

**4. SITE ALTERATION BY-LAW**  
**RÈGLEMENT SUR LES MODIFICATIONS D'EMPLACEMENTS**

**COMMITTEE RECOMMENDATIONS AS AMENDED**

That Council:

1. Approve the revised Site Alteration By-law, attached as Document 1;  
and
2. Direct staff to conduct a review of the Site Alteration By-law, two years after its approval, and report back on its performance and any recommended improvements.
3. Direct staff to amend section 2 of the draft by-law to use the same wording about the preservation of normal farm practice as the Farming and Food Production Protection Act, 1998, such wording being:
  2. This by-law shall not apply to restrict a normal farm practice carried on as part of an agricultural operation.

**RECOMMANDATION DU COMITÉ, TELLES QUE MODIFIÉES**

Que le Conseil :

1. approuve le Règlement sur les modifications d'emplacements révisé qui figure au document 1 ci-joint.
2. demande au personnel de procéder à un examen du Règlement sur les modifications d'emplacements, soit deux ans après son

approbation, et de soumettre un rapport sur son rendement et sur les améliorations pouvant être recommandées.

3. demande au personnel de modifier l'article 2 du projet de règlement municipal de manière à reprendre le libellé suivant concernant le maintien des pratiques agricoles normales, utilisé dans la Loi de 1998 sur la protection de l'agriculture et de la production alimentaire :

2. Le présent règlement municipal n'a pas pour effet de limiter une pratique agricole normale exécutée dans le cadre d'une exploitation agricole.

#### DOCUMENTATION/DOCUMENTATION

1. Director, Economic Development and Long Range Planning, Planning, Infrastructure and Economic Development Department report dated April 23, 2018 (ACS2018-PIE-EDP-0005A)

Rapport du Directeur, Développement Économique et Planification à long terme, Direction générale de la planification, de l'infrastructure et du développement économique, daté le 23 avril 2018 (ACS2018-PIE-EDP-0005A)

2. Extract of draft Minutes, Agriculture and Rural Affairs Committee, 3 May 2018.

Extrait de l'ébauche du procès-verbal, Comité de l'agriculture et des affaires rurales, le 3 mai 2018.

**AGRICULTURE AND RURAL  
AFFAIRS COMMITTEE  
REPORT 34  
9 MAY 2018**

**130**

**COMITÉ DE L'AGRICULTURE ET  
DES AFFAIRES RURALES  
RAPPORT 34  
LE 9 MAI 2018**

**Report to  
Rapport au:**

**Agriculture and Rural Affairs Committee  
Comité de l'agriculture et des affaires rurales  
3 May 2018 / 3 mai 2018**

**and Council  
et au Conseil  
9 May 2018 / 9 mai 2018**

**Submitted on 23 April 2018  
Soumis le 23 avril 2018**

**Submitted by  
Soumis par:  
John Smit,  
Director / directeur,  
Economic Development and Long Range Planning / Développement économique  
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**Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE      File Number: ACS2018-PIE-EDP-0005A**

**SUBJECT: Site Alteration By-law**

**OBJET: Règlement sur les modifications d'emplacements**

## **REPORT RECOMMENDATIONS**

**That Agriculture and Rural Affairs Committee recommend Council:**

- 1. Approve the revised Site Alteration By-law, attached as Document 1; and**
- 2. Direct staff to conduct a review of the Site Alteration By-law, two years after its approval, and report back on its performance and any recommended improvements.**

## **RECOMMANDATIONS DU RAPPORT**

**Que le Comité de l'agriculture et des affaires rurales recommande au Conseil :**

- 4. d'approuver le Règlement sur les modifications d'emplacements révisé qui figure au document 1 ci-joint.**
- 5. de demander au personnel de procéder à un examen du Règlement sur les modifications d'emplacements, soit deux ans après son approbation, et de soumettre un rapport sur son rendement et sur les améliorations pouvant être recommandées.**

## **BACKGROUND**

Staff have been working with key stakeholders since early 2016 to develop a new City-wide by-law to regulate site alteration activities such as topsoil removal, filling or alteration of the grade of land. Background work on the project began several years earlier in response to policy direction in the City's Official Plan for such a by-law to be established. The new Site Alteration By-law (Document 1) is proposed to replace the City's existing Drainage By-law, which is a limited form of a site alteration by-law that only addresses drainage issues, and eight Topsoil Preservation By-laws carried forward from various former municipalities at the time of amalgamation. It will also enable the City to fully implement its Official Plan policies for the protection of significant natural heritage features as mandated by the Province and to legally enforce stop work orders where necessary. Under the new by-law, residents would not need to obtain the City's

approval before undertaking site alteration in most cases, but they would need to follow 10 basic rules intended to prevent or reduce potential negative impacts.

The draft by-law was approved at Planning Committee on February 27, 2018 (Document 4). However, the Agriculture and Rural Affairs Committee at its meeting on April 5 directed staff to make certain changes to the draft by-law and to bring it back to their next meeting (Document 5). Staff have made the requested changes to the by-law, which are included in Document 1. These changes include:

- Clarification that the by-law shall not restrict normal farm practices (see new Section 2 of the by-law).
- Restriction of Section 11, Protection of Natural Environment (formerly Section 10) to the urban area and the lands within approximately 2 kilometres of the urban area, as shown on the new Schedule B.
- Recognition that powers of entry shall be exercised in accordance with the Municipal Act.
- Exemption of the maintenance and repair of drainage works constructed under the *Drainage Act* or *Tile Drainage Act*.
- Edits to section numbering and references to reflect changes resulting from the above revisions.

## **DISCUSSION**

The ability for municipalities to enact a site alteration by-law is provided by Section 142 of the *Municipal Act*. Over 70 municipalities across southern Ontario already have site alteration by-laws in place, including the City of Kingston, which implemented its by-law in 2008. Typically, the stated intent of these by-laws is to reduce or avoid negative impacts to drainage patterns, soil quality, trees and natural features, and the public. This is accomplished through the establishment of rules directing how and where site alteration may occur. Most municipalities also require a permit to be obtained prior to

site alteration. Many of these by-laws include vegetation removal under their definition of site alteration.

Ottawa's Drainage By-law, which has been in force since 2007, is a limited version of a site alteration by-law that enables the City to address complaints about drainage issues caused by site alteration. Other issues, such as impacts to natural areas or soil quality, cannot be addressed through the Drainage By-law. The eight Topsoil Preservation by-laws carried forward from amalgamation do not provide consistent regulation of topsoil removal across the City and are not effective at protecting Ottawa's soils. A comprehensive Site Alteration By-law is therefore proposed to replace all nine of these by-laws, in order to more effectively:

- Prevent drainage problems.
- Protect the productivity of soils in areas designated in Ottawa's Official Plan as Agricultural Resource Areas.
- Protect designated natural areas and other natural heritage features (such as significant woodlands and valleylands) identified in Ottawa's Official Plan from negative impacts.
- Establish basic rules for how site alteration is done to avoid impacts to neighbours and the environment.

Staff have developed the proposed Site Alteration By-law in consultation with key stakeholders and the public, using the existing Drainage By-law as a foundation. Unlike other municipalities' site alteration by-laws, Ottawa's proposed by-law does not include a permit system. It establishes ten basic rules under which site alteration is allowed to occur without prior approval by the City in most cases. The proposed rules can be summarised as follows:

1. Do not work on someone else's property without their permission.
2. Do not cause drainage problems for your neighbours.

3. Follow all other applicable municipal, provincial and federal rules.
4. Do not damage the productivity of soils in areas designated for agricultural use.
5. Get City approval before working in or within 30 metres of significant natural areas in the area shown on Schedule B in the by-law.
6. Notify your neighbour(s) if you will be working within 10 metres of your property boundary.
7. Notify your City planner before working on a site during the development review process.
8. Control sediment and erosion, where necessary.
9. Fence off or otherwise limit your work area, where necessary, to prevent accidental damage to nearby trees, structures or property during the work.
10. Use clean fill.

Rules 1, 2 and 3 would apply to everyone. The by-law allows for exceptions to several of the other rules for property maintenance, minor landscaping, farming, woodlot management, approved developments and aggregate extraction. Some of these are statutory exemptions, while others are at the City's discretion.

