

THE CORPORATION OF THE TOWN OF MONO

BYLAW NUMBER 2014 - 31

BEING A BYLAW TO REGULATE SITE ALTERATIONS, PLACEMENT OF FILL AND REMOVAL OF TOPSOIL WITHIN THE TOWN OF MONO

**WHEREAS** Section 142 of the *Municipal Act, 2001*, S.O. 2001, c.25 as amended authorizes local municipalities to pass bylaws prohibiting or regulating the placing or Dumping of Fill, the removal of topsoil, and the Alteration of the Grade of land;

**AND WHEREAS** Section 128(1) of the *Municipal Act, 2001* authorizes local municipalities 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* authorizes local municipalities to prohibit and regulate with respect to noise, vibration, and dust;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MONO ENACTS AS FOLLOWS:**

1. Definitions

In this Bylaw:

“Council” means the Council of The Corporation of the Town of Mono;

“Drainage” means the movement of stormwater, whether by way of the natural characteristics of the ground surface or by artificial means;

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

“Engineer” means a Professional Engineer registered under the Professional Engineers Act, or a Surveyor registered under the Surveyors Act, or a partnership, association of persons or corporation that holds a Certificate of Authorization under the Professional Engineers Act or the Surveyors Act, as the case may be;

“Erosion” means the detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity;

“Fill” means any type of material deposited or placed on land and includes but is not limited to soil, earth, topsoil, stone, aggregate, asphalt, sod, turf or any combination thereof;

“Grade” at any point on the land means the elevation of the ground surface of the land; and

- a) “Existing Grade” means the Grade as it existed prior to any Site Alteration;

“Highway” means a common and public Highway and includes a street, bridge or other structure forming part of a Highway over or across which a Highway passes, and includes the whole of a road allowance under the jurisdiction of the Town;

“Officer” means a police Officer, a municipal enforcement Officer, the chief building official or other person appointed for the purpose of enforcement of this Bylaw;

“Owner” means the registered Owner(s) of the land;

“Site” means the lot or lots altered or proposed to be altered by means of a Site Alteration;

“Site Alteration” means the placement or Dumping of Fill on land and or the removal of topsoil from land;

“Surveyor” means a professional land Surveyor practicing under licence in the Province of Ontario;

“Town” means The Corporation of the Town of Mono;

“Town Engineer” means an employee of the professional Engineering firm retained by the Town for Engineering purposes;

“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. General Provisions

2.1 No person shall cause or permit the placing of any Fill or topsoil or otherwise alter the Grade of land by causing, permitting, or performing a Site Alteration on land within the Town of Mono other than in conformity with the terms and conditions under this Bylaw and the regulations prescribed in this Bylaw.

2.2 No person shall cause or permit the removal of any topsoil or otherwise alter the Grade of land by causing, permitting, or performing a Site Alteration on land within the Town of Mono other than in conformity with the terms and conditions under this Bylaw and the regulations prescribed in this Bylaw.

2.3 No person shall cause, permit, or perform a Site Alteration on land within the Town of Mono other than in conformity with the terms and conditions under this Bylaw and the regulations prescribed in this Bylaw.

2.4 No person shall fail to obey an order issued under Section 4 of this Bylaw.

2.5 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 Bylaw except to the extent that such injury or destruction is specifically authorized in writing in accordance with the provisions of this Bylaw and any other applicable Bylaws of the Town of Mono or the County of Dufferin for the protection of trees.

## 3. Exemptions

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

a) Activities or matters undertaken by a municipality or governmental authority as defined by the Planning Act or other applicable Acts such as but not limited to: the Conservation Authorities Act, Aggregate Resources Act, Drainage Act, and Electricity Act.

b) Removal of topsoil incidental to a normal farm practice including such removal as an incidental part of sod-farming, greenhouse operations and nurseries for horticultural products.

c) Site Alteration and/or removal of topsoil where Engineering drawings for a plan of subdivision, complete with all applicable securities have been received in full, or where a full site plan application under Section 41 of the Planning Act has been approved. In both cases an Erosion and sediment control plan, approved by the Town Engineer, will be required before undertaking any land disturbances.

- d) That Fill is being placed or Dumped in an excavation to the elevation of Existing Grade following the demolition or removal of a building or structure.
- e) Excavation and backfilling within 10m of a structure and incidental to construction of a structure that has been issued an active building or septic permit under the Ontario Building Code Act.
- f) Topdressing of lawns with topsoil not greater than 15cm and minor landscaping works which are at least 0.3 metres from any property line and do not impact Drainage patterns on neighbouring properties.
- g) The placing or Dumping or removal of Fill involving an amount of soil less than 250 cubic metres of locally sourced Fill on a lot, within any one year period, provided there is no change in the locations, direction, or elevation of any natural or artificial Watercourse, open channel, swale or ditch used to drain the land.

