

MUNICIPALITY OF CENTRAL MANITOULIN

BY-LAW NO. 2008-04

BEING A BY-LAW TO PROTECT AND CONSERVE TOPSOIL WITHIN THE MUNICIPALITY OF CENTRAL MANITOULIN.

WHEREAS the Municipal Act Section 142/2 provides that Councils of Municipalities may pass by-laws to regulate or prohibit the removal of topsoil, the dumping or placing of fill or the changing of the grade of the land and;

WHEREAS the Council of the Municipality of Central Manitoulin deems it advisable to exercise this authority as well as to provide for the rehabilitation of lands where topsoil removal, dumping or placing of fill, or the changing of the grade of the land is permissible:

NOW THEREFORE the Council of the Municipality of Central Manitoulin ENACTS as follows:

1. For the purposes of this by-law, the following definitions and interpretations shall govern:

- (a) "Body of water" includes any brook, creek, stream, river, lake, pond, waterway, and water course, canal, or other flowing or standing water.
- (b) "Township or municipality" means the Municipality of Central Manitoulin.
- (c) "Council" means the Council of the Municipality of Central Manitoulin.
- (d) "Lot" means a parcel of land, described in a deed or other document legally capable of conveying land, or shown as a lot or a block on a registered plan of subdivision.
- (e) "Erosion" means the detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity;
- (f) "Topsoil" means that horizon in a soil known as the "A" horizon, containing organic material.
- (g) "Land disturbance" means any man-made change of the land surface including removing vegetative cover, excavating, filling, grading, and construction or building of roads or parking lots.
- (h) "Site" means the lands from which it is proposed that topsoil be removed, fill be dumped or placed or the grade of the land changed.

2. No person or corporation shall remove or cause or permit the removal of any topsoil, the changing of any grade of the land or the dumping or placing of fill on any land within the Municipality of Central Manitoulin unless:

- (a) the exemptions contained in Subsection 142/ 5, 6, 7 of the Municipal Act. 2001, and R.S.O. 2001, c. 25 as listed herein apply;

Exemptions;

A bylaw passed under this section does not apply to,

- (i) The activities or matters undertaken by a municipality or a local board for a municipality.
- (ii) The placing or dumping of fill, removal of top-soil 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 sub-division or a consent under section 41, 51, or 53 respectively, of the planning act or as a requirement of a site plan or subdivision agreement entered into under those sections,
- (iii) The placing or dumping of fill, removal of topsoil or alteration of the grade of the land imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under 70-2 of the Planning Act or as a requirement of an agreement entered into under that regulation.
- (iv) The placing or dumping of fill, removal of topsoil or alteration to the grade of land undertaken by a transmitter or distributor, as those terms are defined in section 2 of the Electricity Act 1998, for the purposes of constructing and maintaining a transmission or distribution system as defined in that section.
- (v) The placing or dumping of fill, removal of topsoil or alteration to the grade of 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,

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- (vi) 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,
- (viii) The placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken as an incidental part of a drain construction under the Drainage Act or the Tile Drainage Act. 2001, c. 25, s. 142/5; 2002, c. 17, Sched. A, s. 30 (2,3)
- (b) (i) The cumulative total topsoil removed from a lot is less than 5 cu. meters/ Ha. in any calendar year.
- (ii) A Permit as required under By-law 2008-04 has been issued by the municipality.

Exception

A by-law respecting the removal of topsoil does not apply to 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. 2001, c. 25, s. 142 (6).

Exclusion

The exception in subsection (6) respecting the removal of topsoil as an incidental part of a normal agricultural practice does not include the removal of topsoil for sale, exchange or other disposition. 2001, c. 25, s. 142 (7).

By-law ceases to have effect if,

A regulation is made under section 28 of the Conservation Authorities Act respecting the placing or dumping of fill, removal of topsoil or alteration of the grade of land in any area of the municipality, a by-law passed under this section is of no effect in respect to that area. 2001, c. 25, s. 142 (8).

