

THE CORPORATION OF THE CITY OF PORT COLBORNE

BY-LAW NO. 5528/125/10

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

WHEREAS Section 142 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that the Council of a local municipality may pass by-laws to regulate or prohibit the removal of topsoil, the placing or dumping of fill and the alteration of the grade of land;

AND WHEREAS Council of the Corporation of the City of Port Colborne may also require that a permit be obtained for the placing or dumping of fill, the removal of topsoil and the alteration of the grade of land within the City of Port Colborne, and may prescribe the fees for such permit, the circumstances under which a permit may be issued and conditions to such a permit;

AND WHEREAS the Council of the Corporation of the City of Port Colborne deems it in the public interest and expedient to regulate or prohibit certain site alterations within the City of Port Colborne;

NOW THEREFORE the Council of the Corporation of the City of Port Colborne enacts as follows:

DEFINITIONS

1. In this By-law:

“Agricultural Land” means:

- (i) land upon which agriculture is a permitted use pursuant to the applicable zoning by-law of the City of Port Colborne; and
- (ii) land which is being used for agricultural purposes at the time of an application for permit;

“City” means the Corporation of the City of Port Colborne;

“Clerk” shall mean the Clerk of the Corporation of the City of Port Colborne;

“Council” means the Council of the Corporation of the City of Port Colborne;

“Director” means the Director of Planning & Development for the City of Port Colborne or his or her designate.

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

“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 to another location on the same property;

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

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

“Fill” means any type of material deposited or placed on lands and includes soil, stone, concrete, asphalt, sod or turf either singly or in combination;

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

“Incompatible Soil” means, for example, clay or loam when placed on top of sandy or gravelly soils or impervious clay subsoil when placed on top of topsoil;

“Inspector” means the person or persons appointed by Council for the purposes of enforcing the By-law;

“Normal Agricultural Practices” means any activity performed on private lands by the owner or owner’s agent that is considered by the Ministry of Agriculture and the Food to be a routine or common procedure for the type of crop, soil type or general climatic conditions related to the subject property;

“Owner” includes the registered owner of the lands on which fill is proposed to be placed or dumped or which lands are to be re-graded and any person, firm or corporation, whether alone or with others, that has the right to possess or occupy the lands or actually does occupy or possess the lands, including a lessee;

“Permit” means a permit issued pursuant to the provisions of this By-law;

“Place of Disposal” means a municipally-owned storm drainage sewer, roadside ditch, a natural watercourse, or an outlet for storm drainage approved by the Corporation;

“Placing” means the distribution of fill on lands to establish a finished grade different from the existing grade;

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

“Proposed Grade” means the proposed elevation of ground surface of land upon which fill is proposed to be placed or dumped or the grade altered;

“Retaining Wall” means a wall designed to contain and support fill which has a finished grade higher than that of adjacent lands;

“Site” means lands which are the subject of an application for a permit pursuant to the provisions of this By-law;

“Site Alteration” means site grading, or the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere;

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

“Soil Scientist” means a person specializing in agricultural qualities of soil or in the grading or typing of agricultural soil or such equivalent qualification as is acceptable to the Director;

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

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

“Wetland” means land that is seasonally or permanently covered in shallow water or has a water table close to or at its surface, directly contributes to the hydrologic function of a watershed through connection with a surface watercourse, has hydraulic soils, has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance to which has been favoured by the presence of abundant water, but does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic as referred to in this section;

APPLICATION OF THE BY-LAW

2. No person shall dump, or cause or permit the placing or dumping of fill, nor alter or cause or permit the alteration of the grade of lands within the City, without first having obtained a Permit issued by the Director pursuant to this By-law.
3. No person shall remove topsoil, or cause or permit the removal of topsoil from any site in the City without first having obtained a Permit issued by the Director pursuant to this By-law.
4. The requirement of obtaining a Permit under this By-law is in addition to and not in substitution for any other requirement to obtain a Permit or licence or other regulatory approval under any federal, provincial and municipal regulation.

