

## Policy Discussion Papers - Decision Requested

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### Request for Recommendation

#### Top Soil Removal & Site Alteration By-law Update

Presented To:	Priorities Committee
Presented:	Wednesday, Apr 22, 2009
Report Date	Friday, Apr 03, 2009
Type:	Policy Discussion Papers - Decision Requested

### Recommendation

THAT Council approve Option #1 as outlined in the Report dated April 3, 2009, entitled Top Soil Removal & Site Alteration By-law Update from the Acting General Manager of Growth and Development, and

THAT Council direct staff to finalize the draft Site Alteration By-law for approval by Council at its April 29, 2009 Meeting.

### Financial Implications

If the development of a by-law is approved, there will be a minimal impact to the City of Greater Sudbury as only approximately \$50,000 of top soil is purchased directly by the Municipality on an annual basis.

### Background

Staff have appeared before the Priorities Committee of Council on January 21, 2009, and March 4, 2009, with draft by-laws and reports outlining the progress of the development of the Top Soil Removal and Site Alteration By-law. The presentations included input from three (3) public meetings, as well as consultative input from Council's Agricultural and Top Soil Advisory Panel whom have been apprised of staff's progress. Further, staff have met individually and as a group with members of the top soil producers within the City of Greater Sudbury over and above the input received at public meetings.

At the Priorities Meeting of March 4, 2009, Council was presented with a series of planned modifications to the draft by-law to incorporate input from the public meeting and subsequent meetings with the top soil producers, which were:

1. Provide an additional exemption from the by-law for site alteration activities on mining sites covered under a Closure Plan as defined in the Mining Act.

#### Signed By

##### **Report Prepared By**

Guido Mazza  
Director of Building Services/Chief  
Building Official  
*Digitally Signed Apr 16, 09*

##### **Recommended by the Department**

Bill Lautenbach  
Acting General Manager of Growth and  
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##### **Recommended by the C.A.O.**

Doug Nadorozny  
Acting Chief Administrative Officer  
*Digitally Signed Apr 16, 09*

2. Provide for the use of landscape architects as an additional professional qualified to undertake a Control Plan Design.
3. Modify Schedule 'B' "Control Plan Requirements" to provide a more performance based document based on objectives instead of the current prescriptive version to allow the industry and professional engineer more flexibility in design to achieve objectives of the by-law.
4. With respect to the initial phasing in of the by-law, provide for a transitional Conditional Permit to allow applicants to apply for permits immediately without full Control Plan documentation allowing the industry to continue delivering product and design professionals time to gather information and put documentation together for City review, with the undertaking of operating within the objectives of the by-law.
5. Provide additional clarification within the by-law that residential landscaping activities, which are captured within other municipal regulations and by-laws such as the existing Site Grading By-law, the Planning Act, Site Plan Approval process, Subdivision Grading Plans and the Ontario Building Code, are exempt from this by-law.

## **Moratorium/Grandfathering**

Further, the initial recommendation by staff to Council to place a moratorium on the removal of top soil from the reduced designated Agricultural Reserve was modified, in response to concerns raised by the industry operating within the Agricultural Reserve boundaries, some of which have submitted for permitting under the former Town of Valley East by-law allowing such removal, that they be granted a degree of grandfathering.

The grandfathering, it was suggested, would allow them to clear what had been currently stock piled for processing no further. The removals would allow product that has been processed and thus subject to some investment by property owners or producers to be salvaged for return on investment but no further new removals initiated. All provisions of the new by-law would apply with respect to protection of adjoining properties/structures as well as rehabilitation.

After some debate, Council reiterated its commitment to maintain prohibition of removal of top soil within the new Agricultural Reserve. This is consistent with Council's Official Plan Policy, its Healthy Communities Cabinet Initiatives and Provincial Government mandates. However, Council requested staff to provide another report with additional recommendations with respect to "grandfathering" existing operations on 14 sites identified to Council in our March 4, 2009 report for the Priorities Committee meeting of April 22, 2009. The results are presented here for Council's review and consideration.

## **Options to Recognize Existing Operations within the Agricultural Reserve**

The City's Agricultural Reserve covers approximately 5,828 hectares (14,500 acres) of land stretching from the west side of Chelmsford to the east of the Valley East Urban Area. The new Agricultural Reserve is shown on Attachment #1.

City Staff considered a number of methods to identify existing topsoil removal activities within the Agricultural Reserve including: aerial photo review; windshield survey; and, property assessment queries correlated with the names of major known topsoil producers. The aerial photo review is considered to be the most reliable method of identification given the clear, visual evidence of topsoil removal activity that it provides. The City's aerial photos for the Agricultural Reserve are current to 2007.

As indicated in previous reports, City Staff reviewed 2007 air photos for the Agricultural Reserve and identified 14 sites where topsoil removal activities appeared to be underway. The number of potential topsoil removal sites in the Agricultural Reserve has been reduced to 11 through a further review of the 2007 air photos, property assessment information and local knowledge. A twelfth site was identified through

the consultation process. The location of these 12 sites is shown on Attachment #2.

Using these 12 sites, the following three options have been developed for Council's consideration:

**Option #1: Recognize Existing Topsoil Stockpiles**

This first option would see sites with existing stockpiles of topsoil within the Agricultural Reserve recognized in the Draft By-law so that owners/operators would be permitted to remove the existing stockpiled materials, subject to permit and rehabilitation plan approval. This option provides topsoil producers with an opportunity to realize a return on their existing investment. As well, stockpiles present clear, physical evidence of an existing operation. It also provides the City with a mechanism to ensure that the material is removed in a controlled manner and that the site is rehabilitated after the material has been removed. This option is understood by the City's Agricultural and Topsoil Advisory Panel and three of the four major known topsoil producers. This option represents a compromise that remains somewhat consistent with Council's policy and Provincial mandates.

**Option 2: Recognize Existing Topsoil Stockpiles And Permit 5 Hectares Of Additional Removal**

Building on Option #1, this second option would also allow owners/operators of the 12 sites to remove topsoil from an additional 5 hectares of land, subject to permit and rehabilitation plan approval. This option mirrors the Topsoil Removal By-law that was in effect in the former Town of Valley East. If approved, these sites would be specifically identified in the by-law. This option would make an additional 55 hectares of land in the Agricultural Reserve available for topsoil removal activities. This area represents less than one percent of the City's 5,828 hectare Agricultural Reserve. This option is not supported by the City's Agricultural and Topsoil Advisory Panel, and is inconsistent with Council's Official Plan Policy and Provincial mandates.