3. Notwithstanding the exemptions contained in Subsection 2(a) and 2(b) of this By-law no person or corporation shall remove or permit the removal of topsoil, the change in grade or the dumping or placing of fill on any land adjacent to any size body of water without having been issued a Permit by the Municipality.

4. The owner or the authorized agent of the owner shall make all applications for Permits required under By-law 2008-04, in writing.

5. All applications for Permits required under By-law 2008-04 shall:

- (a) be in a form established from time to time, by the Municipality;
- (b) be accompanied by a comprehensive Control and Rehabilitation Plan in accordance with Section 6;
- (c) be accompanied by a fee, as established by Council from time to time, on a per hectare basis;
- (d) be accompanied by a financial guarantee in an amount determined by the Municipality and in a form satisfactory to the Municipality such guarantee to ensure the proper implementation and maintenance of site management control measures and final rehabilitation as specified in the Permit;
- (e) contain all other information as may be required therein; and
- (f) be duly executed by the owner.

6. The Control and Rehabilitation Plan accompanying an application for a Permit required under By-law 2008-04 shall include:

- (a) a key map showing the location of the site;

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- (b) the site boundaries and number of hectares of the site,
- (c) the use of the land and the location and use of the buildings and other structures adjacent to the site;
- (d) the location, dimensions and use of the building and other structures existing or proposed to be erected on the site;
- (e) the location of lakes, streams, wetlands, channels, ditches, other water courses and other bodies of water on and within thirty (30) metres beyond the site boundary;
- (f) the location of the predominant soil types;
- (g) the location and type of vegetative cover;
- (h) the location and dimensions of any existing and proposed storm water drainage systems and natural drainage patterns on and within thirty (30) metres beyond the site boundary;
- (i) the location and dimensions of utilities, structures, roads, highways and paving;
- (j) the existing site topography as per a current Ontario Base Map and extending a minimum of thirty (30) metres beyond the site boundary;
- (k) the proposed final elevations of the site;
- (l) the location and dimensions of all proposed land disturbing activities;
- (m) the location and dimensions of all temporary soil or dirt stockpiles;
- (n) the location, dimensions, design details and design calculations of all construction site control measures necessary to meet the requirements of this By-law;
- (o) a schedule of the anticipated starting and completion dates of each land disturbing or land developing activity including the installation of construction site control measures needed to meet the requirements of this By-law;
- (p) provisions for the maintenance of the construction site control measures during construction;
- (q) the scale of drawing;
- (r) the rehabilitation plans for the site, and;
- (s) any other necessary information with respect to the site.

7. Every Control and Rehabilitation Plan accompanying an application for a Permit required under By-law 2008-04 must be certified by a professional engineer who is qualified in this field and licensed to practice in the Province of Ontario.

8. Notwithstanding any other provisions of this By-law, the Council may not waive the requirement for a Control and Rehabilitation Plan. However, in appropriate cases after taking into consideration the cost of the proposed works, the anticipated impact on any adjacent body of water and the use of the property, Council may waive or reduce the fee and/or financial guarantee for a Permit required under By-law 2008-04.

9. All applications for a Permit required under By-law 2008-04 shall meet the site design guidelines as set out in Schedule "B" to this By-law.

10. The Municipality shall issue a Permit within 30 days where the requirements of this By-law are met and where the Municipality is satisfied that no damage will occur as a result of erosion, sedimentation or flooding and that the land will be rehabilitated to the same or better condition than it was in at the time prior to the removal of the topsoil for which the Permit is issued. Rehabilitation may take the form of:

- (a) levelling and regrading of affected lands;
- (b) planting of trees
- (c) the replacement of topsoil and stabilization by either sodding, hydroseeding, mulching or such other methods as may be directed.

11. Where the Municipality refuses to issue a Permit required under By-law 2008-04, the applicant shall be informed in writing of the refusal and may be required to provide additional information if the application is to be given further consideration.