APPLICATION FOR PERMIT

5. Every person applying for a Permit shall submit:
 - (a) a completed application in the form provided by a Director, as amended by the Director from time to time;
 - (b) the fee prescribed for a Permit as set out in Schedule “A”;
 - (c) a Phase I, II or III environmental site assessment report where required by the Director;

- (d) a plan showing a property scaled drawing of any retaining wall that may be required and a description including dimensions of any materials to be used in the construction of any such retaining wall;
 - (e) a description of the fill proposed to be dumped and a description of the source of the fill;
 - (f) where required by the Director, plans meeting the requirements set out in Schedule "B";
 - (g) where required by the Director, a control plan, the requirements of which are set out in Section 8 and 9; and
 - (h) in the case of Agricultural Land, a report prepared and signed by a Soil Scientist confirming that the proposed alteration will maintain or improve the overall capability of the soil of the site.
6. Every person submitting an application for a Permit shall, in addition to the requirements in Section 5 above:
- (a) certify that the fill contains no contaminants within the meaning of the *Environmental Protection Act*, R.S.O. 1990, c.E.19, as amended; and
 - (b) forever and unconditionally release and indemnify the City with respect to any and all liability that may arise in the event that fill contains contaminants within the meaning of the *Environmental Protection Act*, and any successor legislation.
7. The certificate, release and indemnity referred to in Section 6 above shall be in the form prescribed by the Director, as amended from time to time.

CONTROL PLANS

8. A control plan required to be submitted as part of an application for Permit pursuant to this By-law shall include, where applicable:
- (a) a key map showing the location of the site;
 - (b) the site boundaries, and the size of the site in hectares;
 - (c) the current and proposed use of the site and the location and use of buildings and other structures adjacent to the site;
 - (d) the location, dimensions and use of the buildings 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 the site and within fifteen (15) metres beyond the site boundaries for sites less than 0.2 hectares, and within thirty (30) metres beyond the site boundaries for sites greater than 0.2 hectares;
 - (f) the Regional Storm Flood Plain and Conservation Authority Fill Regulation lines, with appropriate setbacks as required by the Conservation Authority;

- (g) the location of the predominant soil types;
 - (h) the location and dimensions of any existing and proposed storm water drainage systems and natural drainage patterns on and within fifteen (15) metres beyond the site boundaries for sites less than 0.2 hectares, and within thirty (30) metres beyond the site boundaries for sites greater than 0.2 hectares;
 - (i) the location and dimensions of utilities, structures, roads, highways and paving;
 - (j) the existing sit topography at a contour interval not to exceed 0.5 metres and to extend a minimum of fifteen (15) metres beyond the site boundaries for sites less than 0.2 hectares, and within thirty (30) metres beyond the site boundaries for sites greater than 0.2 hectares;
 - (k) the location, diameter, species and drip line of all trees with a caliper measuring 100mm or greater at breast height, all other vegetation to be identified in masses showing outline of canopy created by the massing;
 - (l) all existing vegetation 3 metres outside of the site boundaries or property lines must be identified, including City trees, individually locating all trees with a caliper measuring 100mm or greater at breast height, all other vegetation to be identified in masses showing outline of canopy created by the massing;
 - (m) the proposed final elevations of the site;
 - (n) the location and dimensions of all proposed land disturbance;
 - (o) the location and dimensions of all temporary soil or dirt stockpiles;
 - (p) the location, dimensions, design details, estimated costs and design calculations of all construction site control measures necessary to meet the requirements of this By-law;
 - (q) provisions for the maintenance of site control measures during construction;
 - (r) the scale of the drawing; and
 - (s) any other necessary information with respect to the site, as required by the Director.
9. Every control plan accompanying an application for Permit must be certified by a Professional Engineer who is licensed to practice in the Province of Ontario, or by any other qualified person approved by the Director.
10. Notwithstanding any other provisions of this By-law, the Director may, at his or her sole discretion, waive the requirement for a control plan, or any part thereof, and may reduce the fee for a Permit under this By-law, after taking into consideration the proposed works and the anticipated impact on the site and the surrounding environment.

AGREEMENTS WITH CITY

11. The Director may, prior to the issuance of a Permit under this By-law, require the applicant to enter into an agreement with the City to provide security for the applicant's obligations under this By-law and such requirements as the Director considers necessary to ensure that the work is in accordance with proper engineering and environmental practices.

