5.13 Every Owner shall ensure to satisfy all Conditions of the Permit, notwithstanding if the Permit is expired and may further be required to provide the Town with:

- a) A letter of acknowledgement of the filing of a Record of Site Condition if there is a change of use as per Ontario Regulation 153/04, as amended;
- b) A final topographic survey prepared by an Ontario Land Surveyor confirming that the final grade matches the Approved Grade; and
- c) Completion of all Permit Conditions.

5.14 A Permit is considered closed when all the Conditions and Orders related to the Permit have been deemed to be fulfilled to the satisfaction of the Director and confirmed in writing, at which time all unexpended deposits and securities held by the Town shall be released.

## **6.0 Enforcement and Administration**

- 6.1 This By-law shall be administered and enforced by the Director and his/her designate(s) and by those persons designated as Officers by the Director and/or as may be appointed by Council. Without limiting/restricting any other power, duty or function granted by this By-law, Officer(s) and/or the Director may: give direction, issue Order(s) to discontinue or to perform work and further give verbal or written direction and may enter Property and/or carry out and direct whatever inspections, are reasonably required to determine compliance with this By-law.
- 6.2 Officers may, at any reasonable time, enter and inspect any Property to determine whether the provisions of this By-law, or any condition of a Site Alteration Permit, Agreement or Order issued under this By-law, are being complied with. This power of entry does not allow the Officer to enter any building being used as a residence.
- 6.3 Officers may, at any reasonable time, enter any Property for the purpose of collecting information, taking photographs, videos, measurements, readings and samples (air, surface water, groundwater, soil, materials, etc.) for audit and

verification of compliance with this By-Law or the conditions of any Site Alteration Permit, Agreement or Order.

- 6.4 Officers may, at any reasonable time, request copies of reports, manifests or other documents for the purposes of auditing compliance with this By-Law or the conditions of any Site Alteration Permit, Agreement or Order.
- 6.5 Where an Officer and/or the Director has reasonable grounds to believe that an offence has been committed by a Person, the Officer and/or the Director may require the name, address and proof of identity of that Person, and the Person shall supply the required information.
- 6.6 No person shall hinder or obstruct or attempt to hinder or obstruct an Officer conducting an Inspection or a Person performing corrective works under this By-law.
- 6.7 No person shall provide false information in any statement, whether orally, in writing or otherwise, made to an Officer and/or the Director.
- 6.8 Council for the Town delegates to the Director the authority to issue Site Alteration Permits and approve Agreements on behalf of the Town.
- 6.9 The Director may authorize any Person to carry out any of the powers or duties of the Director pursuant to this By-law.
- 6.10 Where any Site Alteration occurs, is undertaken, caused, or permitted on any Property, the Owner of the Property is presumed to have undertaken, caused, or permitted the Site Alteration to occur, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

## **7.0 Orders**

- 7.1 If an Officer is satisfied that a Person has undertaken, caused, permitted, allowed or performed a Site Alteration and Movement of Fill in contravention of this By-law, a Site alteration Permit issued pursuant to this By-law and/or an Agreement entered into pursuant to this By-law, the Officer may issue an Order requiring work to cease and/or work to be done to correct the contravention, and the Order shall set out:
  - a) the municipal address or the legal description of the land;
  - b) reasonable particulars of the contravention and of the work to be done and the period within which there must be compliance with the order; and

- c) notification that if the work or action is not done and/or ceased, as the case may be, in compliance with the Order within the period specified, the Town may have the work done at the expense of the Owner and seek penalties as outlined in Section 8.

## 7.2 Service of Orders

Orders issued by an Officer under Sections 8.1 or 8.2 shall be served:

- a) personally or by prepaid registered mail to the last known address of the Owner of the land and any other person to be served.
- b) If the Town is unable to effect service of an Order on the Owner under Section 10.3(a), a placard containing the terms of the order may be placed in a conspicuous place on the land and the placing of the placard shall be deemed to be sufficient service of the order.

7.3 An Order may also be issued in any case where ownership to the Property has changed but the offence remains.

## 8.0 Penalties and Offenses

8.1 Every person who contravenes a provision of this By-law, a Condition of Permit and/or Agreement, including an Order issued under this By-law is guilty of an offence.

8.2 If an Order has been issued under this By-law, and the Order has not been complied with, the contravention of the Order shall be deemed to be a continuing offence for each day or part of a day that the Order is not complied with.

8.3 Every Person who is guilty of an offence under this By-law shall be subject to the following penalties upon conviction, as prescribed by the *Municipal Act, 2001*, S.O. 2001, c.25, as amended:

- a) a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000. However, a special fine may exceed \$100,000;
- b) In the case of a continuing offence, for each day or part of a day that the offence continues, a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$10,000. However, despite Section 8.3(a), the total of all of the daily fines for the offence is not limited to \$100,000; and
- c) In the case of a multiple offence, for each offence included in the multiple offence, a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$10,000. However, despite Section 8.3(a), the total of all fines for each included offence is not limited to \$100,000.