**Option 3: Permit Topsoil Removal Across All The Property, Subject To Permit And Rehabilitation**

This option would make the whole legal parcel of the 12 sites available for topsoil removal activity, subject to permit and rehabilitation plan approval. If approved, these sites would be specifically identified in the by-law. This option would make 331 hectares of land in the Agricultural Reserve available to topsoil removal activity. This area represents approximately 5.7 percent of the City's 5,828 hectare Agricultural Reserve. Some of these sites have already seen substantial topsoil removal activity. This option is not supported by the City's Agricultural and Topsoil Advisory Panel, and is inconsistent with Council's Official Plan Policy and Provincial mandates.

## **Appeal Mechanism**

Additional topsoil removal activities may have been initiated in the Agricultural Reserve since 2007. In order to address these concerns, the Draft By-law contemplates a site specific appeal mechanism.

The site specific appeal mechanism would be through Council's Hearing Committee and would be an appeal of a decision by the Director to not issue a permit. The appeal would be only entertained by Council's Hearing Committee provided the applicant provided evidence of an existing operation prior to January 1, 2009.

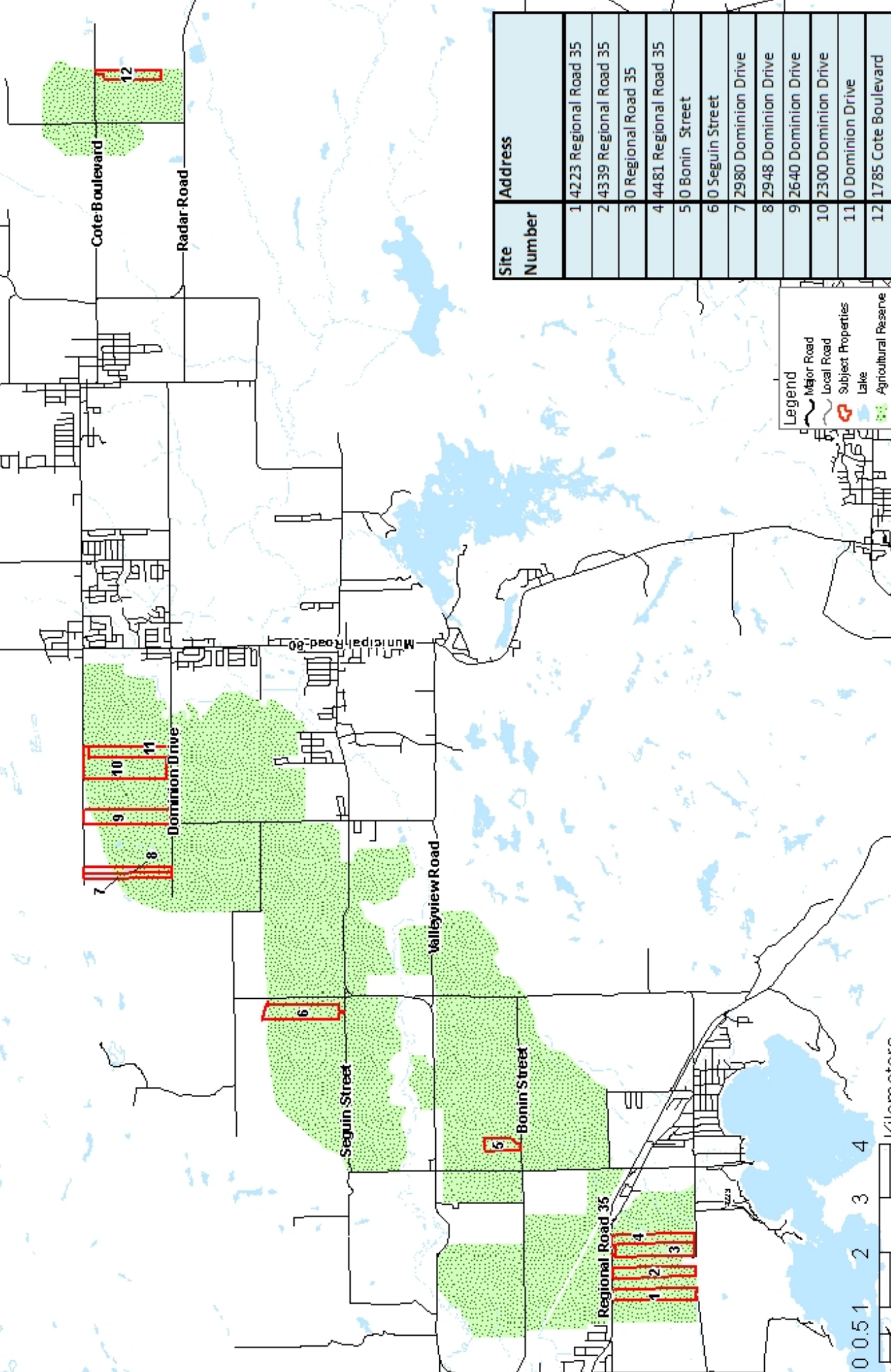
## **Conclusion & Recommendation**

City Staff have developed three options to recognize existing topsoil removal operations within the Agricultural Reserve for Council's consideration. City Staff recommend Option #1, as described above, and seek Council's direction to finalize the draft Site Alteration By-law for approval by Council at its April 29, 2009 Meeting.