The by-law will be enforced using existing staff resources from various departments. If a complaint is received, it will be directed to staff with expertise in the issue(s) related to the complaint for investigation (see Document 2). Investigations will include a desktop review of available information, combined with roadside or on-site inspections where necessary to determine whether the by-law's provisions have not been followed. Investigation and enforcement actions will result in incremental costs to the City (e.g., mailing of notices). If staff determine that a contravention has occurred, the City can require work to be done to correct the problem. In cases where corrective actions are not completed, the by-law also enables the City to undertake the work and recover its costs, plus a 15 per cent administration fee and 15 per cent interest, from the

landowner. These provisions have been carried forward from the City's current Drainage By-law and are consistent with the provisions of the *Municipal Act*. In cases where charges are warranted, the court system may impose financial penalties as well as requiring corrective work upon conviction, in accordance with the provisions of the *Municipal Act*.

### **RURAL IMPLICATIONS**

Rural residents are already subject to some of the rules in the by-law, under the existing Drainage By-law and topsoil preservation by-laws. These rules are being carried forward into the new by-law, with modifications where necessary to improve their clarity and consistency. Exemptions have been provided from several of the new rules in the proposed Site Alteration By-law for activities such as farming, property maintenance, landscaping, and woodlot management. These exemptions are intended to ensure that residents can continue to carry out normal daily activities without being impacted by the by-law. Rural residents on sufficiently large lots may also be exempt from the need to notify their neighbours if the location of their proposed site alteration is over 10 metre from any property boundary.

Farmers would not need to ask the City for approval or notify anyone before carrying out normal farm practices such as cultivating fields, spreading manure, installing and maintaining fences, planting or removing hedgerows and windbreaks, and maintaining drainage or irrigation systems. Farmers in areas designated as Agricultural Resource Areas or General Rural Areas in the Official Plan would not need the City's approval to clear natural features in order to return lands to cultivation. Most farmers already use sediment and erosion control, protective measures around work areas, and clean fill as best practices, and would therefore not be affected by those rules in the by-law.

### **COMMENTS BY THE WARD COUNCILLORS**

This is a city-wide report – not applicable.



## **CONSULTATION**

Staff established a web page on [ottawa.ca](http://ottawa.ca) in early January 2016 to provide the public with information about the project and to invite input at key stages. Project stakeholders were identified, including representatives from other government agencies (Ministry of Environment and Climate Change, Ministry of Natural Resources and Forestry, local conservation authorities), affected industries (agriculture, development / construction, landscaping, aggregate resources, and utilities) and local interest groups (Carleton Landowners' Association, Greenspace Alliance, Federation of Citizens' Associations, Ecology Ottawa, Ontario Woodlot Association). Most of these stakeholder groups were contacted and invited to meet with staff in early 2016 to discuss their potential interest in the project. A few others were identified and added later in the process.

Staff prepared a discussion paper for stakeholder and public consultation, and posted it on the project web page in early July 2016. A summary of the feedback received on the discussion paper is provided in Document 3. Staff then proceeded to develop a preliminary draft of the by-law, which was circulated to stakeholders in mid-January 2017. The stakeholder review period ended in early March. Extensive comments were received, and individual follow-up meetings were held with commenting stakeholders to discuss their feedback. Staff then prepared a revised draft for public consultation.

The revised draft was circulated to stakeholders and posted on the project web page for public review and comment from August 14 to September 25, 2017. The consultation was advertised through the City's Rural Affairs e-newsletter, the Planning and Development e-newsletter, Councillors' newsletters and stakeholder networks. A total of 38 written submissions were received (see attached summary in Document 3). Several of those comments were from rural residents in opposition to the by-law, responding to an e-mail campaign organized by the Carleton Landowners' Association. Others provided comments in support or suggested changes to the by-law. All comments received were considered by staff in developing the final draft of the by-law. Follow-up meetings were held with stakeholders, where necessary, to discuss their feedback.

Some stakeholder and public concerns could not be resolved through the consultation process. The Greenspace Alliance has consistently expressed their strong preference for a proactive permit-based system similar to that used by other municipalities, rather than the rules-in-regulation approach in Ottawa's proposed Site Alteration By-law. The Carleton Landowners' Association is concerned that rural landowners will be inconvenienced by anonymous complainants. Some farmers and woodlot owners are concerned about potential restrictions on their activities despite the exemptions provided in the by-law. Staff acknowledge these concerns and recommend that a review of the by-law be conducted in two years in order to assess its performance over time and determine whether any changes are needed.

#### **LEGAL IMPLICATIONS**

Legal Counsel was involved in the review and drafting of this report, including the proposed by-law.

#### **RISK MANAGEMENT IMPLICATIONS**

There are no risk implications.

#### **ASSET MANAGEMENT IMPLICATIONS**

There are no asset management implications associated with the recommendations of this report.

#### **FINANCIAL IMPLICATIONS**

The by-law will be enforced using existing staff resources. Incremental costs (i.e. mailing of notices) associated with investigation and enforcement actions will be funded from within existing resources. In cases where corrective actions are not completed, the by-law also enables the City to undertake the work and recover its costs, plus a 15 per cent administration fee, and interest per the Municipal Act, from the landowner.

## **ACCESSIBILITY IMPACTS**

The discussion paper and draft by-law were both provided to the public as accessible PDFs and all web content for this project was developed in accordance with the applicable standards. The approved by-law will be made available on the City's web site in an accessible format.

## **ENVIRONMENTAL IMPLICATIONS**

The Site Alteration By-law establishes basic rules intended to avoid or reduce negative environmental impacts that can result from site alteration activities. It also enables the City to fully implement its Official Plan policies for the protection of significant natural heritage features as mandated by the Province. Those policies state that site alteration shall only be permitted within and adjacent to such features if it can be demonstrated that there will be no negative impacts. At present, the policies can only be applied through the Development Review process, leaving many other cases of site alteration unregulated. The by-law also enables the City to issue stop work orders and require corrective actions where necessary to address environmental impacts resulting from improper site alteration.

## **TERM OF COUNCIL PRIORITIES**

This project addresses the following Term of Council Priority:

ES1 – Support an environmentally sustainable Ottawa

## **SUPPORTING DOCUMENTATION**

Document 1 Site Alteration By-law

Document 2 3-1-1 Complaint Flowchart and Investigation Process

Document 3 Consultation Summary

Document 4 Extract of Minutes from Planning Committee (February 27)

Document 5 Extract of Minutes from Agriculture and Rural Affairs Committee (April 5)

**DISPOSITION**

Legal Services, in consultation with staff from the Resiliency and Natural Systems Planning and By-law and Regulatory Services teams, will prepare the by-law for enactment by Council.

Resiliency and Natural Systems Planning staff will work with Public Information and Media Relations to carry out the communication plan and provide the necessary information to the public and internally to staff.

Staff from various City departments (Planning, Infrastructure and Economic Development, Public Works and Environmental Services, Community and Protective Services, and Service Innovation and Performance) will work co-operatively to implement the by-law.

Resiliency and Natural Systems Planning staff will work with Service Ottawa to track calls for service relating to the by-law over the next two years.

**Document 1 – Site Alteration By-law No. 2018-XXX**

Site Alteration By-law

A by-law of the City of Ottawa to protect its agricultural resources and natural heritage features from negative impacts caused by site alteration, and to prevent drainage issues and public nuisances resulting from site alteration activities.

The Council of the City of Ottawa enacts as follows:

SHORT TITLE

1. This by-law may be referred to as the “Site Alteration By-law”.

SITE ALTERATION AND FARMING

2. This by-law shall not apply so as to prevent a farm, meeting the definition of “Agricultural Operation” under the Farming and Food Production Protection Act, 1998, S.O. 1998, c.1, as amended, from carrying out a Normal Farm Practice.