ISSUANCE OF PERMIT

12. The Director shall review or cause to be reviewed a complete Permit application and shall issue a Permit where:
 - (a) the Director is satisfied that the site is not within an area where the placing or dumping of fill, removal of topsoil or alteration of the grade of land is prohibited under this By-law, or any other applicable law;
 - (b) the Director is satisfied that the applicant has complied or will comply with all requirements of this By-law, including the payment of all applicable fees, charges, securities and deposits;
 - (c) the applicant has entered into an agreement as contemplated by this By-law, where required by the Director, and has performed all of its obligations under the agreement which are required to be performed prior to the issuance of the Permit;
 - (d) the Director is satisfied that the proposed final elevation, the resulting drainage patterns, the design of any retaining wall, the type of fill to be used, if any, and the method of placing or dumping of fill, removal of topsoil or alteration of the grade of land are all in accordance with proper engineering and environmental practices; and
 - (e) the Director is satisfied that the placing or dumping of fill, removal of topsoil or alteration of the grade of the land will not result in:
 - (i) soil erosion;
 - (ii) blockage of a watercourse;
 - (iii) siltation in a watercourse or storm sewer;
 - (iv) pollution or contamination of a watercourse;
 - (v) flooding or ponding on abutting lands;
 - (vi) flooding or ponding caused by a watercourse overflowing its banks;
 - (vii) a detrimental effect on any trees of a caliper of seventy-five (75) millimeters or more located on the site;
 - (viii) a detrimental effect on matters of inherent biological sensitivity such as aquifer recharge, water quality, unusual plants or wildlife and overwintering habitats;

- (ix) a detrimental effect on the amenities of adjacent lots;
 - (x) hindering the orderly development of any lands; or
 - (xi) physical damage to the adjacent roadway.
- (f) the Director is satisfied that the existing topsoil is not to be removed from the site, destroyed or buried by the placement of incompatible soils;
 - (g) the Director is satisfied that the existing topsoil will only be removed from the site of man-made facilities such as building or parking lots;
 - (h) where an erosion control plan has been required, and an erosion plan has been filed with the City which includes:
 - the location and dimensions of all proposed site alteration activities;
 - the location and dimensions of all temporary soil and dirt stock piles;
 - the location and dimensions of all required construction site management control measures; and
 - a schedule of anticipated starting and completion dates for each site alteration or land development activity including the installation of construction site management control measures needed to meet the requirements of this By-law;
 - (i) the Director is satisfied that any other concerns have been satisfied.
13. A Permit issued pursuant to the provisions of this By-law shall be valid for a period of six (6) months from the date of issuance. A Permit may be extended once upon written application to the Director prior to expiration of the original Permit.

CONDITIONS

14. The Director may attach such terms, conditions and design guidelines to the issuance of any Permit that served the purposes of this By-law.

COMPLIANCE WITH PLANS AND CONDITIONS

15. Where a Permit has been issued pursuant to the provisions of this By-law, no person shall place or dump fill or remove topsoil or alter the grade of land except in accordance with the plans, documents and other information on the basis of which the Permit was issued and in compliance with terms, conditions and design guidelines imposed by the Director.

16. Every Permit holder, or his or her authorized agent, shall request that the Director or Inspector inspect the site at the commencement and conclusion of the work.

MINIMUM STANDARDS

17. In addition to all other requirements set out in this By-law, no person shall place or dump, or cause or permit the placing or dumping of fill, removal of topsoil or alteration of grade of land in the City unless:
- (a) it is done at the request of, or with the written consent of the owner of the site where the fill is to be placed or dumped, topsoil removed or the grade of land altered;
 - (b) all fill to be used includes only soil, stone, sod or other material acceptable to the Director and that such material is clean and free of any glass, plastics, rubber, metals, termites, liquid, garbage and/or contaminants;
 - (c) the drainage system for the site is provided in accordance with this By-law and any Permit issued pursuant thereto.
18. Every person who places or dumps fill, causes or permits fill to be placed or dumped, removes topsoil or alters the grade of land, shall:
- (a) ensure that the finished grade surface is protected by sod, turf, seeding of grass, greenery, asphalt, concrete or such other material as the Director may approve, either singly or in combination;
 - (b) ensure that fill is not placed around the perimeter of any existing building to an elevation higher than one hundred and fifty (150) millimeters below the top of foundation of such building, unless such building and its foundation walls are raised in a manner satisfactory to the Director;
 - (c) ensure that no piped connection to City culverts, ditches or sewer systems is covered and backfilled until the work has been inspected and approved by the Director or an Inspector;
 - (d) provide and maintain such protection for trees as may be required by the Director;
 - (e) provide and maintain siltation control measures as may be required by the Director;
 - (f) ensure that all fill used is clean and free of rubbish, glass, garbage, termites, organic materials, liquid and toxic chemicals and other contaminants;
 - (g) ensure that the work which is the subject of a Permit does not soil or otherwise foul any municipal roads, and in the event that such soiling or fouling should occur, ensure that the road(s) affected are cleaned to the satisfaction of the Director or an Inspector

within twelve (12) hours of any request by the Director or an Inspector for such cleaning;

- (h) ensure that fill is placed or dumped in such a manner and any retaining wall containing such fill is erected in such a manner that no ponding is caused on the site or abutting lands and that adequate provision is made for proper surface stormwater drainage;
- (i) ensure that the fertility and viability of Agricultural land is maintained; and
- (j) ensure that all conditions of the Permit issued pursuant to this By-law, and any other requirements of this By-law are fulfilled to the satisfaction of the Director.

REVOCAION OF A PERMIT

19. A Permit issued pursuant to the provisions of this By-law may be revoked by the Director under any of the following circumstances:
- (a) if the Permit was issued on mistaken, misleading, false or incorrect information;
 - (b) if the Permit was issued in error;
 - (c) if the Owner requests in writing that the Permit be revoked;
 - (d) if the terms of an agreement under this By-law are not complied with; or
 - (e) if an Owner fails to comply with any provision of this By-law or condition of the Permit.
20. Where a Permit issued pursuant to the provisions of this By-law is revoked, every Owner shall immediately cease all operations being conducted under the authority of the revoked Permit and, unless otherwise directed by the Director, immediately rehabilitate and stabilize the lands so as to prevent adverse impacts.

APPEAL TO COUNCIL

21. Every applicant for a Permit pursuant to the provisions of this By-law may appeal in writing to Council where:
- (a) the Director refuses to issue a Permit, within 30 days after refusal; or
 - (b) the applicant for Permit objects to a condition in the Permit, within 30 days after the issuance of the Permit.
22. On an appeal, Council has the same powers as the Director under this By-law and may:
- (a) issue a site alteration Permit, either with or without conditions;
 - (b) affirm, vary or add any condition to the Permit; or

- (c) confirm the refusal of the Director to issue the Permit.

EXEMPTIONS

23. This By-law does not apply to:

- (a) activities or matters undertaken by the City or a local board of the City;
- (b) 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 the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- (c) 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;
- (d) 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*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- (e) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;
- (f) 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* ; or
- (g) 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* or the *Tile Drainage Act*;
- (h) the use, operation, establishment, alteration, enlargement or extension of a waste management system or waste disposal site lawfully permitted under Part V of the Environmental Protection Act, R.S.O. 1990 c.E.19, as amended, or a waste disposal site or waste management system that is exempted by regulation from said Part V;

- (i) the construction, extension, alteration, maintenance or operation of works under Section 28 of the Public Transportation and Highway Improvement Act, R.S.O. 1990 c.P.50, as amended;
- (j) any work conducted pursuant to, and in accordance with the provisions of, a regulation made under Section 28 of the Conservation Authorities Act respecting the placing or dumping of fill in any area of the City;
- (k) any work where soil is placed or dumped on lands for the purpose of lawn dressing, landscaping or adding to flower beds or vegetable gardens, provided that the ground elevation of the lands is not increased by more than two hundred (200) millimeters (8 inches) and there is no change in the direction, rate or quality of runoff to neighbouring properties.

EXCEPTIONS

- 24. The provisions of this By-law with respect to the removal of topsoil do not apply to the removal of topsoil as an incidental part of a normal farm practice including the removal as an incidental part of sod farming, greenhouse operation and nursery uses.
- 25. The exception referred to in Section 24 above 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 like disposition.

ENFORCEMENT

- 26. The administration and enforcement of this By-law shall be performed by the Director, his or her designates, and those persons designated from time to time as Inspectors under this By-law.
- 27. The Director and his or her designates, and Inspectors, shall have all powers necessary to carry out the administration and enforcement of this By-law, including the power to enter upon and inspect any lands to determine compliance with this By-law or a Permit issued under this By-law.
- 28. Where a person has placed or dumped fill, or caused or permitted the placing or dumping of fill, the removal of topsoil or the alteration of the grade of land in contravention of any Permit issued pursuant to this By-law, without a Permit where a Permit is required under this By-law, or contrary to any other provision of this By-law, the Director may make an Order directing the person to do any or all of the following:
 - (a) comply with the conditions of the Permit and this By-law;
 - (b) cease the work which is the subject of the contravention; and/or

- (c) require work to be done to correct the contravention to the satisfaction of the Director, and within the time specified in the Order.
29. Where a person fails to correct any such contravention to the satisfaction of the Director within the time specified in an Order issued pursuant to this By-law, the City, in addition to all other remedies it may have, may take all necessary steps to bring the lands into compliance with the terms of this By-law, and may enter upon land, at any reasonable time, for this purpose.
30. The City may recover its costs incurred under Section 29, plus interest accrued to the date payment is made at the rate of fifteen percent (15%) per annum, from the owner of the land by action or in a like manner as municipal taxes.