- 8.4 When a person has been convicted of an offence under this By-law:
- a) The Ontario Court of Justice; or
  - b) Any court of competent jurisdiction thereafter;
- may, in addition to any other penalty imposed on the Person convicted, make an Order prohibiting the continuation or repetition of the offence by the Person convicted, and/or require the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
- 8.5 Municipal fees for administration and enforcement activities under this By-law shall be subject to the rates and fees set out in the Town's User Fee Schedule, as amended from time to time.

## **9.0 Severability**

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

## **10.0 Schedule(s)**

- 10.1 Schedule "A" attached to and forms part of this By-law.

## **11.0 Effective Dates and Repeal of Predecessor By-laws**

- 11.1 This By-law shall come into force and effect upon the date it is passed.

READ a first and second time this \_\_\_\_ day of \_\_\_\_, [YEAR].

READ a third time and passed this \_\_\_\_ day of \_\_\_\_, [YEAR].

[Town logo]

## **Town of Amherstburg Excess Soils Strategy**

### **Purpose**

This Strategy was prepared to outline the rationale and recommendations for the development and application of a Permit for Town of Amherstburg: By-law 2024-XXXX, a By-law to Regulate Site Alteration and the Removal, Placement and Movement of Fill within the Town of Amherstburg.

The On-Site and Excess Soil Management regulation (O.Reg. 406/19) under the Environmental Protection Act, R.S.O. 1990, c. E.19, establishes a framework for the proper management of excess soil in Ontario. This Strategy outlines the steps and considerations necessary to comply with the regulation and the accompanying Rules for Soil Management and Excess Soil Quality Standards. The objectives of the strategy and by-law are:

- Comply with O.Reg. 406/19.
- Minimize environmental impact.
- Promote sustainable soil management practices.
- Facilitate beneficial reuse of excess soil.

The Strategy is divided into the following parts:

- Part 1 – Rationale, which describes the purpose and reasons for the By-law and why it is designed as it is, including a best practices review.
- Part 2 – Strategic Recommendations, which describes the specific recommendations included within the Town of Amherstburg By-law 2024-XXXX, a By-law to Regulate Site Alteration and the Removal, Placement and Movement of Fill in the Town of Amherstburg.

Refer to the following related documents:

- Town of Amherstburg By-law 2024-XXXX, a By-law to Regulate Site Alteration and the Removal, Placement and Movement of Fill in the Town of Amherstburg; and
- Town of Amherstburg User Fee Schedule.

Part 1 - Rationale:

### **Why Regulate Excess Soils?**

Provincial policy supports the proper management of excess soils as a valuable resource, and has provided clear rules for the recycling and reuse of fill and excess soils between sites. In order to maintain environmental integrity and protect residents, environmentally sensitive areas, groundwater and surface water resources, the Town of Amherstburg has decided to regulate excess soils in a manner that aligns with the Provincial interest, facilitates local beneficial reuse of excess soil, and supports careful review of site alteration.

Recent discussion and approvals of the Howard Industrial Park District Secondary Plan identified a need within the Town to have an Excess Soils and Reuse Strategy to help manage the site alteration of large-scale development and consider the aforementioned social, health, and environmental concerns, and the enjoyment of neighboring landowners on their properties.

The scope of the Strategy and By-law is all lands within the Town of Amherstburg.

### **Regulatory Framework**

The regulatory authority to create the Town of Amherstburg Site Alteration By-law is outlined in the Municipal Act, 2001, S.O. 2001, c. 25.

The On-Site and Excess Soil Management regulation (O.Reg. 406/19) under the *Environmental Protection Act, R.S.O. 1990, c. E.19* and accompanying Rules for Soil Management and Excess Soil Quality Standards addresses requirements for management of on-site and excess soils, including designation of excess soil as a waste, registry requirements, documentation and tracking, transportation of soil, deposit of excess soil, requirements for various types of soil management sites, excavation requirements, and soil storage requirements.

The Site Alteration By-Law and Excess Soils Strategy are intended to be applied in conjunction with existing regulations and by-laws. The application of the Site Alteration By-Law does not exempt any Person from following existing regulations and by-laws.

### **Best Practices**

A best practices review was conducted, including the Ontario Soil Regulation Task Force (OSRTF) Model By-law (2017) and the Excess Soils By-law Tool 2.0 (2020). The OSRTF is a citizens' coalition group. The Excess Soils By-law Tool 2.0 was developed via funding provided by the Government of Ontario, and included input from members of various municipalities, citizens' coalitions including OSRTF, Ministry of the Environment, Conservation and Parks (MECP), Ministry of Municipal Affairs, Ontario Society of

Professional Engineers, Ontario Sewer and Watermain Construction Association, Professional Engineers Ontario, Residential and Civil Construction Alliance of Ontario, and Supporting Ontario Infrastructure Investments and Lands. These examples were compared against the elected peer-review samples to develop Amherstburg's comprehensive Excess Soils By-law.