DEFINITIONS

3. In this by-law,

“Agricultural Operation” means an agricultural, aquacultural, horticultural or silvicultural operation that is carried on in the expectation of gain or reward;

“Agricultural Resource Area” means lands that have been designated as such on Schedules A or B in the City of Ottawa Official Plan, as amended from time to time;

“City” means the municipal corporation of the City of Ottawa or the geographic area of the City of Ottawa as the context requires;

“Corrective Work Order” means an order issued pursuant to this by-law to do work to correct a contravention;

“Ditch” means a linear depression, swale, or open channel, all of which convey storm water runoff from public or private properties in the same manner as does a piped sewer system;

“Ditch Alteration Policy” means the Ditch Alteration Policy, which was approved by City Council on July 9, 2008, or as amended;

“Drain” means a culvert, rain water leader, sewer, swale, Ditch, or storm sewer, all of which collect and carry rain water, ground water, surface water or subsurface water, and includes appurtenances such as manholes and catch basins, but does not include any drainage works created under the *Drainage Act*;

“Drainage” means the movement of water across a property, whether by way of the natural surface or subsurface characteristics of the property or by an artificial method;

“Ecological Functions” means the natural processes, products or services that living and non-living environments provide or perform within or between species, ecosystems and landscapes, including biological, physical and socio-economic interactions;

“Environmental Impact Statement” means a study completed in accordance with the City’s Environmental Impact Statement Guidelines, to identify the limits of any Natural Heritage Features and their Ecological Functions on or adjacent to a proposed project site, assess the potential environmental impacts of the project, and recommend ways to avoid or reduce Negative Impacts to the features or functions;

“Fill” means any type of material deposited or placed on lands and includes, but is not limited to Soil, stone, concrete, asphalt, rubbish, garbage, turf, dirt, earth, aggregate, and binder either singly or in combination, whether originating on the site or elsewhere, used or capable of being used to raise, lower, or in any other way affect or alter the contours of ground; not all such materials may be acceptable for placement (fill) on a site (see Schedule “A”);

"General Manager" means either the General Manager of the Public Works and Environmental Services Department or the General Manager of the Planning,

Infrastructure and Economic Development Department of the City of Ottawa, or both, as specified in this by-law, or his or her designate;

“General Rural Area” means lands that have been designated as such on Schedules A or B in the City of Ottawa Official Plan, as amended from time to time;

“Good Forestry Practices” means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are applied and that minimize detriments to forest values including significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health and aesthetics and recreational opportunities of the landscape;

"Good Repair" includes the provision of facilities, the making of additions or alterations or the taking of any other action that may be required to ensure that a Ditch or Drain remains clear of any Obstruction and operates as designed or intended;

“Landscaping” means the installation and maintenance of any combination of the following elements:

- (a) vegetation including trees, shrubs, hedges, ornamental plantings, grass or other ground cover, or
- (b) non-vegetative hardscaping materials such as brick, pavers, rock, stone, concrete, tile and wood, excluding monolithic concrete and asphalt and any area used for parking, but including such features as a walkway, patio, deck or in-ground pool, or
- (c) architectural elements such as decorative fencing, walls, sculptures, gazebos, trellises, planters, benches and other similar features

"Last Known Address" means the address that appears on the last revised assessment roll of the City;

“Municipal Trees and Natural Areas Protection By-law” means By-law Number 2006-279 of the City of Ottawa, respecting the protection and maintenance of trees and natural areas on municipal property, as amended from time to time;

“Natural Environment Area” means lands that have been designated as such on Schedules A or B in the City of Ottawa Official Plan, as amended from time to time;

“Natural Heritage Feature” means any component of the City’s natural heritage system, identified in accordance with the policies in Section 2.4.2 of the Official Plan, as amended from time to time;

“Natural Heritage System Overlay” refers to Schedules L1-L3 in the City of Ottawa Official Plan, as amended from time to time;

“Negative Impact” means degradation that threatens the health and integrity of the natural features or Ecological Functions for which an area is identified;

“Normal Farm Practice” means a practice that,

- (a) is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar Agricultural Operations under similar circumstances, or
- (b) makes use of innovative technology in a manner consistent with proper advanced farm management practices; and,
- (c) for the purposes of this By-law, specifically includes activities conducted by an Agricultural Operation in accordance with the requirements of the *Nutrient Management Act*, as amended, or a completed Environmental Farm Plan;

"Obstruct" means any act or inaction that has the effect of preventing or hindering the proper functioning of a Ditch or Drain including, but not limited to the placement, dumping or removal of Fill or Topsoil, or altering the grade of the land by any means including, but not limited to, Landscaping, pavement, interlock, fencing, a swimming pool, deck, shed or retaining wall;



"Obstruction" means any object which prevents or hinders proper functioning of a Ditch or Drain including, but not limited to Fill, Topsoil, rocks, gravel, Landscaping, pavement, interlock, fencing, a swimming pool, deck, shed or retaining wall;

"Occupant" means any person or persons over the age of 18 years in possession of property;

"Owner" means the registered owner of the property or the agent of the registered owner duly authorized by the registered owner in writing;

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

"Property" includes a building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences and erections thereon whether heretofore or hereafter erected, and includes vacant property;

"Rural Natural Features Area" means lands that have been designated as such on Schedule A in the City of Ottawa Official Plan, as amended from time to time;

"Site Alteration" means activities such as the removal of Topsoil from land, the placement or dumping of Fill on land, the alteration of the grade of land, or excavation by any means, including the clearing or stripping of vegetation from the land, the compaction of Soil or the creation of impervious surfaces, or any combination of these activities, and "Alter" or "Alteration" has a corresponding meaning;

"Soil" means any material commonly known as earth, topsoil, loam, subsoil, clay, sand or gravel;

"Stop Work Order" means an order issued pursuant to this by-law to stop the Site Alteration;

“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;

“Urban Natural Features” means lands that have been designated as such on Schedule B in the City of Ottawa Official Plan, as amended from time to time;

“Urban Tree Conservation By-law” means By-law Number 2009-200 of the City of Ottawa, respecting the protection of trees on private property in the urban area, as amended from time to time;

“Watercourse” means a natural or artificial open channel, swale or depression in which water flows continuously or intermittently, and includes a Drain or a Ditch;

“Works” means any physical change to the land, and is synonymous with Site Alteration.

#### **INTERPRETATION**

4. (1) This by-law includes the Schedules annexed hereto and the Schedules are hereby declared to form part of this by-law.
- (2) This by-law is gender-neutral and, accordingly, any reference to one gender includes the other.
- (3) References to items in the plural include the singular, as applicable, unless used with a number modifying the term.
- (4) Dimensions specified in metric units shall be the official dimensions. Imperial dimensions contained in parentheses are provided as a convenience only.
- (5) In this by-law, the word “metre” shall be represented by the abbreviation “m”, the word “centimetre” shall be represented by the abbreviation “cm”, the word “feet” shall be represented by the abbreviation “ft”, and the word “inches” shall be represented by the abbreviation “in”.

- (6) It is declared that if any section, subsection or part thereof be declared by any Court of Law to be bad, illegal or ultra vires, such section, subsection, part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.
- (7) Headings are inserted for convenience of reference purposes only, form no part of this by-law and shall not affect in any way the meaning or interpretation of the provisions of this by-law.
- (8) Unless specified otherwise below, this by-law applies to all lands within the geographical limits of the City of Ottawa other than those areas, which are subject to regulations made under Section 28(1) of the *Conservation Authorities Act*, as amended.

#### PROHIBITIONS – GENERAL

5. No person shall perform, permit, or cause to be performed or permitted any Site Alteration except in accordance with the provisions of this by-law, including the standard practices listed in Schedule “A”.
6. No person shall carry out any Site Alteration unless it is done by, at the request of, or with the consent of the owner of the property on which the Site Alteration takes place.

#### PRESERVATION OF DRAINAGE

7. (1) No person, owner or occupant shall, or shall permit any person to, alter or obstruct, or cause or contribute to the Obstruction of a Ditch, Drain, or lot grade such that the flow of storm, rain, ground, surface or subsurface water is increased, impaired or deviates from the existing drainage pattern or approved grading and drainage pattern and causes or is likely to cause an adverse condition on any abutting property.
- (2) For the purposes of Subsection (1), "deviates" does not include a corrective measure which in the sole opinion of the General Manager of Public Works and

Environmental Services, improves the property's drainage without impacting the existing drainage pattern or approved grading and drainage pattern or causing an adverse condition on any abutting property.

- (3) Where an owner or occupant wishes to alter a roadside ditch system or a ditch that conveys stormwater from City lands via a registered or unregistered easement, an application to Alter a Ditch shall be made in accordance with the process described in the City's Ditch Alteration Policy, as amended.
  - (4) In determining whether to approve the application referred to in this section, the General Manager shall consider the criteria described in Sections 5, 6, 7 and 8 of the Ditch Alteration Policy, as amended from time to time.
8. No owner or occupant shall fail to keep a private Ditch or Drain in Good Repair.
  9. No owner or occupant shall allow a private Ditch or Drain to fall into disrepair such that the flow of storm, rain, ground, surface or subsurface water is increased, impaired or deviates from the existing drainage pattern or approved grading and drainage pattern and causes or is likely to cause an adverse condition on any abutting property.