Attachments

# Agricultural Reserve Potential Topsoil Removal Sites

Overview 1/1

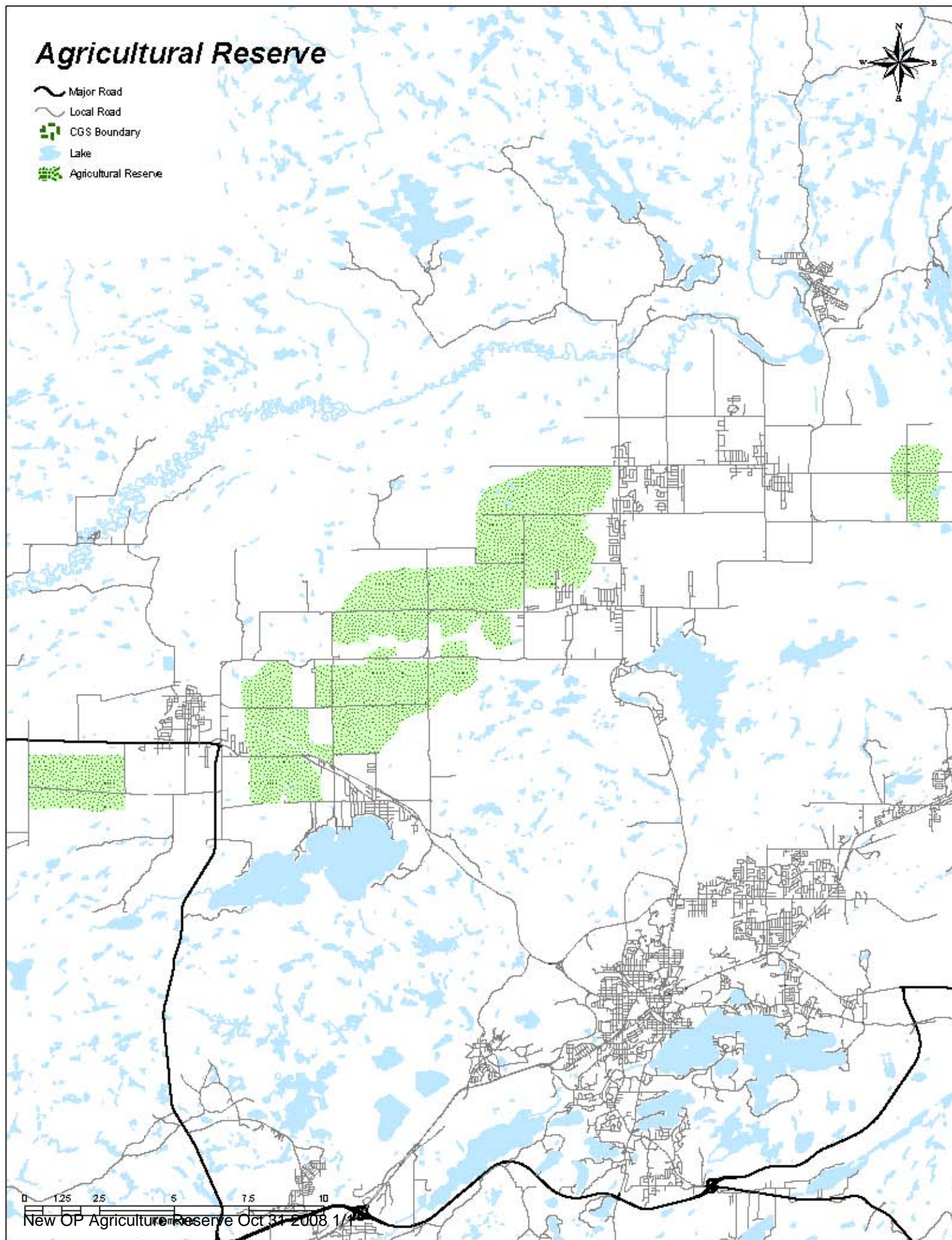


Site Number	Address
1	4223 Regional Road 35
2	4339 Regional Road 35
3	0 Regional Road 35
4	4481 Regional Road 35
5	0 Bonin Street
6	0 Seguin Street
7	2980 Dominion Drive
8	2948 Dominion Drive
9	2640 Dominion Drive
10	2300 Dominion Drive
11	0 Dominion Drive
12	1785 Cote Boulevard



# Agricultural Reserve

- Major Road
- Local Road
- CGS Boundary
- Lake
- Agricultural Reserve



**BY-LAW 2009-XXX**

**A BY-LAW OF THE CITY OF GREATER SUDBURY  
TO REGULATE THE REMOVAL OF TOPSOIL, THE  
PLACING OR DUMPING OF FILL, AND THE  
ALTERATION OF GRADES OF LAND**

**WHEREAS** the City wishes to protect and preserve agricultural lands within its boundaries in accordance with its Official Plan;

**AND WHEREAS** the City wishes to protect bodies of water and adjoining lands that may be adversely affected by activities related to the removal of topsoil, placing or dumping of fill and/or the alteration of grades of land;

**AND WHEREAS** the City wishes to protect its residents and property owners from adverse effects related to the removal of topsoil, placing or dumping of fill and/or the alteration of grades of land;

**AND WHEREAS** Section 142 of the *Municipal Act, 2001*, S.O. 2001, c.25, allows municipalities to prohibit or regulate the placing or dumping of fill, to prohibit or regulate the removal of topsoil, to prohibit or regulate the alteration of the grade of land, to require that a permit be obtained for the placing or dumping of fill, the removal of topsoil, or the alteration of the grade of land, and to impose conditions to such permits;

**NOW THEREFORE THE COUNCIL OF THE CITY OF GREATER SUDBURY  
HEREBY ENACTS AS FOLLOWS:**

**PART I – SHORT TITLE**

1. This By-law shall be known as the Site Alteration By-law.

**PART II - INTERPRETATION**

2. (1) In this By-law,

“Adequate Performance” of a Control Plan means that:

- (i) All stormwater or snowmelt on a Site passes through a Final Control Device before reaching any Protected Area;

- (ii) Stormwater or snowmelt down gradient of a Final Control Device contains less than 100 mg/l of suspended solids, except during or within thirty minutes of precipitation of more than 12 ml in one hour, and,
- (iii) There is no apparent sedimentation in a Protected Area;

"Alteration" means changes in elevation of 25mm or more from Existing Grade or Finished Grade resulting from the Placing or Dumping of Fill, the Removal of Topsoil or any other action that alters the Grade of land;

"Body of water" includes any brook, creek, stream, river, lake, pond, ~~waterway~~, and water course, canal, or other flowing or standing water;

"Control Plan" means a Plan to control erosion and sedimentation prepared and implemented by a Professional to comply with this By-law and the Control Plan Requirements attached at Schedule "A";

"Director" means the Director of Building Services/Chief Building Official of the City of Greater Sudbury or his or her designates;