Both best practices documents provide model language and examples for the following sections:

- DEFINITIONS
- GENERAL PROHIBITIONS & REGULATIONS
- EXEMPTIONS
- COMPLIANCE WITH OTHER REGULATIONS & STATUTES
- REQUIREMENTS FOR ISSUANCE OF A PERMIT
- PERMIT ISSUANCE
- PERMIT EXPIRY, RENEWAL, REVOCATION, TRANSFER
- PERMIT AGREEMENT
- INSPECTION, ADMINISTRATION & ENFORCEMENT
- APPEALS
- NOTICES & ORDERS
- PENALTY
- FEES
- SEVERABILITY
- EFFECTIVE DATES & REPEAL OF PREDECESSOR BY-LAWS

Generally, the best practices documents provide high-level guiding language that allows for the development of a base By-law that can be molded to custom criteria as required by the subject municipality. Part 2 - Strategic Recommendations describes the desktop assessment of comparative municipal site alteration By-laws that helped further refine and shape the draft Town of Amherstburg Excess Soils By-law.

Part 2 - Strategic Recommendations:

### **Identification of Issues**

The Town of Amherstburg's 2022-2026 Community Strategic Plan (the "Plan") has identified a vision of "Preserving our past while forging our future". The Plan is built around four key strategic pillars:

1. Deliver trusted and accountable local government
2. Invest in community amenities and infrastructure
3. Encourage local economic prosperity
4. Shape growth aligned with local identity

This Excess Soils Strategy fits within the vision as it develops clear tools that encourage soil reuse as a valuable resource while preserving the Town's green spaces, agricultural lands, and natural environment.

The Town of Amherstburg has identified the need for an Excess Soils Strategy to allow for increased control and oversight on the movement of excess soils within the municipal boundaries. Items of particular concern for the Town include the movement, management and placement of liquid soils, the transfer and placement of large volumes of soils, and the ability to monitor soil quality and potential impacts on nearby properties, groundwater, and surface water resources.

### **Desktop Assessment**

A desktop assessment of site alteration and fill By-laws across Ontario identified three By-laws for peer review - the Town of Mono, the Town of East Gwillimbury, and the Town of Whitchurch-Stouffville. A comparative analysis of definitions, general provisions, exceptions, punitive measures, and administrative sections was completed to compare the examples against each other and against the components of the best practices documents (OSRTF Model By-law and the Excess Soils By-law Tool 2.0).

Generally, the By-laws included in the desktop assessment aligned with regards to structure and general definitions. Between the three desktop assessment By-laws, variations were identified in what is considered a Minor versus Large Site Alteration, requirements associated with liquid soils placement, permit exemptions, and the level of detail required within a permit application.

A comparison matrix between the three desktop assessment by-laws and the best practices document can be found in the Decision Matrix section.

### **Decision Matrix**

To develop a comprehensive and effective new by-law for excess soils management, it is essential to compare existing best practices documents. This process involves identifying common elements and best practices that can be integrated into the new by-law. To do so, the following methodology was applied:

#### **1. Document Collection and Review**

- **Collect Documents:** Gather the three example by-laws as best practices documents related to excess soils management, as well as the two sources of model by-law language.
- **Initial Review:** Conduct an initial review of each document to understand its structure, scope, and key focus areas.

### 3. Create a Comparison Matrix

- **Matrix Setup:** Create a comparison matrix with columns for each document and rows for each identified section/theme.
- **Populate Matrix:** Fill in the matrix with relevant information from each document, noting similarities and differences.

### 2. Identify Key Sections and Themes

- **Key Sections:** Identify and list the key sections in each document (e.g., soil assessment, transportation, reuse, documentation, compliance).
- **Themes:** Note recurring themes or topics across the documents (e.g., environmental protection, regulatory compliance, stakeholder engagement).

### 4. Analyze Common Elements

- **Common Practices:** Identify practices that are common across all or most documents.
- **Unique Practices:** Note any unique practices that could provide additional value if included in the new by-law.
- **Best Practices:** Highlight practices that are considered best practices based on effectiveness, feasibility, and alignment with regulatory standards.

### 5. Synthesize Findings

- **Summarize Common Elements:** Summarize the common elements identified in the comparison matrix.
- **Evaluate Relevance:** Evaluate the relevance and applicability of these elements to the new by-law context.
- **Draft Recommendations:** Draft recommendations for the new by-law based on the synthesized findings.

By systematically comparing excess soils best practices documents, common elements and best practices can be identified and integrated into a new by-law. This approach structures the new by-law in a way that is comprehensive, effective, and aligned with regulatory standards and industry best practices.

The following tables display the comparison matrices.