#### **PROTECTION OF AGRICULTURAL RESOURCES**

- 10.(1) No person shall perform, permit, or cause to be performed or permitted any Topsoil removal or other Site Alteration that would be detrimental to the agricultural productivity of lands in a designated Agricultural Resource Area.
- (2) Despite Subsection (1) the following activities are permitted:
  - a) Site Alteration that is incidental to a Normal Farm Practice carried out by an Agricultural Operation, including, but not limited to, sod-farming, greenhouse operations, nurseries, field and forage crop or livestock production, but not including the removal of Topsoil or peat for sale, exchange or other disposition;

- b) Site Alteration associated with the implementation of a development that has been approved by the City under either the *Planning Act* or the *Building Code Act*, provided that all such Works proceed in accordance with the other provisions of this by-law and any applicable conditions of approval; and,
- c) Site Alteration associated with the maintenance of services, including septic systems or wells, the installation and maintenance of fences, or the Landscaping and maintenance of yards, provided that all such Works are conducted in accordance with the other provisions of this by-law.

#### PROTECTION OF NATURAL ENVIRONMENT

11. (1) This section applies only to the area shown on Schedule B of this by-law, as amended.

(2) No person shall perform, permit, or cause to be performed or permitted any Site Alteration in or within 30 metres of any designated Natural Environment Area, Urban Natural Features, or Rural Natural Features Area, or any Natural Heritage Feature identified on the City's Natural Heritage System Overlay, without the prior written approval of the General Manager of Planning, Infrastructure and Economic Development.

(3) The General Manager may:

- a) Require an Environmental Impact Statement to be prepared in accordance with the City's Environmental Impact Statement Guidelines, as amended, to confirm the extent of any Natural Heritage Features and associated Ecological Functions on or adjacent to the subject site and to address the potential Negative Impacts of the proposed Site Alteration on those features and functions;
- b) Impose conditions, above and beyond the standard practices contained within Schedule A of this by-law, for the protection of any significant

Natural Heritage Features and associated Ecological Functions identified on or adjacent to the subject site;

- c) Refuse to approve the Site Alteration, in whole or in part, where such Alteration would result in Negative Impacts to the Natural Heritage Feature or its Ecological Functions.
- (4) Despite Subsection (2) the following activities are permitted:
- a) Site Alteration associated with the implementation of a development that has been approved by the City under either the *Planning Act* or the *Building Code Act*, provided that all such Works proceed in accordance with the other provisions of this by-law and any applicable conditions of approval;
  - b) Site Alteration associated with the maintenance of services, including septic systems or wells, the installation and maintenance of fences, or the Landscaping and maintenance of yards, provided that all such Works are conducted in accordance with the other provisions of this by-law;
  - c) Site Alteration that is incidental to forest management activities conducted in accordance with Good Forestry Practices, subject to the Urban Tree Conservation By-law or Municipal Trees and Natural Areas Protection By-law where those by-laws apply;
  - d) Site Alteration that is incidental to a Normal Farm Practice carried out by an Agricultural Operation on lands adjacent to a designated Natural Environment Area, Urban Natural Features, or Rural Natural Features Area, or any Natural Heritage Feature identified on the City's Natural Heritage System Overlay, as amended; and,
  - e) In the case of Natural Heritage Features that are located in a designated Agricultural Resource Area or General Rural Area, the clearing or stripping of trees and other vegetation by an Agricultural Operation in order to

return lands to agricultural production in accordance with Normal Farm Practice.

12. (1) No person shall knowingly furnish false or incorrect information for the purposes of obtaining the General Manager's approval.
- (2) The General Manager's approval may be revoked if,
  - a) it was issued on mistaken, misleading, false or incorrect information;
  - b) it was issued in error;
  - c) the owner or agent requests, in writing, that it be revoked; or,
  - d) the owner or agent fails to comply with the conditions under which the approval was issued.

#### **POWERS OF ENTRY FOR INSPECTION**

13. (1) The General Manager may enter upon property at any reasonable time for the purpose of carrying out an inspection to ascertain whether the provisions of this by-law are complied with and to enforce and carry into effect the provisions of this by-law, but this power of entry does not include dwellings.
  - (2) No person shall hinder or obstruct or attempt to hinder or obstruct the General Manager in the discharge of duties under this by-law.
  - (3) The powers of entry shall be exercised in accordance with the provisions of the Municipal Act.
14. (1) For the purposes of an inspection under Section 13 the General Manager may:
  - a) require the production for inspection of documents or items that may be relevant to the inspection;
  - b) inspect and remove documents or items 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 or photographs necessary for the purposes of the inspection.
- (2) A receipt shall be provided for any document or item removed under Subsection (1) and the document or item shall be promptly returned after the copies or extracts are made.
- (3) Copies of or extracts from documents and items removed under Subsection (1) and certified as being true copies of or extracts from the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the originals.

#### **NOTICE OF VIOLATION**

15. (1) When Site Alteration occurs that is not pursuant to the requirements of this by-law, the General Manager shall send a notice of violation, by registered mail or direct delivery of the notice by hand, to the Last Known Address of the owner and occupant as applicable, requiring the owner and occupant to conform to the requirements of this by-law, and the notice shall specify the time allowed for compliance.
- (2) No person shall fail to comply with a notice sent pursuant to Subsection (1).

#### **ORDER TO DISCONTINUE ACTIVITY (STOP WORK ORDER)**

16. (1) If the General Manager is satisfied that a contravention of this by-law has occurred, the City may make an order requiring the person who contravened this by-law, or who caused or permitted the contravention, or the owner or occupant of the land on which the contravention occurred, to discontinue the contravening activity.



- (2) The order shall set out reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred and the date by which there must be compliance with the order.

### **CORRECTIVE WORK ORDER**

17. (1) If the General Manager is satisfied that a contravention of this by-law has occurred, the City may make an order requiring the person who contravened this by-law, or who caused or permitted the contravention, or the owner or occupant of the land on which the contravention occurred, to do work to correct the contravention to the satisfaction of the General Manager, which may include:
- a) the removal of Fill;
  - b) the filling in of any excavations.
  - c) the elimination of any hazard or potential hazard resulting from the Alteration of the grade of land or the placing, dumping or removal of fill and the restoration of the land to a condition of safety and/or its original environmental condition;
  - d) the restoration of the land to its former condition prior to the Site Alteration;
  - e) the undertaking of any further investigations as required to identify the extent of the breach of this by-law and to correct the contravention, as deemed appropriate by the General Manager.
- (2) The order shall set out reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred, the work to be done, and the date by which the work must be done.

## SERVICE OF ORDERS

18. Orders issued under Sections 16 and 17 may be served personally by the City or sent by registered mail to the person contravening the by-law, and may be posted in a conspicuous place on the property where the contravention occurred.
- a) Where an order under this by-law is served personally by the City, it shall be deemed to have been served on the date of delivery to the person or persons named;
  - b) The posting of an order on the affected lands shall be deemed to be sufficient service of the order on the person or corporation to whom the order is directed on the date it is posted;
  - c) Where an order issued under the by-law is sent by registered mail, it shall be sent to the last known address of:
    - i. The owner; or,
    - ii. The person or company that committed the contravention; and shall be deemed to have been served on the date of the next workday following the date of mailing.

## DEFAULT AND REMEDIAL ACTION

19. (1) Where a notice or order has been sent by the City pursuant to Sections 15(1) or 17(1) and the requirements of the notice or order have not been complied with, the General Manager may cause the work to be done and the total cost of the work shall be at the expense of the owner or occupant.
- (2) For the purposes of Subsection (1), the City may enter upon property at any reasonable time.
- (3) The total cost of such work shall include an administration fee in the amount of 15 per cent of the cost of the work.

- (4) The costs of the work to be done pursuant to Subsection (1) and all costs related to the administration, enforcement and the establishment, acquisition and replacement of capital assets related to this by-law, may be recovered from the owner or occupant by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.
- (5) The cost includes interest calculated at a rate of 15 per cent, calculated for the period commencing on the day the City incurs the cost and ending on the day the cost, including the interest, is paid in full.
- (6) The amount of the cost, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien, in respect of all costs that are payable at the time the notice is registered plus interest accrued at the rate established under Subsection (5) to the date the full payment is made.
- (7) Upon receiving payment of all costs payable plus interest accrued to the date of payment, the City shall register a discharge of the lien in the proper land registry office at the expense of the owner or occupant.