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

"Fill" means any type of material capable of being removed from or deposited on lands, such as soil, topsoil, stone, sod, turf, concrete, and asphalt either singly or in combination as acceptable to the Director;

"Final Control Device" means the most down gradient erosion or sedimentation control device between a Site and a Protected Area;

"Grade" means the elevation of the ground surface and shall be more particularly defined as follows:

- (i) "Existing Grade" means the elevation of the existing ground surface of the Land or Site upon which Placing or Dumping of Fill, Alteration of the Grade or Removal of Topsoil is proposed and of abutting ground surface up to three



metres wide surrounding such Land or Site, except that where such activity has occurred in contravention of this By-Law, Existing Grade shall mean the ground surface of such Land or Site as it existed prior to the said activity;

(ii) "Finished Grade" means the approved elevation of ground surface of Land or a Site upon which Fill has been placed or dumped, the Grade altered, or Topsoil removed, in accordance with this By-Law;

(iii) "Proposed Grade" means the proposed elevation of ground surface of the Land or Site upon which fill is proposed to be placed or dumped, the grade altered or topsoil removed;

"Land" or "Property" means real property within the boundaries of the City of Greater Sudbury;

"Owner" includes any person, partnership, organization or corporation who or which is the registered owner of Land;

"Permit" or "Site Alteration Permit" means an authorization granted in writing by the Director pursuant to this By-law, to perform a Site Alteration on a defined Site and subject to the conditions in Schedule "B" attached to this By-law and such other conditions as the Director may impose and shall include a Conditional Permit issued pursuant to Section 8.1;

"Placing or Dumping" means the depositing of Fill in a location other than where the Fill was obtained and includes the movement and depositing of Fill from one location on a Property or Site to another location on the same or another Property or Site;

"Professional" means a professional engineer or a landscape architect who is licensed to practice in the Province of Ontario, and who is retained by an applicant to prepare and implement a Control Plan;

"Protected Area" includes a body of water, and any area outside the Land or Site on which Site Alteration is occurring, has occurred or will occur;

"Removal of Topsoil" means the removal of Topsoil from Land or a Site or from any part thereof and includes the movement of Topsoil from one Property or Site to another as well the movement of Topsoil to another location on the same Property or Site;

"Site" means real property where Site Alteration is occurring, has occurred or will occur;

"Site Alteration" means one or more of the following activities in relation to a Property:

- (i) placing or dumping fill,
- (ii) removal of topsoil, or,
- (iii) alteration of the grade.

"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.

(2) References in this By-law to words in the singular shall be deemed to include the plural.

### **PART III - EXEMPTIONS**

3. This By-law does not apply to:

- (1) activities or matters undertaken by the City of Greater Sudbury or a local board of the City of Greater Sudbury;
- (2) the Placing or Dumping of Fill, Removal of Topsoil or Alteration of the Grade of Land imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section

41, 51 or 53, respectively, of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;

- (3) the Placing or Dumping of Fill, Removal of Topsoil or Alteration of the Grade of Land imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under Section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under that regulation;
- (4) the Placing or Dumping of Fill, Removal of Topsoil or Alteration of the Grade of Land undertaken by a transmitter or distributor, as those terms are defined in Section 2 of the *Electricity Act*, 1998, S.O. 1998, c. 15, as amended, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that Section;
- (5) the Placing or Dumping of Fill, Removal of Topsoil or Alteration of the Grade of Land undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended;
- (6) the Placing or Dumping of Fill, Removal of Topsoil or Alteration of the Grade of Land undertaken on Land in order to lawfully establish and operate or enlarge any pit or quarry on Land,
  - (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and
  - (ii) on which a pit or quarry is a permitted Land use under a By-law passed under section 34 of the *Planning Act*;

- (7) the Placing or Dumping of Fill, Removal of Topsoil or Alteration of the Grade of land undertaken as an incidental part of drain construction under the *Drainage Act*, R.S.O. 1990, c. D.17, as amended or the *Tile Drainage Act*, R.S.O. 1990, c. T.8, as amended;
- (8) the Removal of 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 but this exemption does not apply to the Removal of Topsoil for sale, exchange or other disposition;
- (9) any Site Alteration as an incidental part of the construction, renovation, replacement or demolition of a basement, foundation or septic bed for residential purposes;
- (10) any Site Alteration where Fill is placed or dumped on lands for the purpose of lawn dressing, constructing a fence, pool or other accessory structure, landscaping or adding to flower beds or vegetable gardens, provided that the Finished Grade elevation of the land does not adversely affect adjoining property owners, that there is no Alteration to the volume, direction, intensity or form of storm water run-off to adjacent properties and that where the Land or Site is located in a plan of subdivision the approved grading plan is maintained;
- (11) any Site Alteration as an incidental part of the construction of any form of underground service where the Fill or Topsoil is removed and properly held or stored for subsequent replacement;
- (12) any approved Site Alteration undertaken by a Permit Holder in relation to a Road Occupancy Permit issued by the City; or,

- (13) any Site Alteration undertaken on land described in a Closure Plan as defined in the *Mining Act*, R.S.O. 1990, c. M.14, as amended and filed pursuant to the provisions thereof.

4. If a regulation is made under section 28 of the *Conservation Authorities Act*, R.S.O. 1990, c. C.27, as amended, respecting the Placing or Dumping of Fill, Removal of Topsoil or Alteration of the Grade of Land in any area of the City of Greater Sudbury, this By-law is of no effect in respect of that area.

#### **PART IV – SITE ALTERATION**

##### **Application**

5. No person shall perform any Site Alteration on any Land or Site, or, being the Owner of the Land or Site, cause or permit any Site Alteration from such Land or Site, unless the person or Site Alteration is exempt from the provisions of this By-Law or a Permit has been obtained in compliance with this By-law.

6. Except in accordance with Schedule "C", no Site Alteration Permits shall be issued for the Removal of Topsoil from any Site being Land designated as "Agricultural Reserve" by the City of Greater Sudbury Official Plan which Lands are identified in Schedule "D" to this By-law.