**Table 1: By-law Sections Comparison Matrix**

<b>Section</b>	<b>Town of Mono</b>	<b>Town of East Gwillimbury</b>	<b>Town of Whitchurch-Stouffville</b>	<b>OSRTF Model By-law</b>	<b>Excess Soil By-Law Tool 2.0</b>	<b>Other Considerations</b>	<b>Town of Amherstburg</b>
<b>Definitions</b>	present	present	present	present	present		present
<b>Application of By-law</b>							
<b>Site Alteration Prohibited</b>							
<b>General Provisions/Regulations</b>	present	present		present	present		present
<b>General Prohibitions</b>			present			included under Section 2	
<b>Exemptions</b>	present	present		present	present		present
<b>Exceptions</b>			present			included under Section 3	
<b>Compliance with other Regulations and Statutes</b>					present	no	
<b>Oak Ridges Moraine</b>							
<b>Application for Variance</b>							
<b>Minimum Standards</b>							
<b>Requirements for Issuance of a Permit / Applications for a Permit</b>	present	present	present	present	present		present
<b>Abandonment, Expiry, Renewal, Transfer, Revocation, Amendment and Closure of Permits</b>	present	present (order of this and below are reversed)	present	present	present		present
<b>Agreements</b>					present	no	
<b>Permit Conditions</b>		present		present			
<b>Small Scale Site Alteration (less than 1k m3)</b>							
<b>Large Scale Site Alteration (more than 1k m3)</b>				present			
<b>Permit Conditions for Commercial Fill Operations or Site Alteration Projects Greater than 10k m3</b>		present				Amherstburg has pits/quarries including at least one currently accepting fill, so this could apply. Would those sites be grandfathered?	

<b>Replacement of Topsoil for Agricultural Purposes</b>							
<b>Fees and Securities</b>				present	present	can put in Schedule or User Fees By-law	
<b>Notice to Public and Consideration of Council</b>		present		present	present	considered under Seciton 4	
<b>Enforcement and Administration</b>	present	present	present	present	present		present
<b>Appeals</b>			present		present	not included in By-law - does Town require an appeals process?	
<b>Orders</b>	present	present	present	present	present		present
<b>Work Order</b>							
<b>Work Done by the Town</b>	present		present			Included under Section 7	
<b>Service of a Work Order</b>							
<b>Presumption</b>			present			included under Section 6	
<b>Recovery of Costs</b>							
<b>Power of Entry</b>							
<b>Obstruction</b>							
<b>Penalties and Offences</b>	present	present	present	present	present		present
<b>Interpretation and Validity</b>							
<b>Order upon Conviction</b>							
<b>Assisstance for Inspector</b>							
<b>Conflicting Legislation</b>							
<b>Severability and Conflicts</b>	present	present	present	present	present		present
<b>Schedules</b>				present		TBD	present
<b>Short Title</b>							
<b>Transition Provision</b>	present		present			not applicable	
<b>Effective Dates and Repeal of Predecessor By-laws</b>	present	present	present		present		present
<b>Application Doc</b>	present	present				TBD	present



**Table 2: By-law Definitions Comparison Matrix**

Definition	Town of Mono	Town of East Gwillimbury	Town of Whitchurch-Stouffville	OSRTF Model By-law	Excess Soil By-Law Tool 2.0	#/5	Other Considerations	Town of Amherstburg
<b>Adverse Effect</b>	present			present	[see website]	2		present
<b>Agreement</b>			present			1	currently included, but optional depending on how Town wants to structure requirements	present
<b>Agricultural</b>	present		present	present		3		present
<b>Alter / Altered</b>			present			1		
<b>Applicant</b>	present					1		present
<b>Application</b>	present			present		2		present
<b>Asphalt</b>			present			1		
<b>By-law</b>				present		1		
<b>By-law Enforcement Officer</b>			present			1		
<b>Conservation Authority</b>	present		present			2		present
<b>Condition(s)</b>	present					1		
<b>Contaminant</b>	present		present	present		3		present
<b>Corporation</b>				present		1		present
<b>Council</b>	present	present	present			3		present
<b>Director</b>	present		present	present		3		present
<b>Drainage</b>	present	present	present			3		present
<b>Dump / Dumping</b>		present				1		
<b>Engineer</b>		present				1		
<b>Environmentally Sensitive Areas</b>				present		1		
<b>Erosion</b>		present				1		
<b>Fill</b>	present	present	present	present		4		present
<b>Soil</b>	present					1		present
<b>Excess Soil</b>	present					1		present
<b>Liquid Soil</b>	present					1		present
<b>Rock</b>	present					1		present
<b>Crushed Rock</b>						0		present
<b>Sod</b>	present					1		present
<b>Compost</b>	present					1		present
<b>Aggregate</b>	present					1		present
<b>Clean concrete and brick</b>	present					1		present
<b>Fill Transfer Site</b>			present			1		