12. Permits issued under By-law 2008-04 are subject to the conditions contained in Schedule "C" to this By-law.

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Top-soil Preservation By-law continued;

13. Permits issued under By-law 2008-04 shall be valid for a period of 365 days. The Municipality may extend the period one or more times for an additional 365 days each time. The Municipality may require additional control measures and/or inspection fees as a condition of the extension if they are necessary to meet the requirements of this By-law.

14. All sedimentation basins and other control measures necessary to meet the requirements of this By-law shall be in place prior to any land disturbance of the site. These measures shall be maintained by the Permit holder or subsequent landowner during the period of land disturbance in a manner satisfactory to the Municipality to ensure adequate compliance with the requirements of this By-law and to prevent damage occurring as a result of erosion, sedimentation or flooding.

15. Employees of the Municipality shall inspect sites for which Permits have been issued under By-law 2008-04 to ensure compliance with the approved Control Plan.

16. No Permit shall be issued for the removal of topsoil the changing of the grade of the land or the dumping or placing of fill, if, in the opinion of the Municipality, the actions taken upon the lands will;

- (a) cause an unacceptable level of waste in the Municipality.
- (b) unreasonably hinder the orderly development of any lands within the Municipality.
- (c) adversely affect adjacent lots; or adversely affect natural drainage systems thus affecting adjacent lots.
- (d) leave the property in a condition that will make rehabilitation unrealistic.

17. The issuance of a Permit by the Municipality as required under By-law 2008-04 does not preclude the applicant's responsibility to obtain all other approvals, which may be required by any other level of government and agencies thereof.

18. If the property for which a Permit required under By-law 2008-04 has been issued is transferred while the Permit remains in effect the new owner shall either:

- (a) provide the Municipality with an agreement to comply with all the conditions under which the existing Permit was issued; and
- (b) provide a financial guarantee in accordance with the requirements of Schedule "A" to this By-law.

19. No notices of contraventions or charges will be laid under this By-law at the time of enactment of this By-law until thirty (30) days written notice to comply with the By-law has been given by the municipality.

20. Any person or corporation who contravenes any provision requirement of this By-law may be issued a Notice of Contravention by the Municipality, and directed to forthwith cease and desist all operations.

21. Where it is revealed or discovered that the holder of a Permit issued under By-law 2008-04 has provided misleading or false information on the application, the Permit issued under this By-law shall be revoked by the Municipality and the Permit holder shall thereafter cease and desist forthwith all operations being conducted under the authority of the revoked Permit.

22. Where the Municipality issues a written order to cease and desist all operations being conducted under authority of the Permit issued under By-law 2008-04, and if such written order is not fully complied with within 3 days of the delivery order, the Municipality may draw on the letter of credit and carry out such work as may be required to comply with the conditions of the Permit.

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Top Soil Preservation By-law continued...

23. Every person or corporation who:

- (a) provides misleading or false information in an application under this By-law in any statement or plan required to be produced under this By-law;
- (b) fails to comply with any notice of contravention or other requirement under this By-law; or contravenes any provision or requirement of this By-law and every director or officer of a corporation who concurs in such production, failure or contravention is guilty of an offense and on conviction is liable to a fine in the amount provided for by Section 62 of the Provincial Offenses Act or any successor legislation in substitution thereof;
- (c) every contravention of any provision of this By-law shall constitute a separate offense for each day such contravention occurs or continues.

24. Schedules A, B, C, & D as attached to this By-law shall form part of this By-law.

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

26. By-law 2002-09 is rescinded.

Read a first, second and third time and finally passed this \_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
Reeve/ Richard Stephens

\_\_\_\_\_  
Clerk/ Ruth Frawley

I, \_\_\_\_\_ Clerk of the Municipality of Central Manitoulin, hereby certified this as a true copy of the Municipality of Central Manitoulin By-law 2008-04.

