

CITY OF MARKHAM
ONTARIO



BY-LAW 2011-232

**SITE ALTERATION BY-LAW
TO REGULATE OR PROHIBIT REMOVAL OF TOPSOIL, PLACING OR
DUMPING OF FILL, AND ALTERATION OF THE GRADE OF LAND
WITHIN THE CITY OF MARKHAM**

This By-law is printed under and
by authority of the Council of
the City of Markham

(Consolidated for convenience only
to March 2021)

(Schedule/Attachment Included)

AMENDED BY:

By-law 2012-43 – February 28 and 29, 2012

By-law 2021-13 – February 9, 2021



By-Law 2011-232

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

WHEREAS Section 142 of the *Municipal Act, 2001*, S.O. c. 25, as amended, authorizes municipal councils to pass by-laws to regulate or prohibit the Removal of Topsoil, the Placing or Dumping of Fill, and the alteration of the grade of land;

AND WHEREAS Section 398 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes a municipality to add fees and charges to the tax roll for a property and collect them in the same manner as municipal taxes;

AND WHEREAS Section 446 of the *Municipal Act, 2001*, S.O. c. 25, as amended, provides that where a person fails to do something that is required under a by-law, the municipality may undertake to do the thing required at the person's expense and the costs may be collected in the same manner as property taxes;

AND WHEREAS the Council of The Corporation of the City of Markham deems it advisable to exercise this authority, as well as to provide for the rehabilitation of lands and protect water bodies and the Natural Heritage Network where the Removal of Topsoil, or the Placing and Dumping of Fill or the alteration of grade of the land is permissible;

AND WHEREAS Section 391 of the *Municipal Act* provides that a municipality may impose fees or charges on persons for services or activities provided or done by or on behalf of it;

AND WHEREAS Section 425 of the *Municipal Act* provides that a municipality may pass by-laws providing that a person who contravenes any by-law of the municipality is guilty of an offence;

AND WHEREAS Subsection 429(1) of the *Municipal Act* provides that, a municipality may establish a system of fines for offences under a by-law of the municipality passed under the *Municipal Act*;

AND WHEREAS Section 434.1 of the *Municipal Act* provides that, a municipality may require a person to pay an administrative penalty if the municipality is satisfied that a person has failed to comply with a by-law of the municipality passed under the *Municipal Act*;

AND WHEREAS Subsection 434.2(1) of the *Municipal Act* provides that, an administrative penalty imposed by a municipality on a person constitutes a debt of the person to the municipality;

AND WHEREAS Section 435 of the *Municipal Act* provides for conditions governing the powers of entry of a municipality;

AND WHEREAS Section 441.1 of the *Municipal Act* provides that upon the request of a municipality that has entered into a transfer agreement under Part X of the *Provincial Offences Act*, the treasurer of a local municipality may add any part of a fine for a commission of a provincial offence that is in default under Section 69 of the *Provincial Offences Act* to the tax roll

for any property in the local municipality for which all of the Owners are responsible for paying the fine and collect it in the same manner as municipal taxes;

AND WHEREAS Section 444 of the *Municipal Act* provides that a municipality may make an Order requiring a person who contravened a by-law or who caused or permitted the contravention or the Owner or occupier of the land on which the contravention occurred to discontinue the contravening activity;

AND WHEREAS Section 445 of the *Municipal Act* provides that, a municipality may make an Order requiring the person who contravened the by-law or who caused or permitted the contravention or the Owner or occupier of the land on which the contravention occurred to do work to correct the contravention; and

AND WHEREAS Section 446 of the *Municipal Act* provides that where a municipality has authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed to or required to do it, the matter or thing may be done at the person's expense, and further provides that the costs of so doing may be added to the tax roll and collected in the same manner as municipal taxes.

(Amended by By-law 2021-13)

NOW THEREFORE the Council of The Corporation of the City of Markham ENACTS as follows:

1 PURPOSE AND INTENT

The purpose of this By-law is to regulate the Placing or Dumping of Fill, the removal of Topsoil, and the alteration of the grade of land through the movement, removal or placement of Topsoil or Fill in order to ensure that:

- (a) existing drainage patterns are maintained;
- (b) changes to drainage or grade are appropriate to protect natural heritage features and archaeological resources;
- (c) interference and damage to watercourses or water bodies are limited;
- (d) water quality is maintained;
- (e) the use of contaminated Fill is prevented;
- (f) haul routes for the transportation of Fill and Topsoil will be designated to and/or from a site by the Director to minimize damage to City and Regional roads and minimize interference and/or disturbance to the City's residents and businesses;
- (g) the City's other regulatory by-laws are complied with;
- (h) the benefits of any proposed Site Alteration outweigh its potential impacts on other properties and Persons; and
- (i) the proponent of the Site Alteration project pays for its costs associated with the processing and enforcement of this By-law.

(Amended by By-law 2021-13)

2 DEFINITIONS

For the purpose of this By-law, the following definitions and interpretations shall govern:

“Adjacent” means abutting or contiguous to;

“Agricultural Lands” includes all lands that are cultivated and/or used for the raising of livestock;

“Agricultural Uses” means the growing of crops, including nursery and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including accommodation for full-time farm labour when the size and nature of the operation requires additional employment;

(Amended by By-law 2021-13)

“Applicant” means the Owner of the property, where such an Owner is an individual, or means any person, authorized in writing by the Owner, to apply for a Permit on the Owner’s behalf;

“City” means The Corporation of the City of Markham;

(Amended by By-law 2021-13)

“Council” means the Council of The Corporation of the City of Markham;

“Development” means:

- a) the construction, erection or placing of one or more buildings or structures on land; or,
- b) the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof; or,
- c) the laying out, establishment or expansion of a parking lot, or of sites for the location of three or more trailers as defined in Section 164(4) of the *Municipal Act, 2001*, S.O. 2001, c. 25 or of sites for the location of three or more mobile homes as defined in clause 46(1) of the *Planning Act*; or,
- d) the laying out and establishment of commercial outdoor recreational facilities including golf courses, driving ranges, sports fields and the like; or,
- e) the laying out and establishment of outdoor patios associated with restaurants;

(Amended by By-law 2021-13)

“Director” means the Director of Engineering or his/her designate;

“Drainage” means the movement of water to a place of disposal, whether by way of natural characteristics of the ground surface or by an artificial method;

“Dump” or **“Dumping”** means depositing of Fill in a location other than where the Fill was obtained;

(Amended by By-law 2021-13)

“Engineer” means a professional engineer, a consultant or an engineering firm hired/appointed by the Owner;

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

“Existing Grade” means the elevation of the existing ground surface of the lands upon which site alteration is proposed and of abutting ground surface up to three (3) metres wide surrounding such lands, except that where site alteration has occurred in contravention of this By-law, Existing Grade shall mean the ground surface of the lands as it existed prior to site alteration;

“Fill” or **“Filling”** means Soil, rock, rubble, organic material or a combination of these that is transported and placed on the natural surface of a Soil or rock or organic terrain; it may or may not be compacted;

(Amended by By-law 2021-13)

“Finished Grade” means the approved elevation of ground surface of lands upon which Fill has been placed or grade of land has been altered in accordance with this By-law;

“Fish Habitat” means the spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out the life processes, as further identified by the Department of Fisheries and Oceans (Canada);

“Greenbelt Plan” means the Ontario Greenbelt Plan (2017), as amended;
(Amended by By-law 2021-13)

“Habitat of Endangered or Threatened Species” means

- a) with respect to a species listed on the Species at Risk in Ontario List as endangered or threatened species for which a regulation made under Clause 55(1)(a) of the Endangered Species Act, 2007, is in force, the area prescribed by the regulation as the habitat of the species; or
- b) with respect to any other species listed on the Species at Risk in Ontario List as an endangered or threatened species, an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding, as approved by the Ministry of Natural Resources and Forestry; and places in the areas described in a) or b), whichever is applicable, that are used by members of the species as dens, nests, hibernacula or other residences.

(Amended by By-law 2021-13)

“Inspector” means a person designated by the Director to inspect the site alteration activities at the construction or development site for compliance with a Permit;

“Land Disturbance” means any man-made change of the land surface including removing vegetative cover, and/or excavating and/or Filling and/or grading;

“Laying Out” means the arrangement, planning or designing of any facility such as a building or a parking lot;

(Amended by By-law 2021-13)

“Lot” means a parcel of land, described in a deed or other document legally capable of conveying land, or shown as a block on a registered plan of subdivision;

“Municipal Law Enforcement Officer” means a person appointed by Council to enforce this By-law;

“Natural Heritage Network” means lands defined as part of the Natural Heritage Network in the City of Markham Official Plan, as amended. It includes Wetlands, Significant Wetlands, Woodlands, Significant Woodlands, Significant Wildlife Habitat, Fish Habitat, Habitat of Endangered and Threatened Species, Valleylands, Significant Valleylands, Areas of Natural and Scientific Interest, permanent and intermittent Watercourses, and other lands (including vegetation protection zones and hazardous lands) as defined in the City of Markham Official Plan;

(Amended by By-law 2021-13)

“Oak Ridges Moraine” means lands subject to *Ontario Regulation* 140/02 and subject to the requirements of the Provincial Oak Ridges Moraine Conservation Plan, as amended;

(Amended by By-law 2021-13)

“Order” includes Notice, Work Order, Order to Comply, and Order to Discontinue;

(Amended by By-law 2021-13)

“Owner” means the legal registered owner of the Lot as shown by the records of the Land Registry Office where the property register for the Lot is situated and for which a Permit is sought or obtained;

“Permit” means permission or authorization given in writing by the Director to perform work regulated by this By-law or part thereof;

“Permit Holder” means the Owner as defined in this By-law or the person in possession of the property and includes a lessee, a mortgagee in possession or a person in charge of the property;

“Person” means an individual, association or corporation and their successors and assigns;

“Place” or **“Placing”** means the distribution of fill on lands to establish a finished grade higher or lower than the existing grade;

(Amended by By-law 2021-13)

“Planning Act” means the *Planning Act*, R.S.O. 1990, c.13, as amended;

“Ponding” means the accumulation of surface water in the area not having Drainage therefrom where the lack of Drainage is caused by the placing or Dumping of Fill or altering of the grade of land;

“Protected Countryside” means lands designated as Protected Countryside in the Ontario Greenbelt Plan (2017), as amended;

(Amended by By-law 2021-13)

“Qualified Person” means the person who meets the qualifications prescribed by the *Environmental Protection Act*, RSO 1990 c E.19 and associated regulations O. Reg. 153/04 or O. Reg. 406/19, as amended;

(Amended by By-law 2021-13)

“Receiving Site” means the location where the imported Soil is being reused;

(Amended by By-law 2021-13)

“Region” means The Regional Municipality of York;

“Removal” means excavation or extraction of any Fill which lowers the Existing Grade, and includes Soil Stripping;

“Security Deposit” means financial security submitted to the City by the Applicant and it can be in the form of a certified cheque, or a letter of credit;

(Amended by By-law 2021-13)

“Significant” means identified as significant by the Ministry of Natural Resources and Forestry, the Region, and the City using evaluation procedures, as amended from time to time;

(Amended by By-law 2021-13)

“Site” means the Lot or Lots altered or proposed to be altered as permitted;

“Site Alteration” means the Placing, or Dumping of Fill, the removal of Topsoil from land, or the alteration of the grade of land through the movement, removal or placement of Soil or Fill;

(Amended by By-law 2021-13)

“Site Alteration Plan” means a plan prepared by an Engineer on behalf of an Owner in connection with a Site Alteration Permit pursuant to this By-law;

“Soil” means any material commonly known as earth, Topsoil, loam, subsoil, clay, sand or gravel;

“Soil Importation” means to bring Soil from a Source Site to a Receiving Site;

(Amended by By-law 2021-13)

“Soil Stripping” means removing of Soil or Topsoil;

“Source Site” means the location where the imported soil is being excavated or coming from;

(Amended by By-law 2021-13)

“Swale” means a depression in the ground sloping to a place of disposal of surface water for the purpose of providing a method of Drainage;

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

“Treasurer” means the Treasurer of the City of Markham or his/her designate;

(Amended by By-law 2021-13)

“Valleylands” means a natural area occurring in a valley or other landform depression that has water flowing through or standing for some period of the year. They include well or ill-defined depressional features associated with a river or stream, whether or not they contain a watercourse in which a flow of water regularly or continuously occurs;

(Amended by By-law 2021-13)

“Watercourse” means a natural or man-made channel or Swale in which water flows, either continuously or intermittently with some degree of regularity;

“Wetlands” means lands that are seasonally or permanently covered by shallow water or have the water table close to or at the surface. In either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic plants or water tolerant plants. The four major types of wetlands are swamps, marshes, bogs and fens. Periodically soaked or wet lands being used for agricultural purposes, which no longer exhibit wetland characteristics, are not considered to be Wetlands for the purposes of this definition;

(Amended by By-law 2021-13)

“Wildlife Habitat” means land that,

- a) is an area where plants, animals and other organisms live or have the potential to live and find adequate amounts of food, water shelter and space to sustain their population, including an area where a species concentrates at a vulnerable point in its annual or life cycle and an area that is important to a migratory or non-migratory species; and
- b) has been further identified, by the Ministry of Natural Resources and Forestry, or by any other person, according to evaluation procedures established by the Ministry of Natural Resources and Forestry, as amended from time to time.

“Woodland” means an area of land of at least 0.2 hectares and includes at least:

- a) 1,000 trees of any size, per hectare;
- b) 750 trees measuring over 5 centimetres diameter at breast height, per hectare;
- c) 500 trees measuring over 12 centimetres diameter at breast height, per hectare; or,
- d) 250 trees measuring over 20 centimetres diameter at breast height, per hectare, but does not include a cultivated fruit or nut orchard, a plantation established and used for the purpose of producing Christmas trees or nursery stock. For the purposes of defining a Woodland, treed areas separated by more than 20 metres will be considered a separate Woodland. When determining a Woodland, continuous agricultural hedgerows and Woodland fingers or narrow Woodland patches will be considered part of the Woodland if they have a minimum average width of at least 40 metres and narrower sections have a length to width ratio of 3:1 or less. Undeveloped clearings with Woodland patches are generally included within a Woodland if the total area of each clearing is no greater than 0.2 hectares. In areas covered by Provincial Plan policies, Woodland includes treed areas as further described by the Ministry of Natural Resources and Forestry. For the purposes of determining densities for Woodlands outside of the Provincial Plan areas, the following species are excluded: staghorn sumac, European buckthorn, common lilac.

(Amended by By-law 2021-13)

3 PROHIBITIONS

- 3.1 No Person shall permit, perform or cause to permit or to have performed any Site Alteration without a Permit, unless otherwise exempt as set forth in this By-law.
- 3.2 No Person shall permit, perform or cause to permit or to have performed any activity other than Site Alteration pursuant to this By-law.
- 3.3 No Person shall permit, perform or cause to permit or to have performed any activity of Development pursuant to this By-law.
- 3.4 No Person shall permit, perform or cause to permit or to have performed any Site Alteration on any lands Adjacent to or within 30 metres of the Natural Heritage Network as identified in the City's Official Plan without having been issued a Permit under this By-law by the Director.
- 3.5 No person shall permit, perform or cause to permit or to have performed Site Alteration on lands within the City other than in conformity this By-law and with the terms and conditions of a Permit issued under this By-law.
- 3.6 No person shall permit, perform or cause to permit or to have performed Site Alteration on lands within the City that is not permitted by Ontario Regulation 140/02, the Oak Ridges Moraine Conservation Plan as shown on Schedule "B" Ontario Regulation 01/02, or any other applicable law or regulation as may be approved or amended from time to time.
- 3.7 No Person shall permit, perform or cause to permit or to have performed Site Alteration on lands within the City that is not permitted by the Greenbelt Plan, as amended and as shown on Schedule "B".
- 3.8 No person shall fail to obey an Order issued under sections 8.0 and 9.0 of this By-law.
- 3.9 Where a person has carried out Site Alteration contrary to this By-law, that person, the Owner and the Permit Holder shall each be jointly and severally responsible for the restoration of the land to the pre-existing grades and environmental conditions to the satisfaction of the Director.
- 3.10 No person shall carry out Site Alteration for storage purposes, unless the storage of such Fill on the land is permitted by this By-law and the applicable zoning by-laws of the City.
- 3.11 No person shall carry out Site Alteration unless:
 - 3.11.1 it is done at the request of or with the consent of the Owner of lands where the Fill is to be placed, Dumped or removed;
 - 3.11.2 all Fill to be Dumped or placed is clean and free of trash, rubbish, glass, liquid or toxic chemicals, hazardous waste or garbage materials;
 - 3.11.3 the Drainage system for the lands is provided in accordance with this By-law and all other applicable City by-laws and the Director is satisfied that provision has been made for surface and storm water Drainage where such Drainage is not provided by natural gradients or a Swale;
 - 3.11.4 the Fill is Placed or Dumped or removed in such a manner, or the retaining wall containing such Fill is erected in such a manner, that no Ponding or alteration of existing flow is caused on abutting lands; and
 - 3.11.5 Erosion and sediment control requirements are met as required by this By-law.

- 3.12 No person shall carry out any Site Alteration on any lands Adjacent to or within 30 metres of the Natural Heritage Network as identified in the City's Official Plan without having been issued a Permit under this By-law by the Director.
- 3.13 Subject to section 4.1.10, no person shall carry out any Site Alteration on Agricultural Lands to an average depth greater than 300 mm. Filling a hole, excavation, or depression of depth greater than 300 mm may be permitted at the discretion of the Director. No Site Alteration Permit will be issued on Agricultural Lands unless the Owner provides a certificate, signed by an Engineer/soil scientist, confirming that the Site Alteration will result in maintaining or improving the overall fertility of the Agricultural Lands.
- 3.14 No person shall perform, permit, or cause to be performed or permitted a Site Alteration, or permit a site condition to remain, and no Permit shall be issued for a proposed Site Alteration that will result in:
- 3.14.1 Soil Erosion;
 - 3.14.2 blockage of a storm Drainage system;
 - 3.14.3 blockage of a natural Drainage system or Watercourse;
 - 3.14.4 siltation or pollution in a Watercourse;
 - 3.14.5 flooding or Ponding caused by a Watercourse overflowing its banks;
 - 3.14.6 an unacceptable level of nuisance in the City;
 - 3.14.7 unreasonable hindrance of the orderly Development of lands within the City;
 - 3.14.8 flooding or Ponding on a neighbouring property or adverse effect on the amenities Adjacent to the land to which the Permit relates;
 - 3.14.9 negative impact on any lands identified as Natural Heritage Network in the City's Official Plan or Areas of Natural or Scientific Interest, Wetland or Wetland complex as identified by the Toronto and Region Conservation Authority, the Ministry of Natural Resources and Forestry, the Region or the City;
 - 3.14.10 a contravention of Ontario Regulation 140/02, the Oak Ridges Moraine Conservation Plan, or any other applicable law or regulation; or
 - 3.14.11 any adverse effect to archeological or historically Significant features.
- 3.15 No Person shall use a haul route for the transportation of Fill and Topsoil that is not authorized by the Director.
- 3.16 No Person shall permit, perform or cause to permit or to have performed the removals of vegetation designated as environmentally significant or trees unless approval is obtained from the City.

(Amended by By-law 2021-13)

4 EXEMPTIONS AND EXCEPTIONS

- 4.1 Lands less than one (1) acre (0.405 ha) in size shall be exempted from the requirement to obtain a Permit, provided that:
- 4.1.1 such land is not within 30 meters of the Natural Heritage Network as identified in the City's Official Plan; or

- 4.1.2 the Site Alteration does not in any way affect the land Drainage of the abutting properties.
- 4.2 Despite the Permit exemption, lands less than one (1.0) acre (0.405 ha) in size remain subject to, and shall comply with, all other relevant provisions of this By-law, and other applicable by-laws, legislation or regulation of any level of government.

AND WHEREAS This By-law does not apply:

- 4.3 Where no more than 300 mm of Fill in depth is placed on lands for the purpose of lawn dressing, landscaping, adding to flower beds or vegetable gardens, provided that:
 - 4.3.1 the elevation of the land within 600 mm of any property line is not changed;
 - 4.3.2 the Site Alteration does not in any way affect the land Drainage of the abutting properties;
 - 4.3.3 the Site Alteration does not in any way affect the land Drainage of the abutting properties;
 - 4.3.4 there is no change in the location, direction or elevation of any natural or artificial Watercourse, open channel, Swale or ditch used to drain land; and
 - 4.3.5 there is control of any sediment runoff.
- 4.4 To activities or matters undertaken by the City or the Region;
- 4.5 Site Alteration requirements imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under sections 41, 51 or 53 respectively, of the Planning Act or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- 4.6 To Site Alteration requirements 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;
- 4.7 To Site Alteration requirements undertaken by a transmitter or distributor, as those terms defined in section 2 of the Electricity Act, 1998, for the purpose of constructing and maintaining a transmission system or a distribution system;
- 4.8 To Site Alteration requirements undertaken on lands as 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;
- 4.9 To Site Alteration requirements undertaken on lands in order to lawfully establish and operate or enlarge any pit or quarry on land:
 - 4.9.1 that has not been designated under the Aggregate Resources Act or a predecessor of that Act; and
 - 4.9.2 on which a pit or quarry is a permitted land use under a by-law passed under Section 34 of the Planning Act;
- 4.10 To Site Alteration undertaken as an incidental part of drain construction under the Drainage Act, Tile Drainage Act or the Municipal Act, 2001;
- 4.11 To Removal of the Topsoil as an incidental part of a normal agricultural practice including such Removal as an incidental part of sod-farming, greenhouse operations and nurseries for horticultural products. This exception does not include the Removal of Topsoil for sale, exchange or other disposition;

- 4.12 If a regulation is made under Section 28 of the Conservation Authorities Act respecting the Site Alteration in any area of the City, the Site Alteration in the area affected by such regulation;
- 4.13 To Removal or addition of Topsoil where the quantity of Topsoil removed or added in any one Lot does not exceed five (5) cubic metres;
- 4.14 To land where a building permit or a conditional building permit has been issued by the City for the erection of a building or structure or the installation of on-site plumbing services, and the site plan accompanying the building permit application provides sufficient information to determine that Site Alteration confirms with the provisions of this By-law; or
- 4.15 To Fill that is placed or Dumped in an excavation to the elevation of Existing Grade following the demolition or removal of a building or structure.

(Amended by By-law 2021-13)

5 REQUIREMENTS FOR ISSUANCE OF A PERMIT

- 5.1 All Permit applications must be completed in full, and all required supporting documentation provided, prior to the issuance of a Permit.
- 5.2 To obtain a Permit pursuant to this By-law, an Applicant shall provide the following information:
 - 5.2.1 a completed application for Site Alteration Permit, duly signed by the Applicant, in the form (Schedule "A") prescribed by the Director from time to time;
 - 5.2.2 the application Permit fees as established by the Director, from time to time and as outlined in the City's By-law 211-83, as amended;
 - 5.2.3 Security Deposit as per the Permit;
 - 5.2.4 proof of liability insurance with a minimum coverage pursuant to the City's requirements for insurance coverage;
 - 5.2.5 a Site Alteration Plan, certified by an Engineer, meeting the standards set out in the City's Design Criteria, as amended;
 - 5.2.6 tree protection fencing, as per the accepted Tree Protection Plan and Arborist Report, shall be installed, inspected and approved by City Staff prior to issuance of the permit;
 - 5.2.7 reports and/or plans describing the Site Alteration Plan showing features and special site conditions, including erosion and sediment control measures and their design details to the satisfaction of the Director;
 - 5.2.8 confirmation that the appropriate archaeological assessments on lands deemed to have moderate to high potentials for the discovery of archaeological resources have been completed to the satisfaction of the Ministry of Culture;
 - 5.2.9 if located on the Oak Ridges Moraine as shown on Schedule "B", studies or reports to confirm that the Site Alteration is in compliance with Ontario Regulation 140/02, the Oak Ridges Moraine Conservation Plan, as amended;
 - 5.2.10 for Site Alteration on Agricultural Lands, a soil fertility report, signed by an Engineer/soil scientist, confirming that the Site Alteration will not result in a reduction in the overall soil fertility;

5.2.11 confirmation that any Soil Importation will comply with all applicable regulatory requirements related to the Soil Importation including, but not limited to, the *O. Reg. 406/19 (On-Site and Excess Soils Management Regulations)*, as amended;

(Amended by By-law 2021-13)

5.2.12 confirmation that a Qualified Person shall document and certify the Soil Importation work ensuring that it meets all applicable regulatory requirements related to the Soil Importation including, but not limited to, the *O. Reg. 406/19 (On-Site and Excess Soils Management Regulations)*, as amended, and make such document(s) available for the City's review upon request;

(Amended by By-law 2021-13)

5.2.13 if lands are designated as Protected Countryside on the Greenbelt Plan as shown on Schedule "B", studies or reports to confirm that the Site Alteration is in compliance with the Greenbelt Plan;

5.2.14 if located within 120.0 m of Natural Heritage Network lands, studies or reports to confirm that the Site Alteration is in conformity with the Markham Official Plan; and

5.2.15 any additional information as required, in writing, by the Director.

5.3 The Applicant shall obtain all other approvals that may be required from any level of government or authority having jurisdiction or any agencies thereof.

(Amended by By-law 2021-13)

6 EXPIRY, RENEWAL, TRANSFER, REVOCATION AND REFUSAL OF PERMITS

6.1 Permits issued pursuant to this By-law shall be valid for a period of 180 days from the date of issuance. Should Land Disturbance activities continue past, or rehabilitation measures are not completed within 180 days, the Director may extend the period one or more times for an additional 180 days each time. The Director may require additional control measures and inspection fees, as a condition of the extension.

6.2 Notwithstanding section 5.0, Permits issued under this By-law shall expire ninety (90) days after the date of issuance of Permit if no work is commenced under the Permit.

6.3 A Permit which is no longer valid or which has expired pursuant to this By-law must be renewed by making a written application to the Director. The Director can renew the expired Permit and issue a Permit extension for a maximum 180 days upon payment to the City for costs incurred in processing the Permit extension, with such costs to be calculated on an hourly rate, in accordance with the latest City's By-law 211-83, as amended.

(Amended by By-law 2021-13)

6.4 If the title of the lands for which a Permit has been issued is transferred while the Permit remains in effect, the Permit shall be cancelled unless the new Owner of the lands, within thirty (30) days of the transfer, forthwith advises the Director of such transfer and either:

6.4.1 provides the City with an undertaking to comply with all the conditions under which the existing Permit was issued and also provide a Security Deposit, insurance, and any other documents required by the Director in accordance with the Permit; or

6.4.2 applies for and obtains a new Permit in accordance with the provisions of this By-law.

- 6.5 Where a Permit is issued based on mistaken, false or misleading information, the Director shall revoke the Permit, and the Owner and the Permit Holder shall ensure that all work that was the subject of revoked Permit ceases.
- 6.6 A Permit may be revoked by the Director under any of the following circumstances:
- 6.6.1 it was issued in error;
 - 6.6.2 the Owner or Permit Holder requests, in writing, that it be revoked;
 - 6.6.3 the terms of an agreement under this By-law have not been complied with;
 - 6.6.4 work authorized under the Permit has not been commenced prior to its expiry date; or
 - 6.6.5 the Owner fails to comply with section 5.3 of this By-law.
- 6.7 If a Permit has expired, been cancelled or revoked after the work has commenced and prior to the completion of the Site Alteration, the Owner shall forthwith restore the Site to its original condition or stabilize the Site to the satisfaction of the Director in a manner that will prevent adverse impacts on abutting properties and the environment.
- 6.8 Where the Director refuses to issue a Permit, the Applicant shall be informed in writing of the refusal.

(Amended by By-law 2021-13)

7 ADMINISTRATION AND ENFORCEMENT

- 7.1 The Director may delegate any of his/her duties under this By-law to an Inspector or Municipal Law Enforcement Officer.
- 7.2 Inspectors and Municipal Law Enforcement Officers, upon producing the appropriate identification, may enter and inspect any lands to determine whether the provisions of this By-law, an Order issued under this By-law or a condition of the Permit issued under this By-law have been complied with.
- 7.3 No person shall obstruct an Inspector or Municipal Law Enforcement Officer who is carrying out an inspection pursuant to this By-law. Any person who so obstructs an Inspector or a Municipal Law Enforcement Officer is guilty of an offence.
- 7.4 An Owner shall be presumed to have carried out an activity related to Site Alteration located on the Owner's property or contravened or caused the contravention of the conditions of a Permit issued under this By-law, as the case may be, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

(Amended by By-law 2021-13)

8 ORDER TO DISCONTINUE ACTIVITY

- 8.1 If a Municipal Law Enforcement Officer has reasonable and probable grounds to believe that a contravention of this By-law has occurred, the Municipal Law Enforcement Officer may make an Order requiring the Owner of the land and person who caused or permitted to be caused the Site Alteration to discontinue the activity.
- 8.2 An Order issued under section 8.1 shall set out:
- 8.2.1 the reasonable particulars of the contravention;
 - 8.2.2 what the Owner must do to rectify the contravention;
 - 8.2.3 the date and time by which the Order must be complied with;

8.2.4 a statement that if the work is not done in compliance with the Order within the specified time period, the City may have the work done at the expense of the Owner;

8.2.5 information regarding the City's contact person; and

8.2.6 the name of the Owner, the municipal address and the legal description of the land that is the subject of the contravention.

(Amended by By-law 2021-13)

9 WORK ORDER

9.1 If a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the officer may make an Order requiring the work to be done to correct the contravention.

9.2 An Order issued under section 9.1 shall set out:

9.2.1 the reasonable particulars of the contravention;

9.2.2 what the Owner must do to rectify the contravention;

9.2.3 the date and time by which the Order must be complied with;

9.2.4 a statement that if the work is not done in compliance with the Order within the specified time period, the City may have the work done at the expense of the Owner;

9.2.5 information regarding the City's contact person; and

9.2.6 the name of the Owner, the municipal address and the legal description of the land that is the subject of the contravention.

(Amended by By-law 2021-13)

10 SERVICE OF ORDERS

10.1 Orders issued by a Municipal Law Enforcement Officer under sections 8.1 and 9.1 shall be served personally or regular mail to the last known address of the Owner and any other person to be served.

10.2 If the City is unable to effect service on the Owner under section 10.1, 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 on the Owner.

(Amended by By-law 2021-13)

11 WORK DONE BY THE CITY

11.1 If the work required by an Order under sections 8.1 and 9.1 of this By-law is not done within the specified period, the City, in addition to all other remedies it may have, may do the work at the Owner's expense and may enter upon the land, at any reasonable time, for this purpose.

11.2 If the costs for work pursuant to section 11.1 are not paid to the City within 30 days of written demand therefor, the Treasurer may add the costs, including interest, to the tax roll for the Lot and collect them in the same manner as municipal taxes.

(Amended by By-law 2021-13)

12 OFFENCES, PENALTIES AND FINES

- 12.1 Every person who contravenes this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.
- 12.2 Every Person who is guilty of an offence under this By-law shall be subject to the following penalties:
- 12.2.1 Upon a first conviction, to a fine of not less than \$500 and not more than \$50,000.
- 12.2.2 Upon a second or subsequent conviction for the same offence, to a fine of not less than \$500 and not more than \$100,000.
- 12.2.3 Upon conviction for a continuing offence, to a fine of not less than \$100 and not more than \$10,000 for each day or part of a day that the offence continues. The total of the daily fines may not exceed \$100,000.
- 12.2.4 Upon conviction for a Multiple Offence, for each offence included in the Multiple Offence, to a fine of not less than \$100 and not more than \$10,000. The total of all fines for each included offence is not limited to \$100,000.
- 12.2.5 Where a Person convicted of an offence is a corporation, the corporation is liable to a fine not less than \$500 and not more than \$100,000.
- 12.3 Instead of laying a charge under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended, for a breach of any provision of this By-law, an Order, a Work Order, or any other Order issued pursuant this By-law, an Officer may issue an administrative penalty to the Person who has contravened this By-law.
- 12.4 The Officer has the discretion to either proceed by way of an administrative penalty or a charge laid under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended. If an administrative penalty is issued to a Person for the breach, no charge shall be laid against that same Person for the same breach.
- 12.5 The amount of the administrative penalty for a breach of a provision of this By-law, a Work Order or Order issued under this By-law is fixed as set out in By-Law No. 2016-84, A By-law to Implement an Administrative Monetary Penalty System for Non-Parking Offences, as amended, or any successor by-law.
- 12.6 A Person who is issued an administrative penalty shall be subject to the procedures as provided for in By-Law 2016-84, A By-law to Implement an Administrative Monetary Penalty System for Non-Parking Offences, as amended, or any successor by-law.
- 12.7 An administrative penalty imposed on a Person pursuant to this By-law that is not paid within 15 days after the day it becomes due and payable, constitutes a debt of the Person to the City and may be added to the tax roll and collected in the same manner as municipal taxes.
- 12.8 Where a fine is in default, the City may proceed with civil enforcement against the Person upon whom the fine has been imposed, pursuant to the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended.
- 12.9 The City may make a request to the treasurer of a local municipality to add any part of a fine that is in default to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the fine, and collect it in the same manner as municipal taxes.

12.10 The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the Person convicted, and such order shall be in addition to any other penalty imposed on the Person convicted.

(Amended by By-law 2021-13)

13 SEVERABILITY

If a court or a tribunal of competent jurisdiction declares any provision or part of a provision of this By-law to be illegal or unenforceable for any reason whatsoever, then that particular provision or provisions or part of the provision shall be severed and remainder of this By-law shall continue to remain in full force and shall be valid and enforceable to the fullest extent permitted by the law.

14 APPLICATION OF OTHER LAWS AND APROVALS

The issuance of a Permit by the Director does not relieve the Applicant of the responsibilities of obtaining all other approvals which may be required by the City or by any level of government and agencies thereof or from the compliance with any other by-law, legislation or regulation.

(Amended by By-law 2021-13)

15 SCHEDULES

The following Schedules attached to this By-law form and are part of this By-law:

15.1 Schedule "A" Application for Site Alteration Permit; and

15.2 Schedule "B" Oak Ridges Moraine and Greenbelt Plan Boundaries.

(Amended by By-law 2021-13)

16 SHORT NAME

This By-law shall be referred to as the "Site Alteration By-law".

17 EFFECT

This By-law shall take effect and come into force upon its passing.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS 13TH DAY OF DECEMBER, 2011.

KIMBERLEY KITTERINGHAM
CITY CLERK

FRANK SCARPITTI
MAYOR

SCHEDULE “A”



**THE CORPORATION OF THE CITY OF MARKHAM
DEVELOPMENT SERVICES COMMISSION**
101 TOWN CENTRE BOULEVARD, MARKHAM, ONTARIO L3R 9W3
Tel (905) 475-4861, Fax (905) 479-7768

APPLICATION FOR SITE ALTERATION PERMIT
Pursuant to the City of Markham By-law No: 2011-232

Please complete all applicable sections of the application form. An incomplete application will be returned to the Applicant.

| OWNER / APPLICANT INFORMATION | | | | |
|--------------------------------------|-------------------|-------------------------------------|----------------------------------|--|
| PROPERTY OWNER: (check one) | | <input type="checkbox"/> Person (s) | <input type="checkbox"/> Company | |
| Registered Land Owner: | <i>Last Name:</i> | <i>First Name:</i> | <i>Initial:</i> | |
| Name (if Company) | | Company Officer: | | |
| Address: | | | | |
| Contact Nos. | Tel. | Email: | | |
| Application Contact Person: | <i>Last Name:</i> | <i>First Name:</i> | <i>Position:</i> | |
| Address: | | | | |
| Contact Nos. | Tel. | Email: | | |

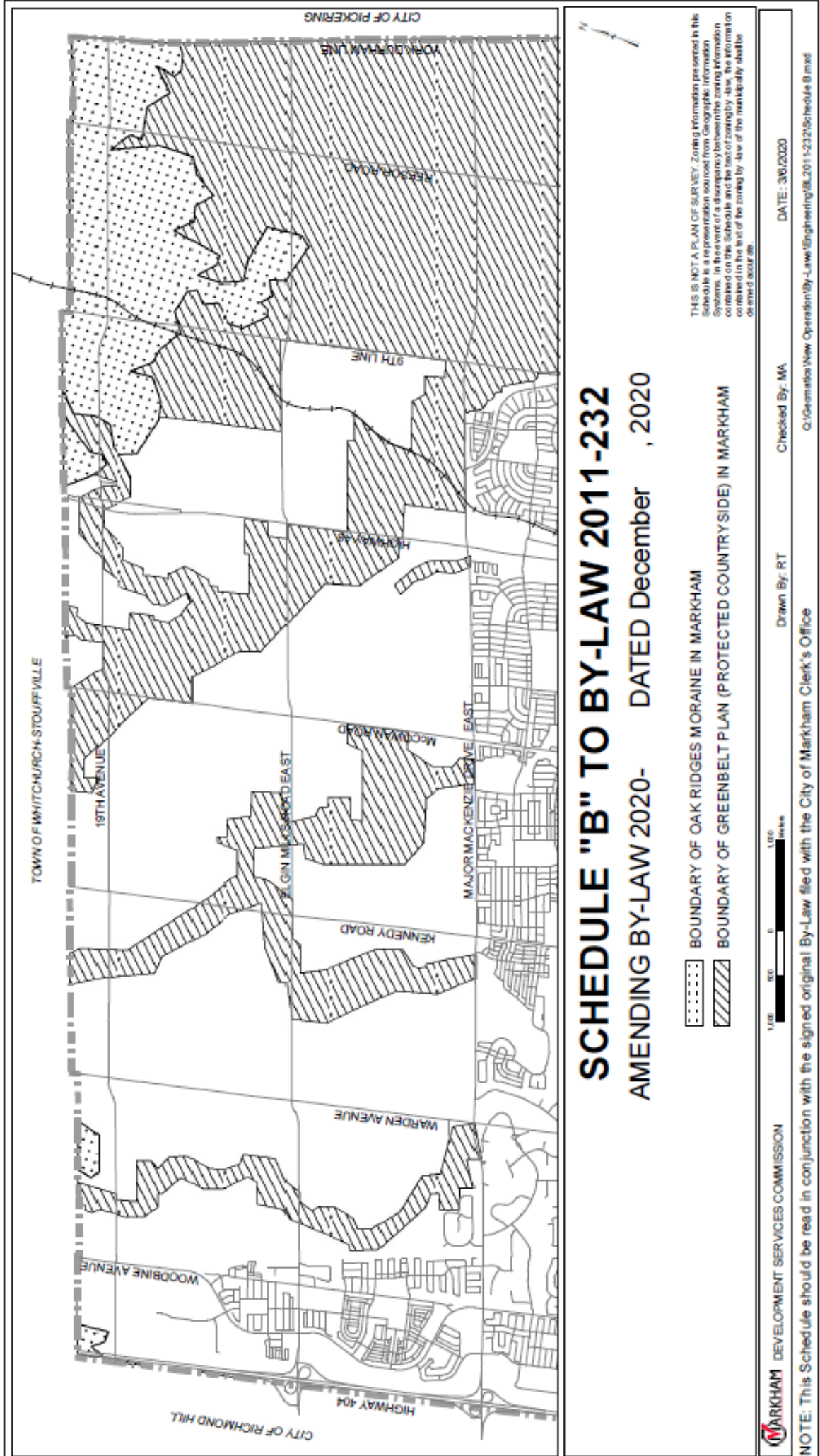
| PROPERTY INFORMATION | |
|-----------------------------|----------------------------|
| Address: | |
| Total Site Area (Ha): | Site Alteration Area (Ha): |

| CONSULTING ENGINEER INFORMATION | | | |
|--|-------------------|--------------------|------------------|
| Company Name | | | |
| Contact Person: | <i>Last Name:</i> | <i>First Name:</i> | <i>Position:</i> |
| Address: | | | |
| Contact Nos. | Tel. | Email: | |

| APPLICANT'S CERTIFICATION | |
|--|--------|
| <i>THE APPLICANT certifies to have read the Site Alteration By-law and Schedules and agrees to abide by all the conditions therein.</i> | |
| I, hereby make the above application for Site Alteration, declaring that all information contained herein is true and correct, and acknowledging the City of Markham will process the application based on the information provided. | |
| Signature: | Title: |
| Printed Name of Signatory: | Date: |



SCHEDULE "B"

Map of Oak Ridges Moraine and Green Belt Boundaries



**SCHEDULE "B" TO BY-LAW 2011-232
 AMENDING BY-LAW 2020- DATED December , 2020**

THIS IS NOT A PLAN OF SURVEY. Zoning information presented in this Schedule is a representation sourced from Geographic Information Systems. In the event of a discrepancy between the zoning information contained on this Schedule and the text of zoning by-law, the information contained in the text of the zoning by-law of the municipality shall be deemed accurate.

-  BOUNDARY OF OAK RIDGES MORaine IN MARKHAM
-  BOUNDARY OF GREENBELT PLAN (PROTECTED COUNTRYSIDE) IN MARKHAM



DATE: 3/1/2020
 Checked By: MA

Drawn By: RT

MARKHAM DEVELOPMENT SERVICES COMMISSION

NOTE: This Schedule should be read in conjunction with the signed original By-Law filed with the City of Markham Clerk's Office
 o:\Geomatics\New Operations\By-Laws\Engineering\BL2011-232\Schedule B.mxd