Fill Management Plan			present			1		present
Garden Supply Establishment			present			1		
Grade	present	present	present	present		4		present
Existing Grade	present		present	present		3		present
Approved Grade	present		present			2		present
Finished Grade			present	present		2		
Proposed Grade				present		1		
Unapproved Grade	present					1		
Guidelines Manual	present		present			2		present
Haul Routes				present		1		present
Highway	present	present				2		
Hydrologically Sensitive Features				present		1		
Hydro-Excavation Truck			present			1		
Inspector			present	present		2		
Insurance				present		1		
Invasive Species	present		present			2		present
Key Natural Heritage Features				present		1		
Lagoon			present			1		
Large Site Alteration	present		present	present		3		present
Minor Site Alteration	present					1	have large and minor to define volumetric splits	present
Minor Amendment			present			1		present
Minimum Vegetative Protective Zones				present		1		
Movement of Fill	present					1		present
Municipality				present		1		
Native Fill			present			1		
Normal Farm Practice	present		present			2		present
Oak Ridges Moraine			present			1		
Offence	present					1		
Officer	present	present				2		present
Ontario Regulation 153/04	present		present			2		present
Ontario Regulation 406/19	present					1		present
Order	present		present	present		3		present
Owner	present	present	present	present		4		present
Permit	present			present		2		present
Person	present		present	present		3		present
Project Area						0		present
Provincial Plans				present		1		
Place/Placed/Placing			present			1		

<b>Property</b>	present					1		present
<b>Public Information Centre</b>	present		present			2		present
<b>Putrescible Organic Material</b>				present		1		
<b>Qualified Person</b>	present			present		2		
<b>Reclaimed Fill</b>			present			1		
<b>Record of Site Condition</b>			present			1		
<b>Receiving Site</b>				present		1		
<b>Reuse Site</b>	present					1		
<b>Site</b>	present	present	present	present	present	4		present
<b>Site Alteration</b>	present	present	present	present	present	4		present
<b>Site Alteration Permit</b>			present			1		
<b>Site Alteration Agreement</b>				present		1		
<b>Site Alteration and Fill Management Plan</b>	present					1		
<b>Site Condition Standards</b>			present			1		
<b>Small Site Alteration</b>	present					1		
<b>Soil</b>				present		1		
<b>Soil Bank Storage Site</b>	present					1		
<b>Soil Processing Site</b>	present					1		
<b>Surveyor</b>		present				1		
<b>Temporary/Temporarily</b>			present			1		
<b>Temporary Fill Storage Site</b>	present					1		
<b>Temporary Storage of Fill</b>	present					1		
<b>Tree</b>	present					1		
<b>Topsoil</b>			present	present		2	included under definition of Fill	present
<b>Town</b>	present	present	present			3		present
<b>Town Engineer</b>		present	present			2		
<b>Watercourse</b>	present	present				2		present

## Custom Criteria

To address the specific characteristics of Fill that were not explicitly mentioned in other by-laws, we recommend the following custom measures:

- Fill is defined to include Soil, Excess Soil, Liquid Soil, Rock, Crushed Rock, and Topsoil to include the materials covered within O.Reg. 406/19.
- The role of Director is assigned to [TBD].
- The By-law considers Large Site Alteration to be the movement, removal, placement or relocation of Fill in excess of 350 m<sup>3</sup>, or placement of over 100 m<sup>3</sup> of Liquid Soils.
- Subject to Section 2, Site Alterations involving the application of Topsoil spread over Agricultural Property provided that the Existing Grade of the Property is not increased by more than 200 mm at any given point is exempt from the provisions of the By-law.
- Subject to Section 2, one-time small volumes of dry Fill placement relative to the size of the Property are exempt from requiring a Site Alteration Permit.
- Subject to the exemptions, the By-law requires temporary soil storage sites (e.g. landscaping depots, residential soil depots, aggregate depots, small liquid soil depots) to obtain a Site Alteration Permit.
- The By-law requires any placement of any volume of Liquid Soils and/or Site Alteration involving greater than 10,000 m<sup>3</sup> of Fill to trigger a public notification process.
- The By-law is written with the ability of the Town, at the discretion of the Director, to require the Property Owner of a Large Site Alteration to enter into an Agreement with the Town.

Fill is defined to include Soil, Excess Soil, Liquid Soil, Rock, Crushed Rock, and Topsoil for clarity to include the materials covered within O.Reg. 406/19, as well as other materials such as Sod, Compost, Aggregate, and Clean concrete and brick, to account for other material movements within typical Site Alteration activities. Topsoil was added into the definition of Fill instead of as a separate definition to provide clarity that Topsoil is considered as a Fill material. Where Topsoil is used separately within the By-law (in comparison to reference as Fill), it is to keep wording consistent with the Planning Act. Note that this By-law does not consider placement of waste, which is governed under R.R.O. 1990, Regulation 347: General – Waste Management.

Large Site Alteration has been defined as Site Alteration involving over 350 m<sup>3</sup>. This volume was selected based on input from the Town indicating a preference for conservatism to protect the natural environment. The volume of 350 m<sup>3</sup> aligns with the small soil volume description in the Rules for Soil Management and Excess Soil Quality Standards document associated with O.Reg. 406/19, for which the 350 m<sup>3</sup> soil volume

is a criteria that applies in the selection of soil quality standards that apply to a reuse site.