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

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SCHEDULE "A" TO TOPSOIL PRESERVATION BY-LAW 2008-04

Describes fee and financial guarantee for a Permit issued under By-law 2008-04

Fee:

The fee for a Topsoil Removal permit shall be \$100.00 per hectare.

Financial Guarantee:

The financial guarantee shall be in the form of either a letter of credit issued by an accredited financial institution or a certified cheque.

The financial guarantee shall be in an amount equal to the estimated cost of rehabilitation of the site as determined by an engineers report. The Municipality of Central Manitoulin may, at their discretion, stipulate a financial guarantee exceeding this amount in situations where they believe that there is a high potential for a negative environmental impact if proper control and rehabilitation is not undertaken.

The financial guarantee shall be released once rehabilitation of the property has been achieved as determined in the Control and Rehabilitation Plan and is to the satisfaction of the Municipality.

Under no circumstances will this financial guarantee exceed the assessed value of the property.

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SCHEDULE "B" TO BY-LAW 2008-04

Site Design Guidelines

The following requirements shall be met on all sites where a Permit is issued under By-law 2008-04:

1. Site Dewatering: Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, up flow chambers, swirl concentrators or other appropriate controls. If the water is demonstrated to have no particles greater than 40 microns in size, then dewatering operations may still be conducted provided the water is not permitted to discharge directly into receiving bodies of water or streams.

2. Drain Inlet Protection: All lot storm-drain inlets or any other inlets as the Municipality considers necessary, shall be protected with filter fabric or equivalent barriers meeting accepted design criteria, standards and specifications accepted by the municipality.

3. Site Erosion Control: The following criteria apply to land disturbing activities that result in runoff leaving the site:

(a) Channelled runoff from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected by filter fences placed along channel edges to reduce sediment reaching the channel.

(b) All activities on the site shall be conducted in a logical sequence to minimize the area of bare soil exposed at any one time.

(c) Any soil or dirt storage piles containing more than one hundred (100) cubic metres of material shall not be located within a down slope drainage length of less than ten (10) metres to a roadway or drainage channel. If remaining for more than thirty (30) days, said soil or dirt storage piles shall be stabilized by mulching, vegetative cover, tarps or other means. Erosion from soil or dirt piles which will be in existence for less than thirty (30) days shall be controlled by filter fence barriers around the pile.

(d) Runoff from the entire disturbed area on the site shall be controlled as follows:

(i) All disturbed ground left inactive shall be stabilized by seeding, sodding, mulching or covering, or other equivalent control measures. The period of time of inactivity shall be at the discretion of the Municipality but shall not exceed thirty (30) days.

(ii) Notwithstanding paragraph 3(4) (a), a Permit holder or applicant for a Permit as required under By-law 2008-04, who has applied for but not yet received a building permit or any other necessary permit may be granted an extension to the permitted period of inactivity, at the discretion of the municipality, provided that said applicant or permit holder provides satisfactory proof that he has made his best efforts to have said building or other necessary permit issued;

(iii) For sites with less than four (4) hectares disturbed at one time and slopes less than twelve (12) percent grade, filter fences or equivalent control measures shall be installed along all down slope sides of the site;

(iv) For sites with more than four (4) hectares disturbed at one time or with slopes greater than twelve (12) percent grade, or if a channel originates in the disturbed area, one or more sedimentation basins shall be constructed. Each sedimentation basin shall have a surface area of at least one (1) percent of the area draining to the basin and at least one (1) metre of depth and be constructed in accordance with design specifications acceptable to the Municipality. Sediment shall be removed to maintain a depth of one (1) metre. It is not permitted to directly discharge the basin into receiving water streams or bodies. Basin discharge rate shall be sufficiently low as to not cause erosion along the discharge channel;

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SCHEDULE "B" TO BY-LAW 2008-04

Site Design Guidelines continued...

(v) For sites located adjacent to existing residential areas, a sediment control fence may be required around the entire perimeter of the site; A three metre wide buffer strip or sediment control fence shall be installed along the perimeter beside the down slope sides of the site; For sites with extensive fill requirements, the Municipality may waive the requirements for stabilization of the disturbed land after thirty (30) days of inactivity provided that the sediment control measures have been implemented to the satisfaction of the Municipality.