OFFENCE AND PENALTY

31. Every person who contravenes any provision of this By-law is guilty of an offence and is liable for every day or part thereof upon which such offence occurs or continues to a fine of not more than \$5,000.00 on a first conviction, and not more than \$10,000.00 on any subsequent conviction.
32. Every corporation that contravenes any provision of this By-law is guilty of an offence and is liable for every day or part thereof upon which such offence occurs or continues to a fine of not more than \$10,000.00 on a first conviction, and not more than \$25,000.00 on any subsequent conviction.

SEVERABILITY

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

ASSISTANCE FOR INSPECTOR

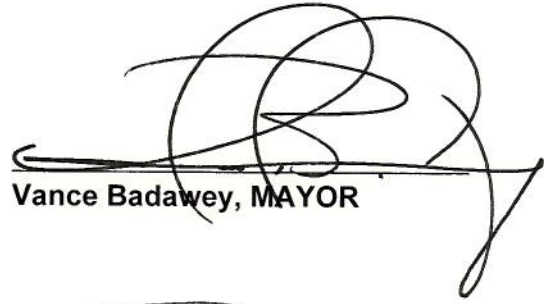
34. The Director or an Inspector shall have the right to retain the services of the City of Port Colborne's consulting engineer for the purposes of determining whether the requirements of Schedule "B" have been complied with, and to assist with the administration of this By-law.

GENERAL

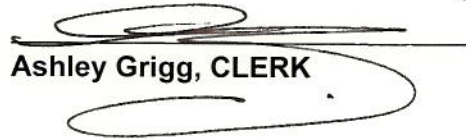
35. That By-law No. 2802/121/92, being a By-law to Prohibit the Removal of Top Soil From Lands Within the City of Port Colborne enacted by the Council of the City of Port Colborne on October 13, 1992 is hereby repealed.
36. The short title of this By-law is the City of Port Colborne Site Alteration By-law.

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

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 13TH DAY
OF SEPTEMBER, 2010.**



Vance Badawey, MAYOR



Ashley Grigg, CLERK

SCHEDULE "A"**SITE ALTERATION PERMIT FEES**

1. Basic Fee for affected land area of 1 hectare for a 6 month permit	\$100.00
2. Additional fee per hectare or fraction thereof over one hectare	\$20.00/ha
3. Maximum fee for a 6 month permit	\$1,000.00
Example: 15 ha = \$100 + (\$20 x 14ha) = \$380.00	
Note: Fees include inspection of control plans and site by City staff	
4. Permit Extension Fee – fee per hectare	\$20.00/ha
Example: same 15 ha site = (\$20.00 x 15 ha) = \$300.00	

SCHEDULE "B"

Plans for the alteration and grading or for the placing or dumping of fill shall be prepared in accordance with the standard drawings and to the satisfaction of the City of Port Colborne, in accordance with the City's Municipal Servicing Standards and as follows:

		(1) indicate: the north arrow on the plan, swales - inverts and typical cross-section, all grade breaks, direction of arrow flows, title block - including lot and plan number and scaled used;
		(2) refer all elevations to the closest municipal bench mark (metric-geodetic);
		(3) show all proposed catch basins, leads, top of grade elevations and inverts;
		(4) show existing contours;
		(5) show regional flood lines if applicable;
		(6) show existing and proposed elevations at lot corners and all building corners;
		(7) show specified building grade (i.e. highest ground elevation at outside wall), driveway elevations, top of foundation and lowest opening in foundation;
		(8) show existing and proposed road grades, lengths and elevations on all streets with symbols at grade changes indicating direction of slope;
		(9) indicate all semi-detached lots with "S" on the plan;
		(10) show all easements - existing and proposed;
		(11) show proposed elevations along boundary of all blocks abutting single family and semi-detached lots in the subdivision;
		(12) illustrate that all drainage outlets for abutting properties are maintained;
		(13) show a table for a list of revisions above the title block;
		(14) the approval of a drainage plan is related to drainage only; it is the responsibility of the developer to ensure that the drainage plan complements the land and suits the houses to be constructed;
		(15) show temporary erosion control measures to be in place during the construction period, e.g. silt fence, sedimentation traps, etc., and permanent erosion control works to be left in place after construction and lot grading is completed, e.g. siltation ponds, etc.