Subject to the provisions of Section 2, an exemption was included for the application of Topsoil spread over Agricultural Property provided that the Existing Grade of the Property is not increased by more than 200 mm. This exemption was provided to align with soil movements associated with Normal Farm Practice as the By-law cannot override the Farming and Food Production Protection Act. The exemption provides a limit on topsoil height to prevent illegal Fill operations attempting to pass as normal agricultural practice, however it should be recognized that Normal Farm Practice can involve a topsoil height raise of greater than 200 mm. If there is a complaint that the use of excess soil is inappropriate, the issue can go to the Normal Farm Practices Protection Board after due conflict resolution/mediation process.

Subject to the provisions of Section 2, one-time small volumes of dry Fill placement are exempted from requiring a Site Alteration permit to allow low risk Fill deposit to occur without causing undue administrative burden on the Town and on the Property Owners.

Other example by-laws exempt temporary soil storage sites such as garden centres and soil processing and storage sites from requiring a Site Permit, subject to other provisions within the By-law, and appropriate zoning and planning requirements, commercial product requirements, and other regulatory requirements, to recognize that permanent Fill placement typically carries higher risks to the environment in comparison to temporary soil storage. It is noted that the example by-laws with such exemptions include a minimum soil quality standard of Table 1: Full Depth Background Site Condition Standards for Agricultural or Other Property Use (Table 1 AgO SCS) from the Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act as the default comparative criteria to evaluate the quality of soil being imported. This soil quality standard is the most stringent standard provided in O.Reg. 153/04 and O.Reg. 406/19. The guidelines accompanying the by-law allow for rationalization of importing soil of differing quality within the proposed Fill Management Plan that would accompany a Site Alteration Permit Application. The proposed By-law does not set a base standard of Table 1 AgO SCS as this soil quality is often more stringent than would typically be required for import, and as such may be overly limiting to Property owners to be able to source soil meeting this quality. As such, the prepared By-law document requires that a Qualified Person define acceptable soil quality standards for import of soil, and does not exempt temporary soil storage sites from requiring a Site Alteration Permit, subject to the exemptions provided within the By-law.

The methods in which Liquid Soils are generated can include hydrovacuum excavation, where typically soil quality is not sampled in advance and thus soil quality is unknown. Due to the nature of Liquid Soil, there is a higher risk of groundwater and surface water impacts on sites where Liquid Soils are placed, depending on the soil quality, volume and location of the final placement of soils. Large volumes of soil (i.e. greater than 10,000 m<sup>3</sup>) can present a greater risk of impacts to the community and natural environment due to more frequent truck movements, potential for contamination, and potential changes to drainage patterns. As such, an additional level of review and transparency involving public consultation and Council approval are deemed necessary for such Site Alteration Permit Applications.

The By-law does not require the property Owner of a Large Site Alteration to enter into an Agreement with the Town regarding Site Alteration, however it provides the flexibility for the Director to require such Agreement. This may be advantageous for Large Site Alterations that extend over multiple years, rather than requiring permit renewal.

### **Strategic Recommendations**

It is recommended that Council delegate authority of applying this By-law to Town staff, in order to expedite approvals and / or denials and to ease the administrative burden of applying the By-law Town-wide. Large Site Alteration Permit Applications involving more than 10,000 m<sup>3</sup> and/or the deposit of >100 m<sup>3</sup> of Liquid Soils will be brought to Council once applications are deemed complete by those with the delegated authority.

To require alignment of Site Alteration projects with Town of Amherstburg goals, Officers of the Town may enforce Orders upon landowners including completing the required conditions imposed within the site alteration permit, at the cost of the landowner. This aligns development projects with municipal objectives and abates social, health, and environmental concerns.

Instead of codifying the requirements of a Site Alteration Permit application into the By-law, reference is made to an accompanying Guidelines Document to allow the Town to more readily make changes to the requirements based on updates to provincial policy, best management practices and regulatory updates, as well as input from stakeholders to the process. This “living document” approach allows the Town to remain nimble and continue fostering sustainable development.

### **Conclusion**

This Excess Soils Strategy aims to require that excess soil generated from construction and development projects, temporarily stored, or finally deposited within the Town of Amherstburg is treated as a resource and is managed in an environmentally responsible and compliant manner. By adhering to O.Reg. 406/19 and the accompanying Rules for Soil Management and Excess Soil Quality Standards, we can promote sustainable soil management practices and contribute to environmental protection.

This Strategy should be reviewed and updated regularly to reflect any changes in regulations or project-specific requirements.

[Town logo]

## **Town of Amherstburg**

### **Guideline for Application for a Site Alteration Permit**

#### **Purpose**

This Guideline for Application for a Site Alteration Permit document (hereinafter referred to as the “Guidelines document”) was developed to provide further information on application for a Site Alteration Permit within the Town of Amherstburg. The Guidelines document is intended to act as a “living document” and may be amended from time to time by the Director to reflect updates in provincial policy changes, regulatory agency regulatory and best practices updates, and input from stakeholders. The Guideline does not constitute legal advice.