#### **OFFENCES AND PENALTIES**

20. Every person who contravenes any of the provisions of this by-law is guilty of an offence and the offence is hereby designated as a continuing offence as provided for in Subsection 429(2)(a) of the *Municipal Act, 2001*, S.O 2001, c.25, as amended.
21. Every person who is convicted of an offence under this by-law is liable to a minimum fine not exceeding \$500 and to a maximum fine not exceeding \$100,000, pursuant to Subsections 429(1) and (3) of the *Municipal Act, 2001*, S.O 2001, c.25, as amended.
22. A person who is convicted of an offence under this by-law is liable, for each day or part of a day that the offence continues, to a minimum fine not exceeding \$500 and a maximum fine not exceeding \$10,000, and the total of all daily fines for the

offence is not limited to \$100,000 as provided for in Subsection 429(3), paragraph 2, of the *Municipal Act, 2001*, S.O 2001, c.25, as amended.

23. When a person has been convicted of an offence under this by-law the Superior Court of Justice or any court of competent jurisdiction thereafter, may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence, and requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

#### APPLICATION OF OTHER LAWS AND APPROVALS

24. No person shall fail to comply with any federal or provincial law, or other municipal by-law or policy, while undertaking Site Alteration.

#### GENERAL EXEMPTIONS

25. The provisions of this by-law do not apply where:
- a) Site Alteration is undertaken by the City or a local board of the City;
  - b) Site Alteration is undertaken by a Conservation Authority or a Ministry of the Provincial or Federal Government;
  - c) Site Alteration is undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, as amended, for the purpose of constructing or maintaining a transmission system or distribution system, as defined in the *Electricity Act, 1998*, as amended;
  - d) Site Alteration occurs as a condition of approval imposed after December 31, 2002 with respect to a site plan, plan of subdivision, a consent, or a development permit under sections 41, 51, 53 or 70.2 respectively of the *Planning Act*, as amended, or as a requirement of an agreement entered into under those sections;

- e) Topsoil removal is 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, but not including the removal of Topsoil for sale, exchange or other disposition;
- f) Site Alteration occurs on land described in a licence for a pit or quarry or a permit for a wayside pit or a wayside quarry issued under the *Aggregate Resources Act*, as amended;
- g) Site Alteration is undertaken 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*, as amended, 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*, as amended;
- h) Site Alteration is undertaken as an incidental part of the construction, maintenance or repair of drainage works under the *Drainage Act*, as amended, or the *Tile Drainage Act*, as amended;
- i) Site Alteration is required as part of the lawful use, operation, establishment, alteration, enlargement, or extension of a waste management system or waste disposal site within the meaning of Part V Waste Management of the *Environmental Protection Act*, as amended, or a private waste disposal site or waste management system that is exempted by regulations for that Part; or,
- j) Site Alteration is required as part of the lawful construction, extension, alteration, maintenance, or operation of works under Section 26 of the *Public Transportation and Highway Improvement Act*, as amended.

REPEALS

26. The following by-laws of the City of Ottawa and the old municipalities are repealed:

- (1) By-law Number 15 of 1982 of the old Corporation of the Township of Cumberland entitled "A By-law to protect and conserve topsoil within the Township of Cumberland"; and,
- (2) By-law Number 164 of 1981 of the old Corporation of the City of Gloucester entitled "A By-law to protect and conserve topsoil within the City of Gloucester"; and,
- (3) By-law Number 45 of 1986 of the old Corporation of the Township of Goulbourn entitled "Being a by-law of the Corporation of the Township of Goulbourn to regulate or prohibit the removal of topsoil"; and,
- (4) By-law Number 111 of 1991 of the old Corporation of the City of Kanata entitled "Being a by-law of the Corporation of the City of Kanata to regulate or prohibit the removal of topsoil"; and,
- (5) By-law Number 112 of 1984 of the old Corporation of the City of Nepean entitled "Being a by-law of The Corporation of the City of Nepean to regulate or prohibit the removal of topsoil"; and,
- (6) By-law Number 79 of 1981 of the old Corporation of the Township of Osgoode entitled "The Topsoil Preservation By-law"; and,
- (7) By-law Number 39 of 1978 of the old Corporation of the Township of Rideau entitled "A By-law to preserve and protect topsoil within the Municipality"; and,
- (8) By-law Number 43 of 1986 of the old Corporation of the Township of West Carleton entitled "Being a By-law to protect, conserve and regulate the removal of topsoil in the Township of West Carleton"; and,
- (9) By-law Number 2007-398 of the City of Ottawa, entitled "Drainage By-law," being a by-law of the City of Ottawa to prohibit the obstruction or alteration

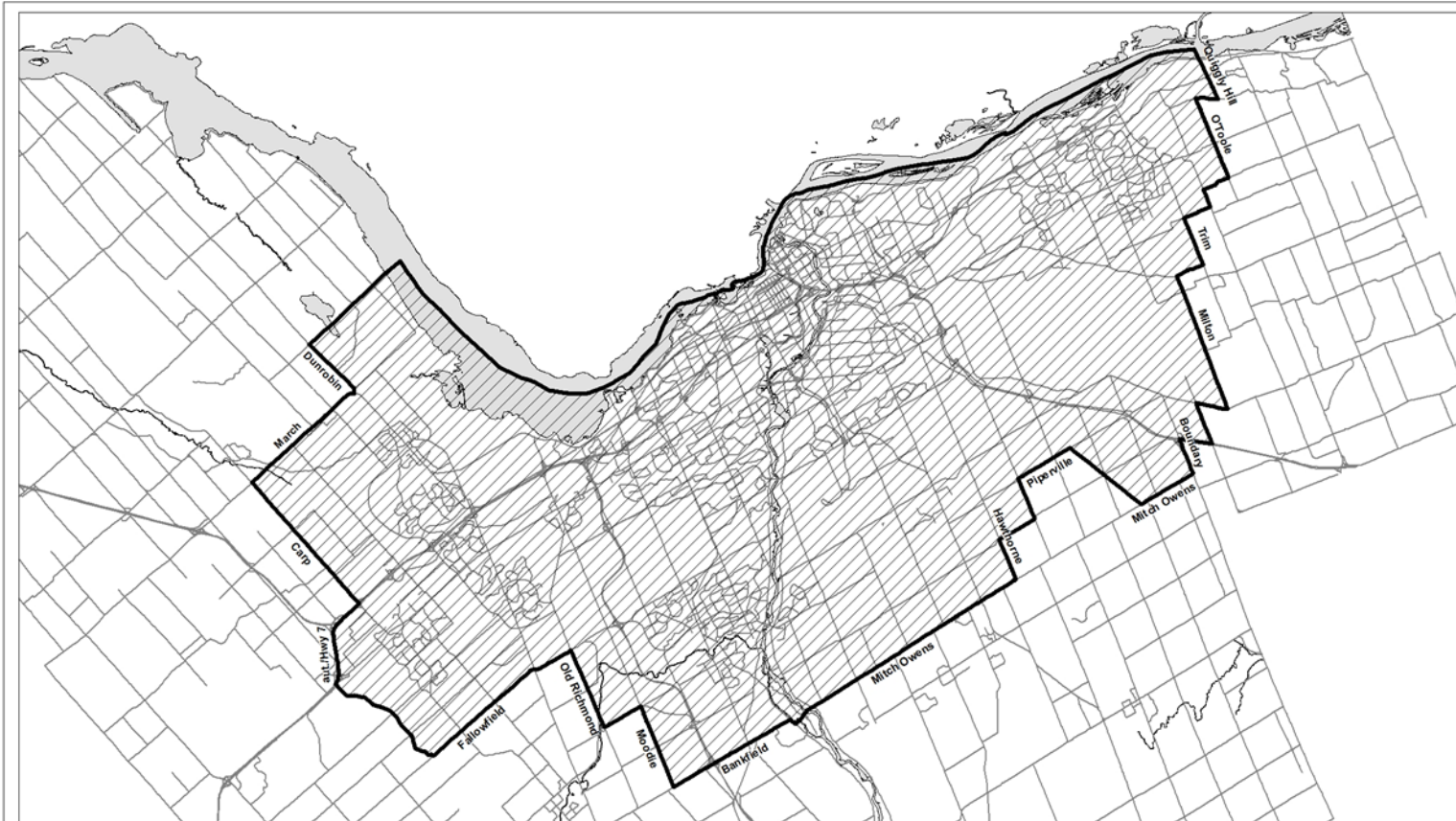
of drains, private drains and the grade of land, and regulating the maintenance and repair of drains, private drains, and the grade of land.”