##### **Permits and Issuance of Permits**

7. All applications for Site Alteration Permits shall be made to the Director who:
- (1) shall receive and process all applications for Permits and renewal of Permits required under this By-law;
  - (2) shall administer the issuance of Permits in accordance with the provisions of this By-law;
  - (3) shall sign all Permits issued pursuant to this By-law;



- (4) shall maintain and keep records of all applications received, all Permits issued and renewed, any suspension or revocation of a Permit, and of any other status change to a Permit issued under this By-law;
- (5) shall enforce this By-law together with the By-law Enforcement Officers for the City of Greater Sudbury; and,
- (6) shall generally perform all functions incidental to and necessary for the due administration and enforcement of this By-law.

**8.** Subject to Section 8.1, all applications for Permits shall include the following and shall be filed with the Director:

- (1) a signed and completed application by the Owner of the land comprising the Site in the general form attached as Schedule "E" to this By-law, which form may be amended from time to time by the Director;
- (2) the fixed fee for a Site Alteration Permit as established in Section 12 of this By-law and as amended from time to time by Council;
- (3) a current copy or copies of the parcel registry showing the legal owner of the Site;
- (4) a Control Plan, the requirements of which are set out in Schedule "A" of this By-law;
- (5) security in a form and amount to be determined in accordance with sections 25 and 26 of this By-law, to secure performance of the Applicant's obligations under this By-law and any Permit that is issued; and,
- (6) a commitment in writing by a qualified Professional that:

1. The Control Plan complies with the Control Plan Requirements attached as Schedule "A" of this By-law and will achieve Adequate Performance;
2. The amount of security referred to in Section 25 of this By-law or the higher amount indicated in the Control Plan by the Professional is sufficient to implement the Control Plan and rehabilitate the Site;
3. The Professional will notify the Director in writing within one business day if the Professional ceases to be retained to monitor and enforce compliance with the Control Plan; and,
4. Until the Professional gives such notice, the Professional will monitor and enforce compliance with the Control Plan until the Site is rehabilitated; and

(7) An undertaking signed by the Owner that the proposed Site Alteration will be conducted in accordance with the Control Plan and this By-law.

**8.1** (1) Applications for Permits filed with the Director before August 31, 2009, shall be required to immediately file the documents and fees indicated in subsections 8(1), (2), (3), (5) and (7) and shall have 90 days from the date of filing of the Application to submit the Control Plan required by subsection 8(4) and the commitment in writing required by subsection 8(6).

(2) Where the Applicant has met the requirements of subsection 8.1(1) and where the Director is satisfied pursuant to section 15 of this By-law, the Director shall issue a Conditional Site Alteration Permit which shall expire 10 days after the date for filing of the Control Plan required by subsection 8(4) pursuant to subsection 8.1(1), unless revoked sooner by the Director in accordance with this By-law.

(3) Conditional Site Alteration Permits shall be subject to all terms and conditions of this By-law.

9. An applicant shall not submit or cause or permit an Application for a Permit to be submitted to the City that is misleading or contains false information.
10. Where it is discovered or revealed that the holder of a Permit issued under this By-law has provided misleading or false information on the Application for a Permit, as determined by the Director, the said Permit shall be revoked by the Director and the Permit Holder shall forthwith cease all Site Alteration which was the subject of the revoked Permit.
11. The Director or his or her designates shall, subject to the provisions of this By-law, upon receipt of the application referred to above, make or cause to be made all investigations which he or she deems necessary.
12. Site Alteration Permit fees shall be the greater of \$500 or \$50 per hectare of Site Alteration area and the same fees shall apply to the new area for Site Alteration where an Applicant wishes to extend an existing Permit to a larger area than initially applied for.
13. The amount of \$250 is hereby fixed as an application fee for the renewal or transfer of an existing Site Alteration Permit to a new Owner of the Land or Site using a previously approved Control Plan.
14. A Permit issued pursuant to this By-law shall be valid for a period of twelve months from the date of issuance.
15. The Director shall issue a Site Alteration Permit when:
  - (1) the Director is satisfied that the Application and attached documentation are complete and in accordance with this By-law;
  - (2) the Applicant has provided the security required by sections 25 and 26 of this By-law;

- (3) the Director is satisfied that the Proposed Grade and resulting drainage pattern, the type of Fill proposed to be used, if any, and the proposed method of Placing and Dumping of Fill, Alteration of the Grade, or Removal of Topsoil, are all in accordance with the City of Greater Sudbury's standards and proper engineering and environmental standards and practices;
  - (4) the Director is satisfied that the Site will be rehabilitated to a condition which is substantially similar to or improved from the condition of the Site prior to the undertaking of the work contemplated by the Site Alteration Permit; and,
  - (5) all other concerns of the Director have been satisfied.
16. All Permits issued pursuant to this By-law shall be subject to the terms and conditions set out in Schedule "B" to this By-law.
17. Notwithstanding the issuance of a Permit pursuant to this By-law, an Applicant shall comply with all other applicable legislation.
18. No person shall enjoy a vested right in the continuance of a Permit and upon the issue, renewal, transfer, cancellation or suspension thereof, the Permit shall be the property of the City of Greater Sudbury.
19. No Permit shall be transferred to another person, or be valid at any Site except as indicated thereon, except with the written consent of the Director acting on the authority of Council.
20. A Permit or a copy thereof shall be posted in a visible location on the Site at all times during which the Permit is valid and in effect.

### **Refusal to Issue Permit**

21. Where the Director refuses to issue a Permit, the Applicant shall be informed in writing of the refusal by the Director. The Director may reconsider the Application if additional information or documentation required by the Director is submitted by the Applicant.

### **Appeal**

22. An applicant for a Permit under this By-law may appeal a refusal to issue a Permit, a condition in a Permit, a failure to make a decision on an Application for a Permit or a revocation of a Permit to the Hearing Committee of the Council of the City of Greater Sudbury which shall have all the powers of the Director pursuant to this By-law. The decision of the Committee shall be final.

23. Notwithstanding any other provisions of this By-law, the Director may waive the requirement for a Control Plan or certain requirements thereof and/or may reduce the application or security fee for a Site Alteration Permit in appropriate cases after taking into consideration the cost of the proposed works, the anticipated impact on any protected area, and the use of the Site.

24. No person shall fail to comply with the Control Plan Requirements set out in Schedule "A", the Permit Conditions set out in Schedule "B", any other condition of a Permit imposed by the Director or with any other requirement of this By-law.