#### **Introduction**

A Site Alteration Permit is required for any activity not covered under Section 3.0 Exclusions. Site Alteration Permit categories are:

1. Minor Site Alteration (placement, removal, relocation, or movement of Fill <350 cubic metres (m<sup>3</sup>), not including placement of any volume of Liquid Soils);
2. Large Site Alteration (placement, removal, relocation, or movement of Fill >350 m<sup>3</sup>); and
3. Large Site Alteration involving >10,000 m<sup>3</sup> or placement of Liquid soils >100 m<sup>3</sup>.

#### **Application**

The Permit applicant shall submit a completed Application for Site Alteration with all required supporting information in the form outlined by the Director.

#### **Application Fee**

The Permit Applicant must calculate and submit the appropriate amounts of the following items in accordance with the Town’s User Fee Schedule:

- i. Application fee in cash at the time of Application submission;
  - a. The Application fee is used to cover the costs of the Town’s administrative and technical staff to administer the application and permitting process.
- ii. Cash deposit in cash at the time of Application submission;
  - a. The cash deposit is used to cover the costs of reviewing support documents and oversight of Site Alteration activities by the Town’s technical staff, By-law Enforcement Officers, Peer Review Consultant, and other technical experts the Town may retain. The cash deposit must be refreshed when requested by the Director or the application process may stop and/or the Permit may be revoked.
- iii. Security deposit in the form of a Letter of Credit or cash prior to issuance of a Permit;



- a. The security deposit is used to address issues of non-compliance with an Order. The security deposit will be used by the Town to retain professional services and/or contractors to conduct Site Alteration related work when the Owner/operator is unwilling or unable to carry out the conditions of an Order.
- iv. Permit renewal fee (if required) in cash payable at the time of Permit renewal Application submission;
  - a. The permit renewal fee is used to cover the costs of the Town's administrative and technical staff to administer the Permit renewal process when there is no significant change to a Site Alteration other than updating the work in progress and extending the approved period of activity. The Director will determine if a Permit renewal Application has significant changes warranting a new Site Alteration Permit Application.
- v. Retroactive Application fee(s) and deposit(s) (if applicable) in cash payable at the time of Application submission as determined by the Director; and
  - a. The retroactive Application fee(s) and deposit(s) is used to cover additional work required to bring Site Alteration activities conducted without a valid Permit into compliance with the By-law.
- vi. Other fees and charges as appropriate.

### **Insurance**

For Large Site Alterations and/or as required by the Director, comprehensive insurance may be required to cover liability in an amount not less than \$XXXXXXXX per occurrence against all claims including personal injury, death, property damage and environmental damage resulting directly or indirectly from Site Alteration activities, in which the policy shall include the Town as named additional insured or insure as required by the Director based on site specific conditions. The insurance shall remain in place until the termination of all Permits and Orders related to the Site Alteration. Provision of a copy of such certificate of insurance is required prior to issuance of the Permit.

### **Background Studies and Documents**

The following background studies and documents are to be provided in support of the Permit application process, where applicable. The studies and documents must be prepared by an appropriately qualified technical specialist(s):

- i. Where the subject Property is within or immediately adjacent or shares a common boundary to an Essex Region Conservation Authority (ERCA) Limit of Regulated Area, provide confirmation from ERCA that the Site Alteration meets their requirements, and all site-specific conditions imposed by ERCA;
- ii. Where the site has previously been licensed by the Ministry of Natural Resources and Forestry (MNRF) for aggregate extraction, provide confirmation of the surrender of the license;
- iii. Where the Site Alteration involves traffic and access via roads under the jurisdiction of the County, provide confirmation from the County that the proposed

- traffic and road access components of the Site Alteration meets their requirements and provide any site-specific conditions imposed by the County;
- iv. Where the Site Alteration has the potential to discharge a contaminant into any part of the natural environment, provide a copy of the Environmental Compliance Approval (ECA) from the Ministry of the Environment, Conservation and Parks (MECP) or confirmation that an ECA is not required;
  - v. Where the Site Alteration has the potential to generate noise, complete the Noise Screening Process for ECA applications and evaluate the potential for noise per NPC-300. Provide a copy of the ECA or confirmation through an Acoustic Assessment that one is not required;
  - vi. Where the site alteration has the potential to result in unstable geotechnical conditions, provide a geotechnical assessment;
  - vii. Where the Site Alteration has the potential to disturb archaeological resources, conduct an Archaeological Assessment as required by the Ministry of Tourism, Culture and Sport (MTCS);
  - viii. Where the Site Alteration is on protected heritage property or adjacent lands, conduct a Heritage Impact Assessment as required by MTCS;
  - ix. Where the Site Alteration is on or within 120 metre (m) of lands designated “Natural Environment”, conduct an Environmental Impact Assessment in accordance with the County of Essex Official Plan Guidelines for Environmental Impact Assessments and as per the requirements of the MNRF, as applicable;
  - x. Where the Site Alteration will result in a change to a more sensitive land use as defined by Ontario Regulation (O.Reg.) 153/04, as amended, provide a description prepared by a Qualified Person (QP) of how a Record of Site Condition will be obtained, as it will be a Permit condition for the completion of the Site Alteration;
  - xi. Where the Site Alteration involves import of greater than 10,000 m<sup>3</sup> of excess soil, confirmation that a notice will be filed on the Excess Soil Registry administered by the Resource Productivity & Recovery Authority in accordance with O.Reg. 406/19 prior to the import of excess soil;
  - xii. Provide a legal plan of the property and specify the location of the Site Alteration activities; and
  - xiii. Provide other background reports and documentation as required to support the application.

### **Fill Management Plan**

A Site Alteration Permit Application shall be accompanied by a Fill Management Plan (FMP) for Large Site Alterations., or where required at the discretion of the Director. The FMP outlines the existing and final condition of the subject Property, Site Alteration operations, and mitigation measures to be employed. A FMP is dependent on the size and nature of the site alteration to be undertaken and the scope of this plan will vary depending on the sensitivity of the site and potential receptors and size of the Site Alteration. There are various elements of an FMP that require input from various

appropriately qualified technical specialists. The following are key considerations for a FMP:

- i. Description of the purpose of the Site Alteration and its conformance with good engineering and scientific practices and how the Site Alteration will not result in an adverse condition
- ii. Proposed schedule of works including start date, end date, and timing of major activities
- iii. Hours of operation and timeframes where no activity will occur in accordance with local by-laws
- iv. Contact details
- v. A description of roles and responsibilities for the implementation of the operations, plans/protocols/procedures, and monitoring
- vi. Site design and layout including engineering drawings and cross-sections:
  - a. Site access, security, and signage
  - b. Site design layout and phasing plans
  - c. Existing topography and conditions
  - d. Existing surface water flow on and around the subject Property
  - e. Proposed interim grades prior to topsoil placement
  - f. Proposed final grades and conditions
  - g. Proposed final surface water flow on and around the Property
  - h. Geotechnical controls
- vii. Filling details
  - a. Current and intended use of the subject Property
  - b. Applicable soil quality standard(s) and rationale as determined by a Qualified Person (QP) as defined in O.Reg. 406/19
  - c. Cut-fill volumes, locations and cross-sections showing Fill for on-site reuse, Fill for import, and Fill for export
  - d. Geotechnical requirements as determined by a geotechnical engineer
- viii. Health and safety plan
- ix. Erosion and sediment control plan
- x. Stormwater management plan
- xi. Noise and vibration control plan
- xii. Traffic management plan including alternate routes
- xiii. Invasive species management plan
- xiv. Identification of environmentally sensitive areas as defined in Section A of the Soil Rules associated with O.Reg. 406/19
- xv. Evaluation of existing groundwater conditions and potential impacts to groundwater, sensitive groundwater features and groundwater users, and mitigation measures developed by a hydrogeologist
- xvi. Complaint response protocol
- xvii. Site Operations
  - a. A methodology of how any imported Fill will be evaluated to ensure it meets the applicable soil quality requirements established for the subject Property

- b. Procedure to account for each load of excess soil deposited or exported
- c. Procedures to ensure that the storage of excess soil for final placement does not cause an adverse effect
- d. Mud and dust management and mitigation procedures
- e. Procedures regarding filling around existing trees, developed by a qualified environmental specialist
- f. Procedure in the event hazardous or contaminated soil is identified
- xviii. Monitoring and contingency plans, as required, for:
  - a. Groundwater quality
  - b. Surface water quality
  - c. Ongoing confirmation of grade and soil volume
  - d. Soil inspection and audit/verification samples
  - e. Erosion and sediment control monitoring and maintenance
  - f. Air, noise, and vibration impacts
  - g. Ecological impacts
  - h. Spill prevention and response plan
- xix. Documentation and record keeping procedures for:
  - a. Source site assessment and soil quality results
  - b. Presence of salt related parameters
  - c. Soil movement tracking (on Property, off Property, and interim and final placement on Property)
  - d. Written confirmation of acceptance of Fill
  - e. Hauling records
  - f. Inspection and auditing
  - g. Monitoring results

### **Permit Conditions**

Each Site Alteration Permit will be issued with mandatory conditions for compliance including:

- a) General Conditions
- b) Property Specific Conditions as outlined in the:
  - a. Fill Management Plan
  - b. Additional documentation (if applicable)
  - c. Additional Conditions (if applicable) to address specific issues
- c) The requirement for the Owner to sign the Permit to abide by all Terms and Conditions of the Permit and provide an indemnity to the Town.
- d) The requirement that Large Site Alteration Permits involving greater than 10,000 m<sup>3</sup> or deposit of any liquid soils only be issued after Council has approved a Permit.

### **Indemnification**

The Owner will, both during and following the term of the Permit, indemnify and save harmless the Town from all costs, losses, damages, judgements, claims, demands,

suits, actions, complaints or other proceedings in any manner based upon, occasioned by or attributable to anything done or omitted to be done by the Owner, its directors, officers, employees, agents, sub-contractors or volunteers in connection with site alteration and fill activities conducted pursuant to the Permit.