#### Schedule A – Standard Practices for Site Alteration

1. (1) Prior to commencing Site Alteration, notification shall be provided where required by parts (2) and (3) below, except in the case of:
  - a) minor Landscaping or yard maintenance activities, such as the planting of trees or shrubs, the top-dressing of lawns, or the creation and maintenance of garden beds, but not including the installation of an in-ground pool; or,
  - b) Site Alteration that is incidental to a Normal Farm Practice carried out by an Agricultural Operation; or,
  - c) Site Alteration that is incidental to forest management in accordance with Good Forestry Practices; or,
  - d) urgent events, such as flooding or failures of private services.
- (2) Where Site Alteration is proposed to occur within 10 m of the property boundary, the owner or their agent shall notify the owner or occupant of the adjacent private property by means of a written or posted notice.
- (3) Where Site Alteration is proposed to occur on a property that is subject to a *Planning Act* application, the owner or their agent shall provide written notification to the City’s lead planner for the file.
- (4) Notification referred to in parts (2) and (3) above shall include:
  - a) a clear description of the nature and purpose of the Site Alteration,
  - b) the location and extent of the area to be affected,

- c) the anticipated duration of the work, and,
  - d) contact information for the person or company responsible for carrying out the Site Alteration.
2. The following practices shall apply to all Site Alteration activities, except in the case of Site Alteration associated with the implementation of a development that has been approved by the City under either the *Planning Act* or the *Building Code Act*, which shall proceed in accordance with any applicable conditions of approval.
- (1) Sediment and erosion control measures shall be provided where necessary to prevent impacts to Natural Heritage Features, Watercourses or other surface water features, adjacent Properties, or City infrastructure. These measures shall be installed prior to the commencement of Site Alteration, and shall be maintained in good working order until the site has stabilized, after which any such measures that are not permanent shall be removed in a manner that minimizes disturbance to the site.
  - (2) Fencing or other protective measures shall be provided where necessary to clearly delimit the work area and prevent impacts to adjacent trees or other vegetation, Natural Heritage Features, Properties, or City infrastructure. Such measures shall be installed prior to the commencement of Site Alteration, and shall be maintained in good working order until the completion of the Site Alteration, after which any such measures that are not permanent shall be removed in a manner that minimizes disturbance to the site.
  - (3) All Fill to be dumped or placed shall be clean and free of trash, rubbish, glass, liquid or toxic chemicals, hazardous waste, contamination, or other deleterious material.





Planning, Infrastructure and Economic Development Department,  
GIS and Data Management



Services de la planification, de l'infrastructure  
et du développement économique,  
SIG et Gestion des données

I:\GIS\Shapefiles\Site\_Alteration\_By-law SchedB

2018 / 04 / 17

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Scale - N.T.S. / Echelle N.A.E.

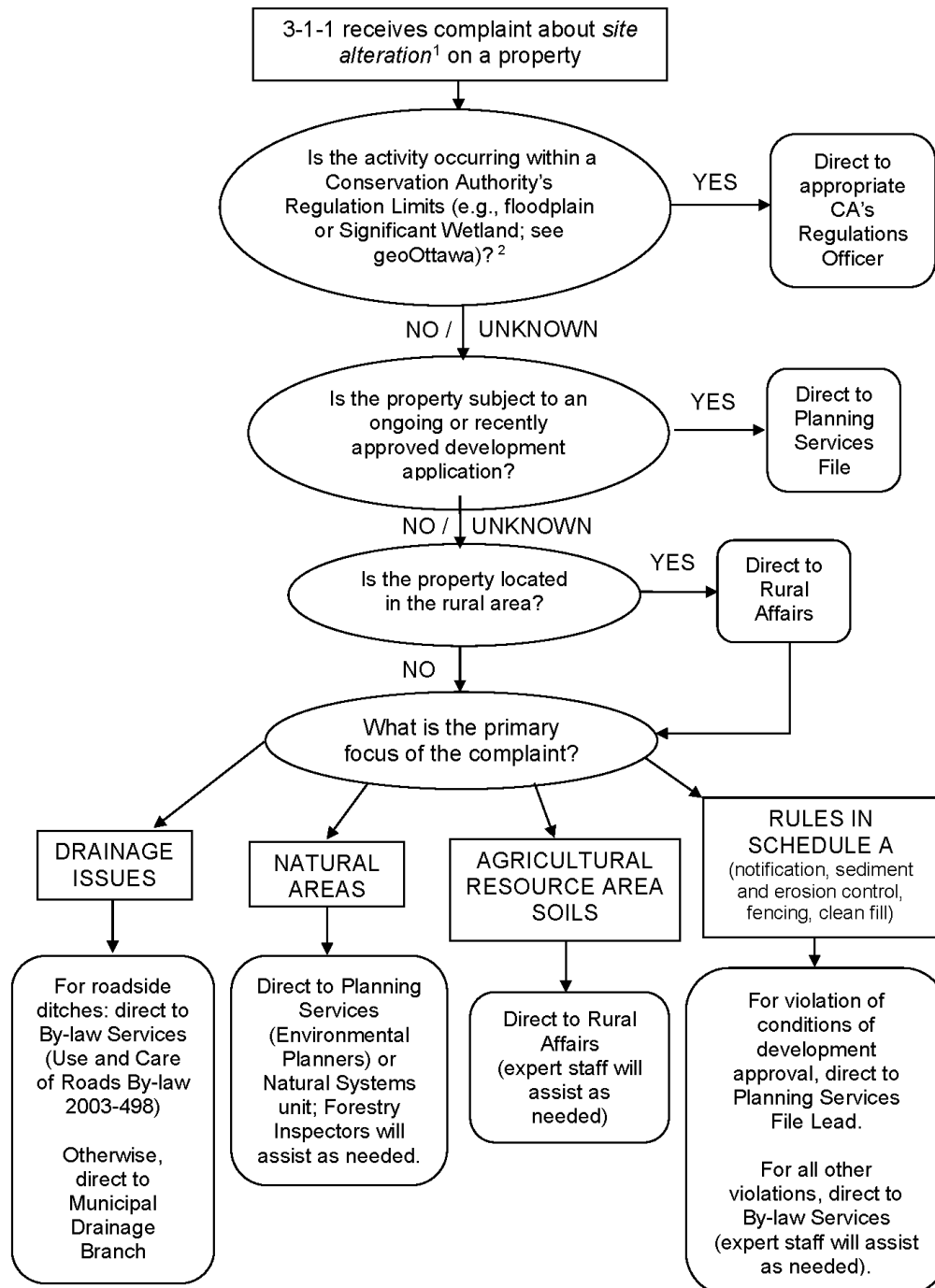
**This is Schedule B to the Site Alteration By-law No. 2018-XXX  
Annexe B au Règlement n° 2018-XXX - Les modifications d'emplacements**



Area affected by Section 11 of the Site Alteration By-law /

Limites de la zone régie par l'article 11 de la Règlement municipal sur les modifications d'emplacements

## Document 2 – 3-1-1 Complaint Flowchart and Investigation Process



Notes:

1 – Site alteration means “activities such as the removal of topsoil from land, the placement or dumping of fill on land, the alteration of the grade of land, or excavation by any means, including the clearing or stripping of vegetation from the land, the compaction of soil or the creation of impervious surfaces, or any combination of these activities.”

2 – Any site alteration occurring within a Conservation Authority’s Regulation Limits is under their jurisdiction, and is not subject to this by-law. Both agencies may need to be involved in cases where site alteration extends across both regulated and non-regulated lands.

3 – The Planning Services file lead should consult expert staff as needed to address a complaint, based on the direction in this flow chart. When 3-1-1 refers calls directly to expert staff, those staff should check to determine whether the property is in fact subject to an ongoing or recently approved development application, and if so, should contact the file lead.

### Process for City Staff Investigating Site Alteration Complaints

Note: available background information and roadside surveys should be used to the extent possible in this process, before proceeding to on-site investigation. On-site investigations may be unnecessary in cases where complaints are clearly not supported after preliminary investigations have been completed.

1. Confirm whether the complaint actually involves **site alteration** as defined in the by-law: “activities such as the removal of topsoil from land, the placement or dumping of fill on land, the alteration of the grade of land, or excavation by any means, including the clearing or stripping of vegetation from the land, the compaction of soil or the creation of impervious surfaces, or any combination of these activities.”

If not, then it is not subject to this by-law. Cutting or trimming a few trees and shrubs is not site alteration; refer tree-cutting complaints to City’s Urban Tree Conservation By-law or Municipal Trees and Natural Areas Protection By-law, as applicable.