### **Security**

25. An applicant for a Permit shall provide security in the amount of \$500 per hectare. The Director may, however, prior to the issuance of a Permit under this By-law, require the Applicant to provide additional security for the Applicant's obligations under this By-law and any Permit issued if the Professional retained by the Applicant is of the opinion that a higher amount would be required to properly



rehabilitate the Site in accordance with proper engineering standards and practice, this By-law, the Control Plan and the terms and conditions of the Permit.

26. Security determined in accordance with Section 25 shall be provided by way of an irrevocable letter of credit, certified cheque, or cash.

27. Where the Permit Holder has complied with all of the requirements of this By-law to the satisfaction of the Director and where the Professional has certified that the Control Plan has been fully implemented and achieves Adequate Performance, the City shall release the Permit Holder's security.

#### **Enforcement**

28. Every person obtaining a Permit under this By-law when so requested by the Director or his or her designates, a By-law Enforcement Officer, or by any other person authorized by Council, shall produce the Permit for inspection.

29. A Site Alteration Permit may be revoked by the Director under the following circumstances:

- (2) if it was obtained on mistaken, false or incorrect information;
- (3) if it was issued in error;
- (4) if the Permit Holder requests in writing that it be revoked; or,
- (5) if a Permit Holder fails to comply with the provisions of this By-law or the conditions of any Permit.

30. The Director or his or her designates, a By-law Enforcement Officer or any other person authorized by Council may at any reasonable time enter and inspect any Land to determine whether this By-law or any Permit issued thereunder is being complied with, but this section does not allow the entry into any building.

31. No person shall obstruct the Director or his or her designates, a By-law Enforcement Officer or any other person authorized by Council with respect to the administration and enforcement of this By-law.

#### **Order to Discontinue Activity**

32. If the Director is satisfied that a contravention of this By-law or Permit issued thereunder has occurred, the Director may make an Order requiring the Owner of the Land or the person who caused or permitted the Site Alteration in contravention of the By-law or permit to discontinue the activity and the Director shall set out the municipal address or the legal description of the Land and reasonable particulars of the contravention and the period within which there must be compliance.

#### **Work Order**

33. If the Director is satisfied that a contravention of this By-law or a Permit issued thereunder has occurred, the Director may make an Order requiring work to be done to correct the contravention and the order shall set out the municipal address or the legal description of the Land, reasonable particulars of the contravention and of the work to be done and the period within such there must be compliance with the Order and a notice stating that if the work is not done in compliance with the Order within the period, the City may have the work done at the expense of the Owner and added to the tax roll for the Land, to be collected as taxes.

34. If the work required by an Order set out above is not done within the specified period, the Director is hereby authorized to perform the work at the Owners' expense and to enter upon the Land for this purpose, either personally or by way of contractors, and to use the security provided, if applicable, and to transfer the cost, or remaining cost of such work to the tax roll for the Land.

35. The costs set out above incurred by the City shall include interest accrued to the date payment is made at the rate of 15% per annum, and may include a 10% administration fee, if the work is performed by the City for someone under the City's direction.

36. Before the City enters on Land to perform the work set out above, the Order shall be served upon the Owner of the Land personally or by prepaid registered mail to the last known address of the Owner of the Land, or as set out in any Permit application.

37. If the City is unable to effect service as set out above, the Director may place a placard containing the terms of the order in a conspicuous place on the Land and may enter upon the Land for this purpose.

#### **Penalty**

38. Any person who contravenes this By-law, a condition of a Permit or an Order as set out herein is guilty of an offence and is liable to a maximum fine of \$100,000.

39. A director or officer of a corporation who knowingly concurs in the contravention of this By-law, a condition of a Permit or an Order as set out in this By-law is guilty of an offence.

40. Any offences pursuant to this By-law shall be prosecuted in accordance with the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended from time to time.

#### **PART V - GENERAL**

41. (1) By-Law No. 82-141 of the former Regional Municipality of Sudbury and By-Law No. 92-21 of the former Town of Valley East are hereby repealed.

(2) The repeal of By-laws by this Section shall not be deemed to include any opinion by the City as to those By-laws.

(3) The repeal of By-laws by this Section does not affect any offence committed against any By-law so repealed or any penalty or forfeiture or punishment incurred in respect thereof;

(4) The repeal of By-laws by this Section does not affect any investigation, legal proceeding or remedy in respect of such privilege, obligation, liability, penalty, forfeiture or punishment.

(5) Any valid permit issued pursuant to By-law 92-21 of the former Town of Valley East shall expire on the date of passage of this By-law.

42. Schedule "A" to "E" attached hereto form a part of this By-law.

43. This By-law shall come into force and take effect on the date it is adopted by Council.

**READ A FIRST AND SECOND TIME IN OPEN COUNCIL** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

**READ A THIRD TIME AND FINALLY ENACTED AND PASSED IN OPEN COUNCIL** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

**SCHEDULE "A"**  
To By-Law 2009-xxx of the City of Greater Sudbury

Page 1 of 2

**Control Plan Requirements**

1. A Control Plan required to be submitted as part of an application for a Permit pursuant to this by-law shall include:
  - a) A key map showing the location of the Site;
  - b) The Site boundaries and number of hectares of the Site;
  - c) The use of the Site and the location and use of the buildings and other structures adjacent to the Site;
  - d) The location, dimensions and use of existing and proposed buildings and other structures existing or proposed to be erected on the Site;
  - e) The location of lakes, streams, wetlands, channels, ditches, other watercourses and other bodies of water on the Site and within thirty (30) metres beyond the Site boundary;
  - f) The location of the predominant Soil types;
  - g) The Regional Storm Flood Plain & Conservation Authority Fill Regulation Lines.
  - h) The location of driveways on the lands and all easements and rights-of-way over, under, across or through the Site;
  - i) The location and dimensions of any existing and proposed storm water Drainage systems and natural Drainage patterns on the Site and within thirty (30) metres of the Site boundaries;
  - j) The location and dimensions of the utilities, structures, roads, highways and paving;
  - k) The existing Site topography at a contour interval not to exceed 0.5 metres and to extend a minimum of thirty (30) metres beyond the Site boundaries;
  - l) The Proposed Grades(s) and Drainage systems(s) to be used upon completion of the work which is the subject of the Permit;
  - m) The location and dimensions of all proposed work which is the subject of the application for a Permit;
  - n) The location and dimensions of all proposed temporary Topsoil or Fill stockpile;
  - o) The location, dimensions, design details and specifications of all work which is the subject of the application including all Site siltation control measures or Retaining Walls necessary to meet the requirements of this by-law and the estimated cost of the same;
  - p) A schedule of the anticipated starting and completion dates of all proposed work which is the subject of the application for a Permit, including the installation of construction Site control measures needed to meet the requirements of this by-law;
  - q) Provisions for the maintenance of construction Site Erosion and Dust Control measures during construction and after as required;
  - r) A description of the proposed Fill; and
  - s) The scale of drawing, either 1:500 or 1:1000.