3.2 Notwithstanding Section 3.1, the Site Alterations set out remain subject to the provisions of Sections 2.2 and 2.3 inclusive, Section 4, and Sections 5 to 10 inclusive of this Bylaw.

#### 4. Orders

##### 4.1 Order to Discontinue Activity

If an Officer is satisfied that a contravention of this bylaw has occurred, the Officer may make an order requiring the Owner of the land or the person who caused or permitted the placing or Dumping of Fill, removal of topsoil, the alteration of the Grade of land or injuring or destruction of trees protected under this Bylaw to discontinue the activity, and the order shall set out:

- a) the municipal address or the legal description of the land;
- b) reasonable particulars of the contravention; and,
- c) the period within which there must be compliance.

##### 4.2 Work Order for Site Alteration Work

If an Officer is satisfied that a person has caused or permitted the performance of a Site Alteration in contravention of the provisions of this Bylaw, the Officer may make an order requiring 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; and 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 a notice stating that if the work is not done in compliance with the order within the period it specifies, the Town may have the work done at the expense of the Owner.
- b) without limiting the generality of Section 4.2, an Officer may issue an order under Section 4.2:
  - i) Requiring that the Fill Dumped or placed contrary to this Bylaw be removed by the person who Dumped or placed it or who caused or permitted it to be Dumped or placed;
  - ii) Requiring the rehabilitation of land from which topsoil has been removed contrary to this Bylaw;
  - iii) Requiring that the Grade of the land altered contrary to this Bylaw be restored to its original condition by the person who altered it or who caused or permitted it to be altered.

#### 4.3 Service of Orders

- a) Orders issued by an Officer under Sections 4.1 or 4.2 shall be served 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 on the Owner under Section 4.3 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.

#### 5. Work Done by the Town

- 5.1 If the work required by an order under Section 4.2 of this Bylaw is not done within the specified period, the Town, in addition to all other remedies it may have, may do the work at the Owner's expense and may enter upon land, at any reasonable time, for this purpose in accordance with the provisions of the *Municipal Act, 2001*.
- 5.2 The Town may recover the costs of doing a matter or thing under Section 5.1 from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

#### 6. Requests for Variance or Exception

- 6.1 An Owner may request a Variance from, or Exception to, the prohibitions contained in Sections 2 and 3 and, upon such a request being made, the Owner is entitled to a review of such request by the Town.
- 6.2 Requests for a Variance or Exception under Section 6.1 shall be in writing and directed to Council in care of the Clerk of the Town, specifying the reasons for the Variance or Exception and include any documents the Owner will be relying on, and all other documentation set out in Schedule "A" to this Bylaw. The application shall be accompanied by a non-refundable processing fee of Two Thousand Dollars (\$2,000.00) and a refundable deposit of \$20,000.00 to cover the costs the Town may incur for Engineering and other professional reviews. Monies not utilized shall be refunded to the Owner
- 6.3 Upon receipt of a written request under Section 6.2, the Town shall:
  - a) schedule a review date before Council;
  - b) give the requesting Owner notice of the review date at least twenty (20) days prior to the hearing date; and,
  - c) give all landowners within 500 metres of the subject property notice of the request of Variance or Exception.
- 6.4 Delivery of any notice to the requesting Owner shall be made by personal delivery or registered mail. The notice shall be deemed to have been delivered on the seventh (7<sup>th</sup>) day after the date of mailing, or on the date of personal delivery.
- 6.5 The review of a request under Section 6.2 shall be held in public, and Council shall hear the requesting Owner and every other person who desires to be heard in favour of or against the request, and Council may adjourn the meeting or reserve its recommendation.

- 6.6 Upon reviewing a request under Section 6.2, Council shall consider whether the requested Variance or Exception:
- a) will result in maintaining or improving the overall agricultural capability of the Site;
  - b) is an incidental part of a normal agricultural practice;
  - c) will maintain the general intent and purpose of this Bylaw; and,
  - d) is in the general community interest.

6.7 The minimum general Terms of Conditions of a Variance or Exception are set out in Schedule "B" to this Bylaw.

## 7. Haul Routes

7.1 On Variance or Exception under Section 6, the Town may designate one or more Haul Routes to and one or more Haul Routes from a Site for the placement or Dumping of Fill at the Site or the removal of Topsoil from the Site.

7.2 The Town may establish the amount of the liquidated damages to the Town for failure to use designated Haul Routes.

7.3 Where the Highways are not under the jurisdiction of the Town, the Applicant shall provide permission from the road authority in a form acceptable to the Town prior to issuance of an Approval.

7.4 An Owner of Land which is subject to a Variance or Exception under Section 6 for which a designated Haul Route condition has been established shall be responsible for ensuring that the designated Haul Routes are used by any person coming to or travelling from the Site under the authority of the Variance or Exception concerned and any failure to do so shall be in contravention of this Bylaw for which the Owner or Occupier is liable to a fine under Section 8 and/or to the revocation of the Variance or Exception concerned by the Town as the case may be.

7.5 Any person failing to use a designated Haul Route for the Dumping or placing of Fill on a Site or the removing of Topsoil from a Site which is the subject of a Variance or Exception under this Bylaw is guilty of an offence.

## 8. Penalty and Offence

8.1 Every person who contravenes this Bylaw is guilty of an offence and upon conviction is liable:

- a) For contraventions of this Bylaw, \$5,000.00 as prescribed by the *Provincial Offences Act*, R.S.O. 1990, c. P.33.
- b) For contraventions of other provisions of this Bylaw:
  - i) on a first conviction, to a fine of not more than \$10,000.00;
  - ii) on any subsequent conviction, to a fine of not more than \$25,000.00 as prescribed by the *Municipal Act, 2001*, S.O. 2001, c.25.
- c) Notwithstanding Section 8.1 b) where the person convicted is a corporation:
  - i) on a first conviction to a fine of not more than \$25,000.00;
  - ii) on a subsequent conviction, to a fine of not more than \$100,000.00 as prescribed by the *Municipal Act, 2001*, S.O. 2001, c.25.

- d) If a person is convicted of an offence for contravening Section 2 or an order under Section 4.1 to stop the injuring or destruction of trees the court in which the conviction has been entered, or any court of competent jurisdiction thereafter, may order the person to rehabilitate the land or plant or replant trees in such manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to reestablish the trees (p. 138(2), *Municipal Act, 2001*).

9 Severability

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

10 Application of Other Bylaws

Compliance with this Bylaw does not relieve the applicant of the responsibility of obtaining all other approvals that may be required by the Town of Mono or any other level of government and agencies thereof or from compliance with any other bylaw, legislation or obligation.

11. Offences

- 11.1 Every person who contravenes any part of this bylaw is guilty of an offence and is subject to the provisions of the Provincial Offences Act.
- 11.2 Schedule "C" attached hereto adopts Short Form Wording and Set Fines for the purpose of the enforcement of this Bylaw.

12. Schedules

- 12.1 Schedules "A", "B", and "C" attached to this Bylaw form part of this Bylaw.
- 12.2 Schedule "C" of this Bylaw shall be effective upon approval of the Bylaw by the Regional Senior Justice of the Ontario Court of Justice.

13. Short Name

This Bylaw may be referred to as the "Fill Bylaw".

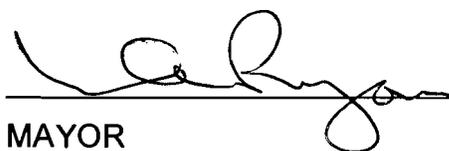
14. Repeal of Bylaw

Bylaw 2012-17 is hereby repealed.

This Bylaw shall come into force and take effect on the date of the final passing thereof.

READ A FIRST AND SECOND TIME THIS 27<sup>th</sup> DAY OF AUGUST, 2014.

READ A THIRD TIME AND PASSED THIS 27<sup>th</sup> DAY OF AUGUST, 2014.

  
MAYOR

  
CLERK

## SCHEDULE "A"

### VARIANCE OR EXCEPTION APPLICATION REQUIREMENTS

1. A person applying for a Variance or Exception shall submit the following to Council:
  - a) a complete application in the form prescribed in Schedule "B" appended to this Bylaw, including proof satisfactory to the Town that the Applicant is the legal Owner of the Site, or has been authorized by the Owner of the Site to submit the application;
  - b) the prior written consent of the Owner of the Land where the Site Alteration is to take place;
  - c) the applicable Variance or Exception approval processing fee in accordance with Section 6.2 of the Bylaw;
  - d) an accurate plan of the Site in accordance with the requirements set out in Schedule "B" appended to this Bylaw showing:
    - (i) the property boundaries of the Site with dimensions;
    - (ii) existing elevations in the form of contours at 0.5 metre intervals or less, with spot elevations along the Site boundary lines and 3.0 metres beyond the Site boundary lines at sufficient intervals to clearly show the existing Drainage patterns on the Land and on the abutting Lands;
    - (iii) the location of all existing underground services, including storm sewers, Watercourses and any bodies of water, on the Site and on abutting Lands and Highways;
    - (iv) the location of all existing buildings or structures, all trees greater than 75 mm in calliper (which shall be identified by species), all shrubs and driveways on the Site and all easements and rights-of-way over, under, across, or through the Site;
    - (v) proposed sediment and Erosion controls that will be installed prior to Alteration of the Site;
    - (vi) proposed final elevations and the Drainage system to be used upon completion of the Site Alteration;
    - (vii) the intended use of the Site, including a description of the proposed Fill placement or Topsoil removal operation; and
    - (viii) all existing street services, including light standards, hydro poles and transformers, cable television and telephone pedestals, fire hydrants and valves, catch basins and manholes.
  - e) A detailed report explaining how the application (source, transportation, and receiving) will be in conformity with the best management practices set out in the Ministry of Environment document titled "Management of Excess Soil – A Guide for Best Management Practices";
  - f) A plan showing the design details to proper scale of any retaining wall that may be required, including the size, type and location of all material to be used in construction of such retaining wall, with a Professional Engineer's signature and stamp;
  - g) A Haul Route Plan showing the proposed roads within the Town to be used by vehicles for the dumping or placement of Fill and/or to be used by vehicles for the removal of Topsoil from the Site.

- h) A refundable security deposit:
    - i) In the amount \$20,000.00;
    - ii) In a form acceptable to Council to secure performance of the work for which the Approval was obtained;
    - iii) Available to recover the cost of the Town performing or having performed:
      - 1) Any required works which the Applicant or Approval holder has failed to perform to the satisfaction of the Town, or
      - 2) Any restoration works required to be performed on any Highway damaged as a result of the works, and;
    - iv) Available to recover the liquidated damages suffered by the Town, for any failures to use designated Haul Routes to and from the Site.
  - i) A release and indemnity in favour of the Town, and in a form satisfactory to the Town, with respect to any and all liability which may arise in the event that the Fill used in the Site Alteration contains contaminants within the meaning of the Environmental Protection Act, R.S.O. 1990, c. E. 19, as amended.
2. a) The refundable security deposit provided under Paragraph 1 (h) to this Schedule shall remain in effect for the full duration of the Approval, and any irrevocable 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 cancellations.
  - 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' notice period, the Town may draw on the current letter of credit at the discretion of the Town, and any interest accruing on the realized cash security deposit shall belong to the Town and not to the Approval Holder.
3. Notwithstanding any other provisions of this Bylaw, after taking into consideration of the proposed works and whether the Applicant otherwise has conformed with this Bylaw, Council may waive the requirement for a plan, and/or reduce or waive the Approval fee and/or the refundable security deposit.

## SCHEDULE "B"

### TERMS AND CONDITIONS OF VARIANCE OR EXCEPTION APPROVAL

1. a) An Approval shall remain valid for a period of one (1) year from the date of issuance but shall expire six (6) months after the date of issuance if work under the Approval has not yet commenced.
- b) An Approval which is no longer valid or has expired may, at the sole discretion of the Town, be renewed for a six (6) month period from the date of invalidity or expiry provided that the proposed work has not been revised and that the Applicant is not in contravention of the requirements of this Bylaw.
- c) A request under Subsection (b) shall be made in writing to the Town accompanied by payment of the applicable Approval fee in accordance with Section 6.2 of the Bylaw.
2. All Approvals shall contain the following conditions:
  - a) The issuance of an Approval does not relieve the Owner of Land, Applicant, or Approval Holder from any responsibility to obtain all other approvals that may be required from any level of government or authority having jurisdiction or any agencies thereof.
  - b) A Site Alteration Approval is not transferable to another property.
  - c) The work shall be done at the request of, or with the consent of, the Owner of the lands where the proposed Site Alteration is to be performed.
  - d) All Fill to be Dumped or placed shall be clean and free of waste, asphalt, trash, rubbish, glass, liquid or toxic chemicals, hazardous waste or contaminants within the meaning of the Environmental Protection Act.
  - e) No ponding or alteration of existing surface water flow resulting directly or indirectly from the Site Alteration shall be caused on abutting Lands.
  - f) Where required, the finished Grade surface shall be protected from Erosion by sod, turf, seeding for grass, greenery, asphalt, concrete, or other means either singly or in combination, within two months of completion of the Site Alteration work, or as specified by the Town.
  - g) All trenches in which piping is laid as part of the Drainage system shall be inspected by the Town prior to backfilling the excavation.
  - h) Erosion and sedimentation control measures shall be provided around all disturbed areas in a manner satisfactory to the Town prior to the commencement of the Site Alteration, and shall be maintained in good working order until the Site has stabilized.
  - i) All Fill shall be properly compacted using acceptable Engineering practices, unless it is being stockpiled on the Site for future use.
  - j) The Approval Holder and Owner shall ensure that natural Drainage or any natural or human-made Watercourse or water body is not altered in such a manner that will negatively affect other property or the environment.
  - k) If archaeological resources are discovered or identified during the Site Alteration, even after the issuance of an Approval, the Owner of Land, Applicant or Approval Holder shall immediately cease all activity on the property and contact the Town.

- l) No Site Alteration shall be performed:
  - i) on any Saturday or Sunday, or Statutory Holiday;
  - ii) using Highways to access or egress from the Site except those Highways designated Haul Routes;
  - iii) before 8:30 a.m. or after 3:00 p.m. during any weekday Monday through Friday using Highways to access or egress from the Site;
  - iv) in contravention of the Town's *Noise Bylaw*;
  - v) that exceeds one hundred (100) truckloads of Fill per day arriving at, or leaving, the Site using Highways to access or egress from the Site;
  - vi) prior to submitting to the Town a schedule of the anticipated starting and completion dates for each Site Alteration activity including the schedule for the use of the designated Haul Routes;
  - vii) prior to submitting to the Town a submission detailing Site Erosion control measures and dust control measures that will be implemented and maintained during and following construction, as required.
- m) A Site Alteration performed pursuant to an Approval shall not detrimentally affect the quality or quantity of water in wells on adjacent properties.
- n) The Owner and Occupant of the Land and any Approval Holder ensures that all vehicles to and from the Site follow the designated Haul Routes to and from the Site.

3. Every Approval Holder shall:

- a) provide proof satisfactory to the Town that the Site has been adequately reinstated and stabilized in accordance with this Bylaw and the plan accompanying the Approval;
- b) give notice to the Town to carry out a final inspection to confirm that all relevant terms of this Bylaw have been complied with;
- c) following the completion of the Works, and before the release of any deposit or portion thereof, provide a statement of a professional Engineer or Ontario Land Surveyor retained by the Approval Holder certifying that:
  - i) the grading has been completed in accordance with the plans submitted;
  - ii) the finished project does not detrimentally affect Drainage on adjacent properties; and,
  - iii) the finished project does not detrimentally affect the quality or quantity of water in wells on adjacent properties;
- d) prior to commencement of works under an Approval, certify that the Fill introduced to the Site contains no contaminants within the meaning of the *Environmental Protection Act*, R.S.O. 1990, c.E. 19, as amended;
- e) keep all Highways free of debris originating from the Site Alteration; and,
- f) during performance of a Site Alteration, perform the following minimum procedures:
  - i) at least once per day, scrape all Highways that have been fouled; and,
  - ii) at least once each week on Friday night or Saturday morning, clean all Highways that have been fouled.

## **REVOCACTION OF VARIANCE OR EXCEPTION APPROVAL**

1. Where the ownership of the Land for which a Variance or Exception has been granted is transferred while the Variance or Exception remains in effect, the Approval Holder, prior to the completion of the transfer, shall provide written notice of both the pending transfer and the Site Alteration status to both the Town and the new Owner, and the new Owner shall within thirty (30) days of the completion of the transfer either:
  - a) provide the Town with an undertaking to comply with all the conditions under which the existing Approval was issued; or,
  - b) apply for and obtain a new Approval in accordance with the provisions of this Bylaw.
2. In the event that neither the undertaking prescribed by Clause 1.a), nor a complete application for a new Approval under Clause 1.b), is received by the Town within the said period, the existing Approval may be revoked by the Town, and the Approval Holder shall thereupon cease and desist forthwith all operations being conducted under the authority of the revoked Approval, save and except for proper clean-up of the Site Alteration works already undertaken.
3. Where it is determined that the Approval Holder has provided misleading or false information on the application, or has contravened the provisions of this Bylaw or the requirements or conditions of the Approval, the Town may revoke said Approval and the Approval Holder shall thereafter cease and desist all operations being conducted under the authority of the revoked Approval, save and except proper clean-up of the Site Alteration works already undertaken.

SCHEDULE "C"

**PART 1 PROVINCIAL OFFENCES ACT**

Item	Short Form Wording	Provision Creating or Defining Offence	Set Fine
1	Cause or permit the placing of Fill on a property	2.1	\$150.00
2	Cause or permit the removal of topsoil on a property	2.2	\$150.00
3	Cause or permit Site Alteration on a property	2.3	\$150.00