2. Confirm whether the site alteration is occurring on lands subject to the by-law, by checking the Conservation Authority (CA) regulation limits on geoOttawa. If the activity is occurring on lands regulated by the Conservation Authorities, refer the complaint to the appropriate CA Regulations Officer for action. If lands on both sides of the limit are involved, contact the CA to coordinate the investigation.
3. If the complaint involves multiple issues, reach out to other expert staff in the appropriate team(s) to coordinate the investigation:
  - Drainage issues – Municipal Drainage unit;
  - Agricultural soils – Rural Affairs staff;
  - Natural features / designated environmental areas – Environmental Planners, Natural Systems staff and/or Forestry Inspectors;

- Conditions of approval – Planning Services File Lead / Development Inspectors;
  - Sediment and erosion control – qualified Development Inspectors / Drainage staff;
  - Fill quality – Development Inspectors / other qualified staff;
  - Enforcement process – By-law Services.
4. Review available information about the subject property to determine which parts of the by-law apply:
- Official Plan designation (Schedule A or B) and Natural Heritage System Overlay (Schedule L);
  - Development status (check in MAP / with Planning Services; if it is currently under review or has been recently approved, contact the City's lead planner for the file to coordinate investigation);
  - Aerial photography and Streetview imagery.
5. Review by-law and determine whether any exemptions in Section 25 or elsewhere apply:
- The City's own activities are exempt (Section 25(a)).
  - Activities undertaken by provincial or federal agencies are exempt (Section 25(b)).
  - Several activities approved under provincial processes are exempt, such as:
    - Construction / maintenance of electrical transmission / distribution systems by Hydro companies (Section 25(c));
    - Aggregate extraction in licensed pits / quarries (Sections 25(f, g));

- Construction of drains under the *Drainage Act* or *Tile Drainage Act* (Section 25(h));
  - Construction / operation of regulated waste disposal sites (Section 25(i));
  - Construction / maintenance / operation of provincial highways (Section 25(j)).
- 
- Several exemptions apply to Agricultural Operations engaging in Normal Farm Practices such as cultivating fields, spreading manure, installing and maintaining fences, constructing and maintaining tile drainage, clearing woodlots, etc. (see Sections 4(8), 10(2), 11(3), 25(e), and Schedule A).
  - Several exemptions apply to site alteration related to woodlot management (see Sections 11(3) and Schedule A).
  - Several exemptions apply to yard maintenance and landscaping activities (see Sections 10(2), 11(3), and Schedule A).
  - Approved developments are allowed to proceed under their conditions of approval (check with the City's planner; see Sections 10(2), 11(3), 25(d), and Schedule A).
6. In cases where the by-law has not been contravened, document this determination and the supporting rationale and close the service request. Provide response to complainant where required.
  7. Where non-compliance has occurred, document all available evidence from desktop review, on-site investigation, and any other sources, and proceed with enforcement in consultation with By-law Services and/or Legal Services.

### **Document 3 – Consultation Summary**

The results of the public consultation are summarized below in the As We Heard It reports prepared following the consultation on the Discussion Paper (July-August 2016) and the draft Site Alteration By-law (August-September 2017).

#### **As We Heard It Report: Discussion Paper (August 2016)**

The comment period for the City's discussion paper on Site Alteration closed on August 5, 2016. Ten written submissions were received. Six were from residents or community-based organizations, while four were from the following project stakeholders:

- Greater Ottawa Home Builders' Association
- Greenspace Alliance of Canada's Capital / Federation of Citizens' Associations
- Ministry of Natural Resources and Forestry (Kemptville District)
- Mississippi Valley Conservation Authority

City staff have reviewed all of the comments received, and will consider them carefully during the development of the draft by-law.

The following is a summary of comments received on several key issues identified in the written submissions.

#### **Issue 1: Rules in regulation versus a permit approach**

This was the most commonly addressed issue, with eight out of ten submissions providing comments. Two submissions indicated support for allowing site alteration to proceed without the need for prior approval, within limits established through existing regulations or the proposed by-law. Six submissions disagreed, indicating that the City should instead require proponents to obtain approval prior to undertaking site alteration. Five of the submissions were particularly strong in this respect. A commonly cited reason for preferring this approach was that it would enable the City to proactively avoid

or reduce impacts instead of only being able to respond after impacts had already occurred.

### **Issue 2: Vegetation removal**

Four submissions indicated that the by-law should address vegetation removal as a type of site alteration. One additional submission questioned whether vegetation removal that did not involve grade changes would be included, but did not indicate support or opposition.

### **Issue 3: Environmental Impact Statement**

Three submissions addressed the potential requirement for an Environmental Impact Statement in cases where site alteration would affect natural heritage features. Two indicated support for such a requirement, while the third indicated this would be overly stringent.

### **Issue 4: Notification**

Three submissions indicated support for requiring notification in advance of site alteration.

### **As We Heard It Report: Draft Site Alteration By-law (October 2017)**

The comment period for the City's draft Site Alteration By-law closed on September 25, 2017. A total of 38 written submissions were received. Most of these were from residents or community-based organisations; however, comments were also received from the following project stakeholders:

- Carleton Landowners' Association
- Greater Ottawa Home Builders' Association
- Greenspace Alliance of Canada's Capital
- Federation of Citizens' Associations



- Ministry of Natural Resources and Forestry (Kemptville District)
- Mississippi Valley Conservation Authority
- Ontario Federation of Agriculture
- Ontario Woodlot Association
- South Nation Conservation

City staff have reviewed and considered all of the comments received during the finalization of the draft by-law.

Several commonly heard comments are provided below, along with responses by staff.

**1. The by-law will interfere with farming.**

The proposed by-law includes numerous exemptions for farmers, which were discussed with representatives of the farming industry. The City recognises that activities such as cultivating fields, spreading manure, returning fallow lands to cultivation, maintaining farm drainage systems, and installing and maintaining fences are all normal parts of farming. Staff will continue to work with local representatives of the Ontario Federation of Agriculture and other farming organisations to ensure that the by-law's provisions are clearly understood and that normal farming practices are not impacted.

**2. The by-law is supposedly intended to protect farmland, but it does not address the issue of urban sprawl.**

The decision to expand a city's urban boundary is made as part of a comprehensive Official Plan Review under the *Planning Act*. The City of Ottawa has generally avoided expanding its urban boundaries into areas of prime farmland, which are identified in the Official Plan as Agricultural Resource Areas. The by-law cannot regulate decisions under the *Planning Act*, but it can limit activities such as topsoil stripping that could reduce soil productivity and lead to efforts to have an area of agricultural land redesignated to permit development.

### **3. Why are developers exempt from the by-law?**

Developers are not exempt from the by-law. The development-related exemptions in the by-law only apply to projects that have already undergone review by the City, and have been approved under either the *Building Code Act* or the *Planning Act*. This includes projects undertaken by private residents (e.g., addition to a house, construction of a large outbuilding, etc.) as well as by professional land developers (e.g., a new residential subdivision). These exemptions are provided to allow people who have followed the proper process and received approval for their project to move ahead without further delay.

The by-law specifies that site alteration associated with approved developments must be done in compliance with any conditions of approval imposed by the City. If those conditions are not complied with, the by-law enables the City to issue and enforce stop work orders and corrective orders.

### **4. Why is the City exempt from the by-law? Shouldn't it have to follow its own rules?**

The *Municipal Act* specifies that a site alteration by-law legally does not apply to activities undertaken by the City. However, City staff who routinely engage in site alteration activities as part of their work will be briefed on the by-law and its rules. Many of the rules in Schedule A (regarding notification, sediment and erosion control, protection of the work area, fill quality, and discovery of archaeological resources) are already standard practice for City projects.

Ottawa City Council may, at its discretion, direct staff to comply with the provisions of the by-law when undertaking site alteration.

### **5. The by-law should not operate on a complaints basis.**

Some stakeholders and residents would prefer that the City implement a permit-based by-law. They feel that the City should review and approve all site alteration activities in advance, rather than react to complaints after the fact. Staff note that the draft by-law does require prior approval for site alteration within or adjacent to sensitive

environmental lands; however, for most activities, a rules in regulation approach is preferred.

Other stakeholders and residents object to the complaint-based system because they feel that it is open to abuse, and that farmers or other landowners could be forced to stop work whenever the City receives an anonymous phone call. Staff acknowledge that frivolous or malicious complaints are a possibility, as with any other municipal by-law. However, in most such cases, the City's investigation would consist of a quick desktop review or a visual inspection from the roadside to determine whether the complaint was valid. If not, there would be no need to inconvenience the landowner at all.