**SCHEDULE "A"**

To By-Law 2009-xxx of the City of Greater Sudbury

**Page 2 of 2**

**Control Plan Requirements - Continued**

2. Every Control Plan accompanying an application for a Permit under this by-law must be stamped by a professional Engineer or Landscape Architect who are licensed to practice in the Province of Ontario.
3. Notwithstanding any other provisions of this by-law, the Director may waive the requirements for a Control Plan or any part thereof under this by-law, after taking into consideration the proposed works, the anticipated impact on the Site and the surrounding environment.
4. The Control Plan shall specify how the Site will be rehabilitated and stabilized, and how the Professional will determine when the Site is sufficiently stable that erosion and sedimentation control measures are no longer required.

DRAFT FOR DISCUSSION PURPOSES

**SCHEDULE "B"**  
To By-Law 2009-xxxx of the City of Greater Sudbury

**Site Alteration Permit Conditions:**

It shall be a condition of all Site Alteration Permits that:

- (a) the Director shall be notified within 48 hours of the commencement of any Site Alteration activity;
- (b) the Director shall be notified of the completion of any control measures within days after installation;
- (c) the Permit Holder shall not modify the Control Plan without approval;
- (d) the Permit Holder shall install all control measures as identified in the approved Control Plan and shall ensure that it achieves Adequate Performance at all times;
- (e) the Permit Holder shall maintain all road drainage systems, storm water drainage systems, control measures and other facilities identified in the Control Plan to ensure Adequate Performance;
- (f) the Permit Holder shall repair any situation or erosion damage to adjoining surfaces and drainage ways resulting from Site Alteration activities to ensure Adequate Performance;
- (g) the Permit Holder shall inspect the control measures at least once per week and after each rainfall of at least one centimetre and make the needed repairs to ensure Adequate Performance;
- (h) the Permit Holder shall allow employees of the City to enter the Site for the purpose of inspecting for compliance with the Control Plan, to ensure Adequate Performance, or for performing any work necessary to bring the Site into compliance with the Control Plan;
- (i) the Permit Holder shall request that the City carry out a final inspection of the Site and to obtain the approval of the Director that this By-law and the terms and conditions of the Permit have been complied with by the Permit Holder;
- (i) the Permit Holder shall maintain a copy of the Control Plan on the Site; and,
- (j) the Permit Holder shall ensure that the work that is the subject of the Permit does not soil or otherwise foul any public road.
- (k) the Site Alteration activity will not result in:
  - i) soil erosion;
  - ii) blockage, siltation or pollution of a protected area;
  - iii) flooding or ponding or adverse impact of a protected area;
  - iv) a detrimental effect on any trees of a calliper of 75 mm or more located on the Site;

**SCHEDULE "B"**

To By-Law 2009-xxxx of the City of Greater Sudbury

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- v) a detrimental effect on matters of inherent biological sensitivity such as an aquifer recharge, water quality, unusual plants or wildlife and overwintering habits;
- vi) a detrimental effect on any environmentally significant lands or areas of natural or scientific interest, wetland or wetland complex identified by the Nickel District Conservation Authority or the Ministry of Natural Resources;
- vii) any contravention of regulations, standards, or guidelines established pursuant to the Environmental Protection Act;
- viii) a level of waste or a nuisance unacceptable to the City or nearby residents;
- ix) contravention of any other applicable law or regulation.

DRAFT FOR DISCUSSION PURPOSES

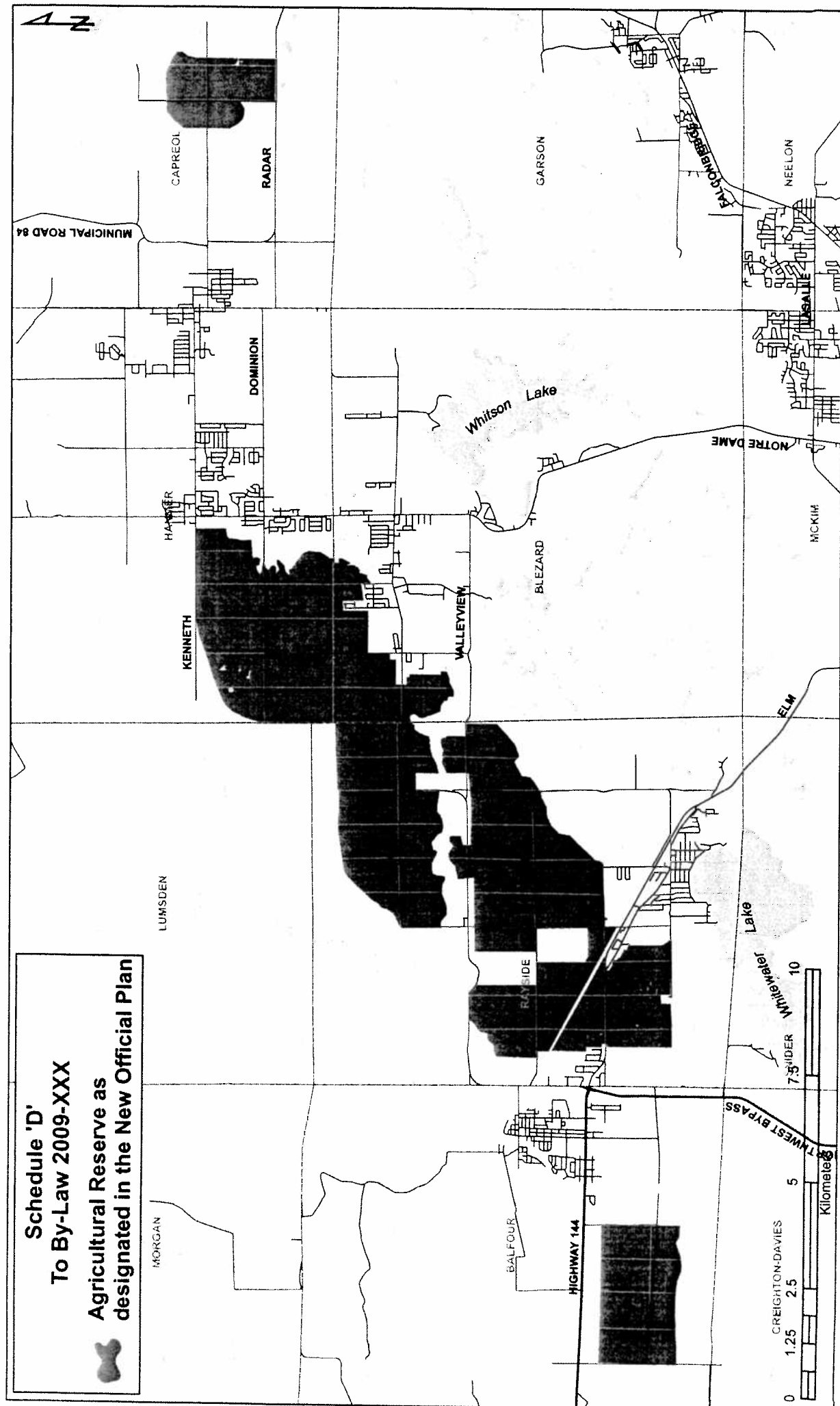
**SCHEDULE "C"**  
To By-Law 2009-XX of the City of Greater Sudbury