4. Rehabilitation: Where site rehabilitation is not covered under any other provision or By-law, the municipality may request, as part of the Control Plan, plans for rehabilitation of the site. All rehabilitation should be completed before temporary on-site drainage control measures are removed. Rehabilitation should proceed on a phased basis; such that topsoil is stabilized as construction on each phase of the site is completed. Rehabilitation may take the form of:

- (a) Levelling and regrading of affected lands
- (b) Planting of trees and other stabilizing ground cover
- (c) The replacement of topsoil and stabilization by either sodding, hydroseeding, mulching or other such methods as may be directed.



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SCHEDULE "C" TO BY-LAW 2008-04

Permit Conditions

1. All Permit holders shall:

- (a) Notify the Municipality within 48 hours of commencing any land disturbing activity;
- (b) Notify the Municipality of the completion of any control measures within 2 days after their installation;
- (c) Obtain permission in writing from the Municipality prior to modifying the Control and Rehabilitation Plan;
- (d) Install all control measures as identified in the approved Control and Rehabilitation Plan;
- (e) Maintain all road drainage systems, storm water drainage systems, control measures and other facilities identified in the Control and Rehabilitation Plan;
- (f) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land developing and/or disturbing activities;
- (g) Inspect the construction control measures at least once per week and after each rainfall of at least one (1) centimetre and make the needed repairs;
- (h) Allow the employees of the Municipality to enter the site for the purpose of inspecting for compliance with the Control and Rehabilitation Plan or for performing any work necessary to bring the site into compliance with the Control and Rehabilitation Plan; and maintain a copy of the Control and Rehabilitation Plan on the site.

2. The Municipality:

- (a) Upon the failure by the Permit holder to complete all or part of the works in the time stipulated in the Control and Rehabilitation Plan, may draw the appropriate amount from the financial guarantee and use the funds to arrange for the completion of the said works, or any part thereof;
- (b) Upon the failure by the Permit holder to repair or maintain a specific part of the works as requested by the Municipality, and in the time requested, the Municipality may at any time authorize the use of all or part of the financial guarantee to pay the cost of any part of the works it may in its or their absolute discretion deem necessary, or;
- (c) In the case of emergency repairs or clean-up, the municipality may undertake the necessary works at the expense of the Permit holder and reimburse itself out of financial guarantee posted by the applicant.

**See application form attached**

MUNICIPALITY OF CENTRAL MANITOULIN  
SCHEDULE "D" TO BY-LAW 2008-04

**APPLICATION FOR A PERMIT REQUIRED UNDER BY-LAW 2008-04**

NAME: \_\_\_\_\_ Location of site: LOT \_\_\_\_\_

ADDRESS: \_\_\_\_\_ Concession \_\_\_\_\_

\_\_\_\_\_ WARD # \_\_\_\_\_

\_\_\_\_\_ SIZE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

A fee must accompany this application in the amount as set out by By-law 2008-04.

A Control and Rehabilitation Plan must accompany this application as set out in By-law 2008-04

The Control and Rehabilitation Plan must be certified by a professional engineer, qualified in this field and licensed to practice in the Province of Ontario.

Please take note of the following:

The Municipality shall issue a Permit within 30 days where the requirements of this By-law are met and where the Municipality is satisfied that no damage will occur as a result of erosion, sedimentation or flooding and that the land will be rehabilitated to the same or better condition than it was in at the time prior to the removal of the topsoil, changing of the grade of the land, or dumping or placing fill, for which the Permit is issued. Rehabilitation may take the form of:

- (a) Levelling and regrading of affected lands;
- (b) Planting of trees
- (c) the replacement of topsoil and stabilization by either sodding, hydro seeding, mulching or such other methods as may be directed.

By-law 2008-04 must be adhered to in all of its parts.

Signature :-----