**6. The by-law gives City staff too much authority to enter onto private property.**

The provisions in the by-law are taken from the *Municipal Act*, and are consistent with other City of Ottawa by-laws already in effect, as well as with by-laws from other municipalities across Ontario. City of Ottawa staff involved in by-law enforcement normally contact the resident upon arrival, as a courtesy before beginning their inspection. For practical reasons, inspections relating to site alteration complaints would take place during daylight hours.

**Document 4 – Extract of Minutes from Planning Committee**

**EXTRACT OF MINUTES 59A  
PLANNING COMMITTEE  
27 FEBRUARY 2018**

**EXTRAIT DU PROCÈS-VERBAL 59A  
COMITÉ DE L'URBANISME  
LE 27 FÉVRIER 2018**

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SITE ALTERATION BY-LAW

ACS2018-PIE-EDP-0005

CITY WIDE

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**REPORT RECOMMENDATIONS**

**That Planning Committee recommend Council:**

- 1. approve the Site Alteration By-law, attached as Document 1; and**
- 2. direct staff to conduct a review of the Site Alteration By-law, two years after its approval, and report back on its performance and any recommended improvements.**

The following staff responded to questions on this matter:

- ❖ Planning, Infrastructure and Economic Development department: John Smit, Director, Economic Development and Long Range Planning; Amy MacPherson, Natural Systems Planner
- ❖ Office of the City Clerk and Solicitor: Tim Marc, Senior Legal Counsel, Planning, Development and Real Estate.

The committee heard four delegations on this matter. The following delegation spoke in support:

- Murray Chown, Greater Ottawa Home Builders Association

The following delegations spoke in support but offered some suggestions:

- \*Paul Johanis, Chair, Greenspace Alliance of Canada's Capital
- \*Sheila Perry, FCA

The primary arguments in support of the proposal included (but were not necessarily limited to):

- the bylaw covers both rural and urban site alterations
- vegetation removal is included as a type of site alteration
- site alterations within a 30 metre proximity of sensitive environmental areas / Natural Heritage Features will require prior approval of the General Manager of Planning, Infrastructure and Economic Development and the City has the option of requiring an Environmental Impact Statement and imposing conditions

The main suggestions / concerns included (but were not necessarily limited to):

- the by-law should be enforced through a permit system rather than a complaint-based system, or barring that, a minimal form of prior reporting could be introduced as an adjunct to the complaint procedure; at a minimum, the bylaw should require that the Ward Councillor be notified of any intended site alteration meeting the bylaw definition
- the proposed 30 metre proximity zone (within which pre-approval is required) for site alterations near sensitive environmental areas should be increased to 120 metres, similar to the significant wetlands policy in the current Official Plan
- this by-law (or the Significant Woodland Policy or the Urban Tree Conservation bylaw) should be amended to protect against pre-emptive cutting of rural trees and woodlands ahead of urban expansions in the periurban area

The following delegation spoke in opposition:

- \*Mike Westley

His primary argument and concern in opposition to the proposal included (but were not necessarily limited to):

- The by-law is unconstitutional and infringes on the legal rights of private property owners and those with Crown Patents to use and enjoy their own properties.

*[\* Individuals / groups marked with an asterisk above provided written comments; all submissions are held on file with the City Clerk.]*

Planning Committee CARRIED the report recommendations as presented.

**AGRICULTURE AND RURAL  
AFFAIRS COMMITTEE  
REPORT 34  
9 MAY 2018**

**174**

**COMITÉ DE L'AGRICULTURE ET  
DES AFFAIRES RURALES  
RAPPORT 34  
LE 9 MAI 2018**

**Document 5 – Extract of Minutes from Agriculture and Rural Affairs Committee**

**EXTRACT OF DRAFT MINUTES 33  
AGRICULTURE AND RURAL  
AFFAIRS COMMITTEE  
5 APRIL 2018**

**EXTRAIT DE L'ÉBAUCHE DU  
PROCÈS-VERBAL 33  
COMITÉ DE L'AGRICULTURE ET  
DES AFFAIRES RURALES  
LE 5 AVRIL 2018**

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SITE ALTERATION BY-LAW

ACS2018-PIE-EDP-0005

CITY WIDE

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**That Agriculture and Rural Affairs Committee recommend Council:**

- 1. Approve the Site Alteration By-law, attached as Document 1; and**
- 2. Direct staff to conduct a review of the Site Alteration By-law, two years after its approval, and report back on its performance and any recommended improvements.**

Marica Clarke, Program Manager, Natural Systems Policy introduced Amy MacPherson, Planner II who would give a PowerPoint presentation on the report. The presentation is held on file in the City Clerk's office.

Following the presentation the Committee heard from the following delegations:

1. \*Tedd Wood – He said that the proposed by-law is not in compliance with the Farming and Food Production Protection Act. It should include a general

exemption for Agricultural Uses in order to be in compliance with provincial statute and regulation. He noted that other municipalities have included the wording in their by-law but not Ottawa.

2. \*Klaus Beltzner - Osgoode Ward Advisory Committee – He gave a number of scenarios where questions could arise if as to whether permission was needed in order to carry out the work.
3. \*Shirley Dolan – Carleton Landowners Association – Agrees with the motion that will be put forward by Councillor El-Chantiry. Noted that there does need to be that blanket exemption for farms.
4. Mike Westley - Stated that he was opposed to the by-law. He commented that the drainage issues have yet to be resolved let alone dealing with site alteration.
5. Colin Heard – President, North West Goulbourn Community Association – Is concerned with the section on power of entry. Opposed to sections within the by-law.
6. Paul Johanis – Greenspace Alliance – Is in favour of the by-law and believes that a permit driven system would make it easier to track. He would like to see protection of woodlots that border urban areas.

*[ \* All individuals marked with an asterisk either provided their comments in writing or by email; all such comments are held on file with the City Clerk. ]*

The Committee members then asked various questions of staff:

- The section on Power of Entry is actually from the Municipal Act which is the basis of many of the City's by-laws. It does exclude power to enter dwellings. Section 435 of the Municipal Act states that notice must be given.
- City approval can be done by a call or email. Staff have been working with the



311 staff and with By-law Staff.

- Chair Moffatt stated that the farm exemption should be in the By-law. Stephen Willis, General Manager, Planning, Infrastructure and Economic Development said that he will work prior to Council to include that language in the by-law.

**MOTION ARA 33/03**

Moved by Councillor El-Chantiry

**WHEREAS Section 10 of the draft Site Alteration By-law as shown in Document 1 of the report concerns the protection of the natural environment within 30 metres of any designated Natural Environment Area, Urban Natural Features, or Rural Natural Features Area, or any Natural Heritage Feature identified on the City's Natural Heritage System Overlay; and,**

**WHEREAS some rural residents have expressed concerns about potential restrictions on their ability to manage their lands if these restrictions apply; and,**

**WHEREAS the report was considered and carried by Planning Committee at its meeting of 27 February 2018.**

**THEREFORE BE IT RESOLVED that the Agriculture and Rural Affairs Committee refer this matter to staff with a request to amend Document 1 so that Section 10 only applies to the area generally delineated by the closest municipal road or natural boundary two kilometres outside of the Urban Boundary as shown on Schedule A of the Official Plan; and,**

**BE IT FURTHER RESOLVED that staff include a map showing how the boundary line is applied, as a schedule in the by-law, and bring the report back to Agriculture and Rural Affairs Committee in such time as to permit consideration prior to Council on 9 May 2018; and,**

**BE IT FURTHER RESOLVED that the Agriculture and Rural Affairs Committee direct Legal Services to review the text of the draft by-law to add possible**

**improvements to clarify normal farm practices before the by-law is brought back to Agriculture and Rural Affairs Committee in such time as to permit consideration prior to Council on 9 May 2018.**

**CARRIED**

Chair Moffatt thanked the delegations and stated that the report will be going to Council on April 11<sup>th</sup> and the revised rural sections of the by-law to come back to ARAC on May 3<sup>rd</sup> and the Council again on May 9<sup>th</sup>.

The recommendations were **CARRIED as amended** by Councillor E. El-Chantiry's motion.

**DIRECTION TO STAFF:**

- 1) That Legal staff pursue inserting Section 435 of the Municipal Act into the By-law.
- 2) That staff get comment from By-law and Regulatory Services on the level of staffing needed and workload once this By-law is enacted.
- 3) That staff add "Repair and maintenance" to Section 24 (h) on drainage in the By-law.