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**Existing Operations**

1. For the purposes of this schedule:  
  
"Topsoil Stockpile" means Topsoil which has been removed from its native or natural location and placed in an identifiable pile or heap for storage.
2. Where an application for a Permit is filed prior to August 31, 2009 an application may be issued a Permit for the Removal of Topsoil Stockpiles from a Site being Land designated as "Agricultural Reserve" as identified in Schedule "D" if the Applicant establishes to the satisfaction of the Director that the Topsoil Stockpile existed prior to the passing of this By-law and if the provisions of this By-law are met.
3. An application for a Permit pursuant to this Schedule and any Permit issued thereunder shall be subject to all requirements of this By-law.
4. A Permit issued pursuant to this Schedule shall be valid for one (1) year and shall not be renewed.

DRAFT FOR DISCUSSION PURPOSES





**SCHEDULE "E"**  
To By-Law 2009-XX of the City of Greater Sudbury

Page 1 of 3

File: \_\_\_\_\_

The City of Greater Sudbury  
Application For a Site Alteration Permit  
**By-law 2009** \_\_\_\_\_

New Permit _____	Regular Permit _____
Renewal _____	
Transfer _____	

Permit Is To: Place or Dump Fill \_\_\_\_\_  
Remove Topsoil \_\_\_\_\_  
Alter the Grade of Land \_\_\_\_\_

Site Location: Lot # \_\_\_\_\_ Plan # \_\_\_\_\_  
Address \_\_\_\_\_ Size: \_\_\_\_\_  
Hectares \_\_\_\_\_

**Applicant:**

Registered Owner: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Contractor: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Residence: \_\_\_\_\_ Business: \_\_\_\_\_  
After Hours Contact Telephone No: \_\_\_\_\_

**Engineer:**

Name: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
After Hours Contact Telephone No: \_\_\_\_\_

**Project Schedule:**

Start Date (Y/M/D): \_\_\_\_\_ Completion Date (Y/M/D) \_\_\_\_\_

**Included With This Application Are:**

(a) Control Plan	
(b) Calculation of the Annual Cost of Implementing the Control Plan, plus rehabilitating the Site.	
(c) Engineer's Certificate	
(d) Application Processing Fee \$ _____	
(e) Environmental Protection Deposit \$ _____	
(f) If this is an application to transfer or renew an existing Permit, a copy of that Permit.	

**SCHEDULE "E"**  
To By-Law 2009-XX of the City of Greater Sudbury

Page 2 of 3

**Applicant's Certificate**

I, \_\_\_\_\_, declare that:

- (a) I am the Owner of the Site,
- (b) I have read By-Law 2009 \_\_\_\_\_ and agree to comply with it,
- (c) I understand that I am responsible to prevent erosion and sedimentation from or at the Site,
- (d) The information contained in this Application and the supporting documents is complete and accurate,
- (e) The proposed Site Alteration will be conducted in accordance with the Control Plan,
- (f) If this is an application for renewal, to date the Site Alteration has been conducted in accordance with the Control Plan, and has complied with the Performance Measure, and
- (g) I authorize the Director, his or her designates and the City's By-law Enforcement Officers to enter the Site to determine compliance with the Control Plan or to perform any work necessary to bring the Site into compliance with the Control Plan.

\_\_\_\_\_  
Signature of Owner

Copy to: Applicant  
City of Greater Sudbury Development Services Department

City of Greater Sudbury Acknowledgement

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**SCHEDULE "E"**

To By-Law 2009-XX of the City of Greater Sudbury

**COMMITMENT CERTIFICATE**

This form to be completed by the owner's Control Plan Design professional  
Top Soil Removal & Site Alteration By-law

Permit Application No.
------------------------

Project Description:

Date:

Address of Project:

The undersigned Professional (landscape architect or professional engineer licensed in the Province of Ontario) hereby certifies that they have been retained to provide design and general reviews of the "Control Plan" for the location/property indicated, to determine whether the removal, grading and rehabilitation is in general conformance with the plans and other documents that form the basis for the issuance of Permit, in accordance with the approved "Control Plan" and the performance standards of the City of Greater Sudbury Top Soil Removal and Site Alteration By-law #2009-XX.

**The undersigned hereby certifies that he/she has read and agrees to the above**

Consultant Firm:

Telephone:

Address:

Fax:

 Signature  
(officer of Corporation)

Print Name: