



Staff Report

Planning and Development Services – Planning Division

Report To: Committee of the Whole
Meeting Date: March 23rd^h, 2021
Report Number: PDS.21.031
Subject: Update to By-Law No. 2002-78, and Request to extend the Lora Bay Berm
Prepared by: Brian Worsley, Manager Development Engineering

A. Recommendations

THAT Council receive Staff Report PDS.21.031, entitled “Update to By-Law No. 2002-78, and Request to Extend the Lora Bay Berm” for information;

AND THAT Council direct Town staff to finalize a Fill Agreement pertaining to the extension of the Lora Bay Berm;

AND THAT the Fill Agreement shall address such matters as may be directed by Council in the consideration of Staff Report PDS.21.031;

AND THAT the Mayor and the Clerk are authorized to execute the Lora Bay Berm Extension Fill Agreement;

AND THAT Council direct staff to initiate an update to By-Law 2002-78.

B. Overview

The Town’s current Fill By-Law would benefit from, public notice/communication of site activities, better integration with Land Development activities & processes, clear assignment of responsibilities, and closer alignment with new Provincial Regulations, (in particular Ontario Regulation 406/19).

An application has been received to extend the Lora Bay berm originally initiated under Permit 2009-531. Staff are requesting Council direction with respect to the specific application for extension of the Lora Bay berm, as well as the Fill By-law in general.

C. Background

The first phase of the Lora Bay Berm (figure Attachment #1) was authorized under Permit No. 2009-531, issued October 30th, 2009 under Fill By-Law, 2002-78. The Berm has also been

authorized by the Ministry of Transport Ontario (MTO), under the Public Transportation and Highway Improvement Act (PTHIA). While MTO permits are required, a separate Town authorization under By-Law 2002-78 is also necessary, as all lands in Town must either be exempt, or be zoned Residential Land and have a permit.

It should be noted that the previous authorization for the original Lora Bay berm (i.e. Permit 2009-531) was done under the exemption listed in Section 2.e.ix of the By-Law. Specifically, this exemption states the following:

The placing or dumping of fill and/or the alteration of the existing grade of the land where said land is subject to the provisions of an Agreement entered into between the owner of the lands and the Town respecting the placing or dumping of fill and/or alteration of the existing grade of the land.

In review of Permit 2009-531, the permit was issued under this same exemption. Considering the conditions attached to that permit, staff believe that the permit was issued in the spirit and intent of this exemption. However, current staff review of the requirements under By-Law 2002-78 have concluded that a formal agreement is required for an extension of the works originally authorized under permit 2009-531. In review of the delegated authority By-Law (By-Law 2015-63) delegated authority is not in place for any existing staff position to execute this agreement. Accordingly, a report to Committee of the Whole seeking direction is required to allow Council to consider the requested extension of the Lora Bay Berm.

Should Council wish to allow the extension of the Lora Bay Berm, staff have reviewed the Engineering drawings associated with the berm extension. The Engineering drawings submitted with the application satisfy the Engineering requirements (primarily erosion & sedimentation control) for the proposed Berm extension and are enclosed as Attachment 2. Operational requirements, such as dust control, will be dealt with through the agreement.

On a broader scale, staff's review of the existing By-Law has revealed potentially larger regulatory issues. Ontario Regulation (O. Reg.) 406/19, On-Site and Excess Soil Management, came into force on January 1st of 2021. The guidance notes for the regulations within 406/19, when rolled out, will be utilized to re-frame the Town's Fill By-Law. As the guidance notes are not yet available, Town staff are working with Ministry of Environment Conservation and Parks (MECP) staff to allow the Town to harmonize the Town's By-Law with O. Reg 406/19. Implementation of O. Reg. 406/19 is also likely to be influenced by the Provincial Covid-19 Recovery Act, 2020 (Bill 197), which, amongst other initiatives, addresses eliminating construction delays, and speeding up infrastructure projects. In tandem with the Covid-19 Recovery Act, amendments to the MECP regulatory process are anticipated in the near future. When enacted, Town staff expect Environmental Compliance Approvals (ECA) will be downloaded to Municipalities to reduce infrastructure approval timelines.

Town staff have been communicating with MECP staff on the above initiatives to ensure that a new Town Fill By-Law, if directed by Council, can be appropriately framed to achieve the results desired by Council, and to work within the recent Provincial legislative initiatives mentioned

above. As additional research by Staff is required, direction from Council as to prime goals of a new By-Law is requested, to help focus staff efforts.

D. Analysis

The intent of the Town's Fill By-Law is understood to primarily be to regulate Development related re-grading & Fill movements. Normal agricultural practices, minor landscape and gardening activities that don't impact drainage across property lines, and activities authorized under other legislation, are understood to be exempt from the By-Law. However, in the case of works such as the Lora Bay Berm, the provisions of the existing By-Law have been determined to be in need of enhancements to manage educate and enforce where necessary.

Staff experience with the current By-Law, has indicated that a revised By-Law should provide:

1. Enhanced Notice Provisions to ensure adequate community communications
2. Additional control over the nature of the material being placed / filled, (earth fill versus boulders, building debris, and tree stumps)
3. Specification of the degree of compaction of placed material
4. Time limits on placement of material, verification of compliance with design, and restoration of the fill surface
5. A tighter enforcement regime, to provide a better mechanism for Municipal enforcement.
6. An agreement authorized by Council for alteration of grade and/or Fill placement.
7. For the taking of Securities

A draft agreement is provided for Council consideration for the specific case of the request to extend the Lora Bay berm. (Attachment 3)

Council's direction on the prioritization of objectives for the draft fill agreement will assist staff in finalizing the agreement. Staff recommend that an update to the bylaw be initiated to explore how the items above can be integrated into a new By-Law. Furthermore, staff would explore other site alteration activities that often come up and are associated with the movement or placement of fill. Through the By-Law update engagement process, staff will also obtain input from the community and business stakeholders (developers, builders, landscapers). This would include how the Town can best respond to a growing need and ensure landscaping on private lands does not negatively impact other matters (i.e. drainage, infrastructure, etc.).

E. Strategic Priorities

1. Communications and Engagement

We will enhance communications and engagement between Town Staff, Town residents and stakeholders.

2. Organizational Excellence

We will continually seek out ways to improve the internal organization of Town Staff and the management of Town assets.

3. Community

We will protect and enhance the community feel and the character of the Town, while ensuring the responsible use of resources and restoration of nature.

4. Quality of Life

We will foster a high quality of life for full-time and part-time residents of all ages and stages, while welcoming visitors.

F. Environmental Impacts

Environmental Impacts from the placement of fill will be subject to and controlled by the requirements of 406/19, *On-Site and Excess Soil Management*

G. Financial Impact

None at this time

H. In consultation with

Will Thomson, Director Legal Services

I. Public Engagement

The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required, at this time. Comments regarding this report should be submitted to Brian Worsley, Development Engineering developmentengineering@thebluemountains.ca

J. Attached

1. Lora Bay Berm Location Figure
2. Engineering Drawings – Proposed Lora Bay Berm Extension
3. Draft Fill Agreement for Lora Bay Berm Extension

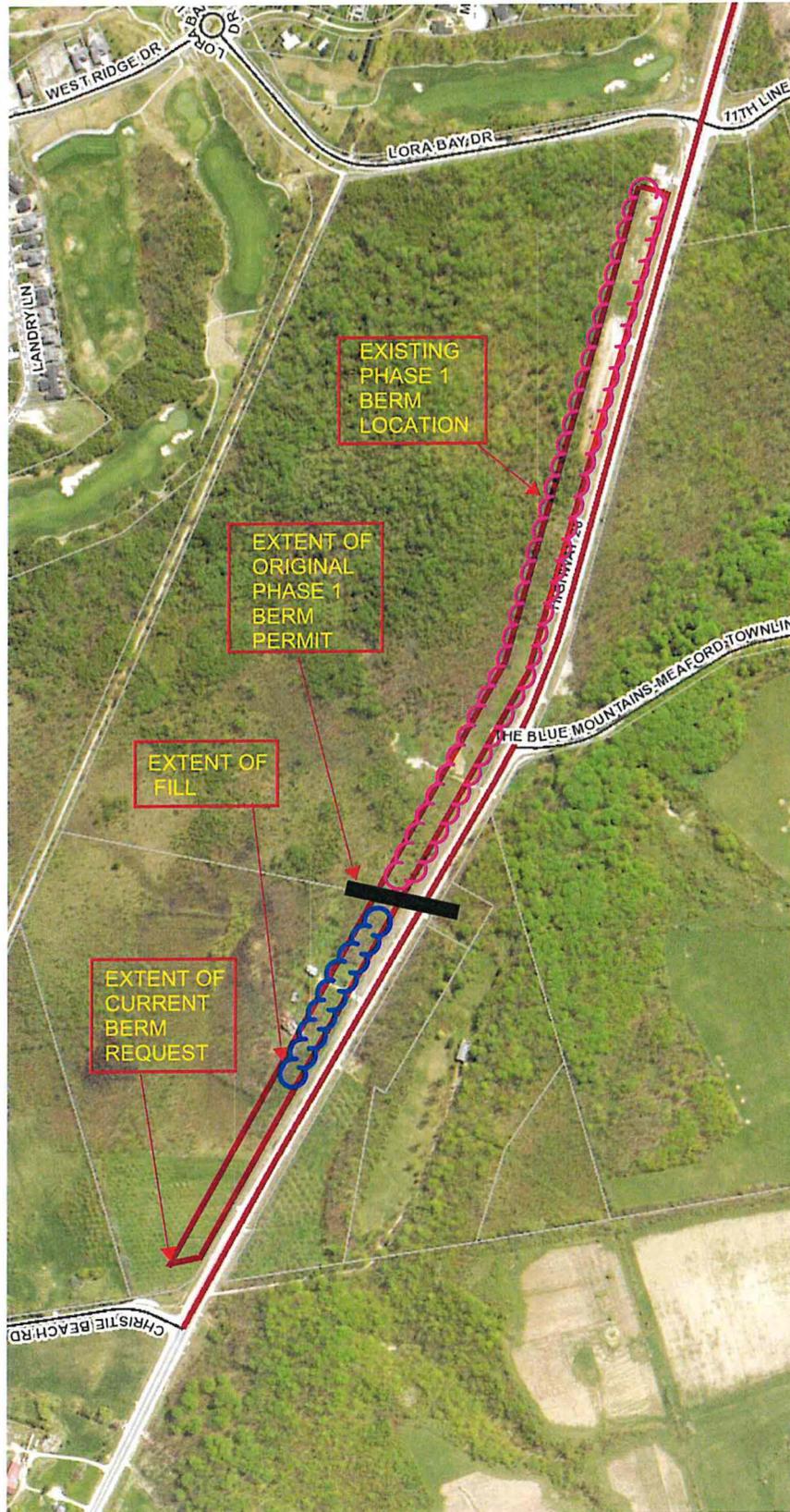
Respectfully submitted,

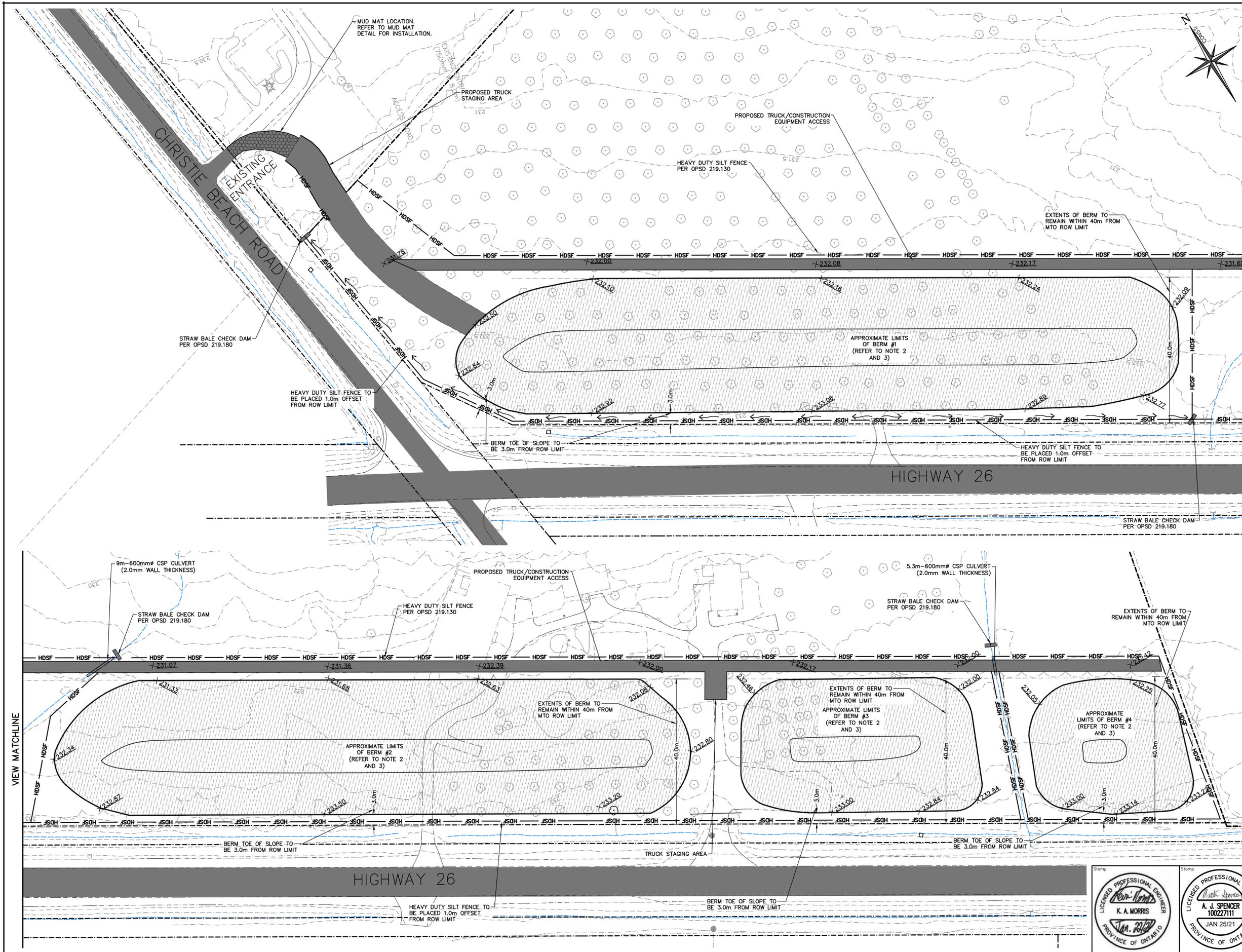
Brian Worsley, P.Eng., MSc., MICE, PMP
Manager of Development Engineering

Nathan Westendorp, RPP, MCIP
Director of Planning and Development Services

For more information, please contact:
Brian Worsley
developmentengineering@thebluemountains.ca
519-599-3131 extension 224

LORA BAY BERM





LEGEND

- PROPERTY LINE
- - - EXISTING CONTOUR (0.5m)
- - - EXISTING DITCH
- [Pattern] MUD-MAT; SEE DETAIL
- HDSF HEAVY DUTY SILT FENCE; SEE DETAIL
- [Hatched] APPROXIMATE FILL AREA
- PROPOSED SWALE
- [Arrow] PR. STRAW BALE CHECK FLOW

- NOTES:**
- TREE CLEARING TO BE COMPLETED TO LIMITS OF SILT FENCING (IF REQUIRED).
 - BERM TO BE CONSTRUCTED PER THE FOLLOWING PARAMETERS:
 - MAXIMUM HEIGHT = 2.5M ABOVE EXISTING CENTRELINE ELEVATION OF HIGHWAY 26
 - SIDE SLOPES = 3:1 (MAX.)
 - TOE OF SLOPE ADJACENT TO MTO/PUBLIC ROWS TO TERMINATE 3M OFFSET FROM ROW LIMIT.
 - WIDTH OF BERM AREA ADJACENT TO HIGHWAY 26 ROW TO BE 40M (MAX.)
 - CONTRACTOR TO CONFIRM CENTRELINE ELEVATIONS OF HIGHWAY 26 PRIOR TO STARTING FILL PLACEMENT OPERATIONS.



3	ISSUED FOR PERMIT	2021/JAN/22
2	ISSUED FOR CLIENT REVIEW	2021/JAN/22
1	ISSUED FOR CLIENT REVIEW	2021/JAN/19
No.	ISSUE / REVISION	YYYY/MM/DD

DRAWING NOTES:
 THIS DRAWING IS THE EXCLUSIVE PROPERTY OF C.F. CROZIER & ASSOCIATES INC. AND THE REPRODUCTION OF ANY PART OF IT WITHOUT PRIOR WRITTEN CONSENT OF THIS OFFICE IS STRICTLY PROHIBITED.
 THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS, LEVELS, AND DATUMS ON SITE AND REPORT ANY DISCREPANCIES OR OMISSIONS TO THIS OFFICE PRIOR TO CONSTRUCTION.
 THIS DRAWING IS TO BE READ AND UNDERSTOOD IN CONJUNCTION WITH ALL OTHER PLANS AND DOCUMENTS APPLICABLE TO THIS PROJECT. DO NOT SCALE THIS DRAWING.
 ALL EXISTING UNDERGROUND UTILITIES TO BE VERIFIED IN THE FIELD BY THE CONTRACTOR PRIOR TO CONSTRUCTION.

Project: **LORA BAY BERM**
 Drawing: **GRADING AND EROSION & SEDIMENT CONTROL PLAN**

Stamp: **PROFESSIONAL ENGINEER**
 K. A. MORRIS
 JAN 25/21
 PROVINCE OF ONTARIO

Stamp: **PROFESSIONAL ENGINEER**
 A. J. SPENCER
 100227111
 JAN 25/21
 PROVINCE OF ONTARIO

CROZIER CONSULTING ENGINEERS
 THE HARBOUREdge BUILDING,
 40 HURON STREET, SUITE 301,
 COLLINGWOOD, ON L9Y 4R3
 705-446-3510 T
 705-446-3520 F
 WWW.CROZIER.CA
 INFO@CROZIER.CA

Drawn: A.K. Design: Project No. **469-3061**
 Check: A.S. Check: Scale: 1:500 Dwg: **100**

NOTES:

MAINTENANCE & OPERATIONS OF SEDIMENT CONTROLS

SILT FENCE

1. SILT FENCE MUST BE INSPECTED WEEKLY FOR RIPS OR TEARS, BROKEN STAKES, BLOW-OUTS AND ACCUMULATION OF SEDIMENT.
2. SILT FENCE MUST BE INSPECTED FOLLOWING ALL 15mm OR GREATER RAIN STORM EVENT OR AS DIRECTED BY SITE ENGINEER.
3. SEDIMENT MUST BE REMOVED FROM SILT FENCE WHEN ACCUMULATION REACHES 50% OF THE HEIGHT OF THE FENCE.
4. ALL SILT FENCES MUST BE REMOVED ONLY WHEN THE ENTIRE SITE IS STABILIZED AND AS DIRECTED BY THE SITE ENGINEER.

MUD MAT

1. INSPECT MUD MAT WEEKLY TO ASSESS CONDITION AND ENSURE OPERATION EFFICIENCY.
2. SUPPLY AND PLACE ADDITIONAL CLEAR STONE AS DIRECTED BY SITE ENGINEER.
3. MUD MAT TO REMAIN IN PLACE UNTIL SITE IS STABILIZED OR AS DIRECTED BY SITE ENGINEER.

DECOMMISSIONING

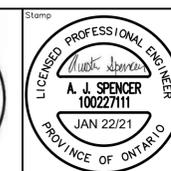
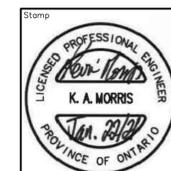
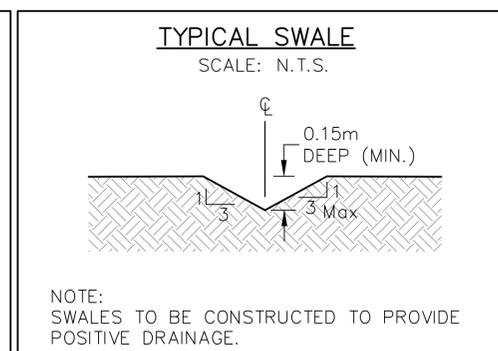
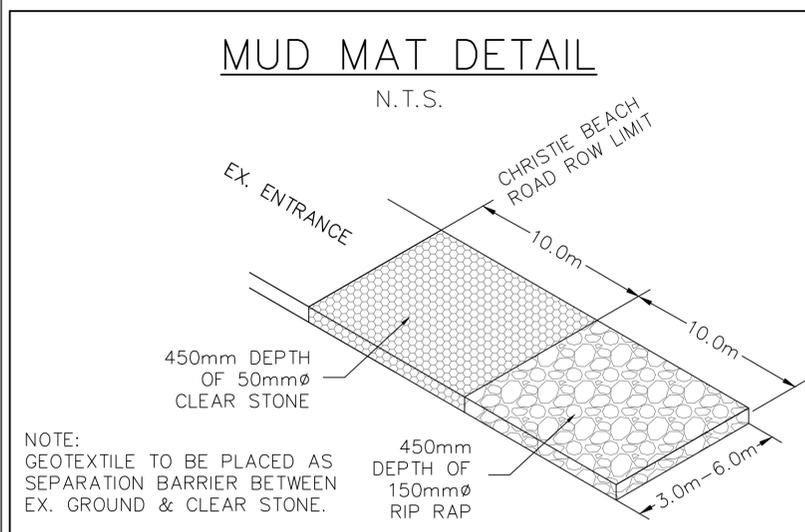
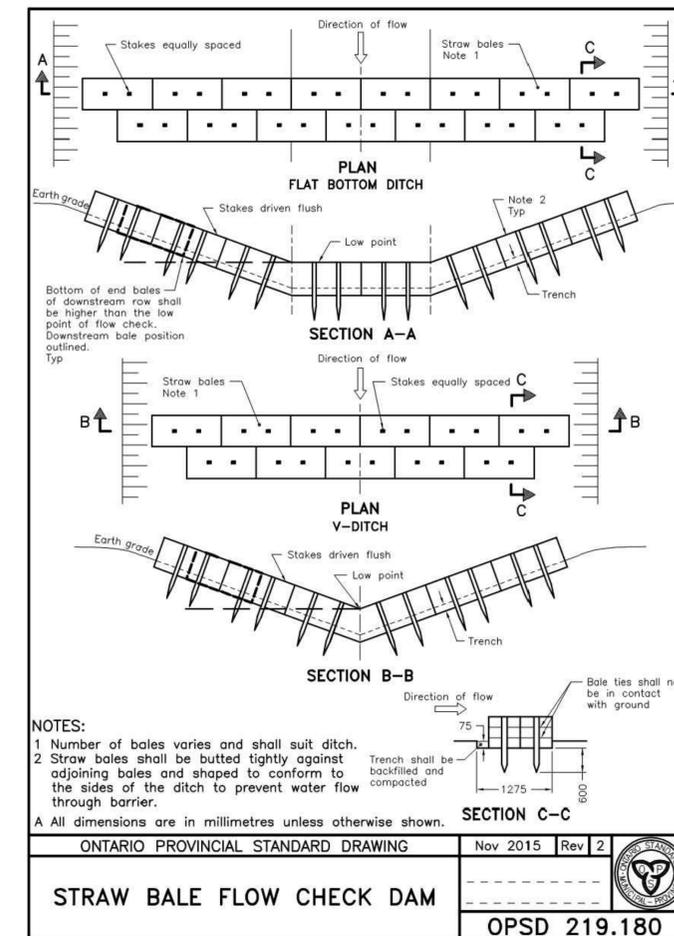
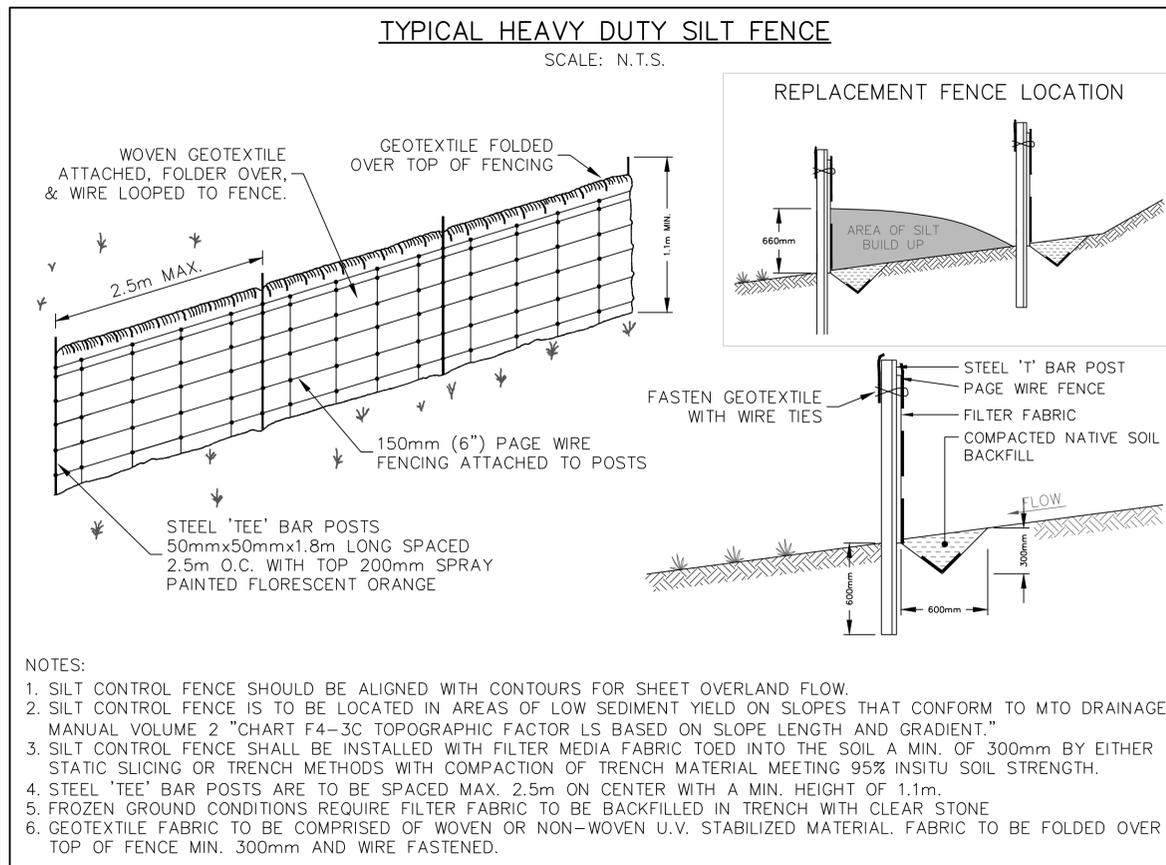
1. FOLLOWING COMPLETION OF CONSTRUCTION, STABILIZATION OF BERM, AND AS DIRECTED BY SITE ENGINEER, ALL EROSION AND SEDIMENT CONTROL WORKS ARE TO BE REMOVED INCLUDING ANY ACCUMULATED SEDIMENT.
2. WITHIN 60 DAYS OF COMPLETION OF BERM OR AS WEATHER PERMITS, BERM TO BE CAPPED WITH 150MM OF TOPSOIL AND SEED OR PER TOWN STANDARDS.

CHECK DAM

1. CHECK DAMS TO BE REVIEWED REGULARLY AND AFTER SIGNIFICANT RAINFALLS. CHECK DAMS ARE TO BE MAINTAINED/REPLACED IF REQUIRED.

GENERAL CONSTRUCTION NOTES:

1. BERM TO BE CONSTRUCTED PER THE FOLLOWING PARAMETERS:
 - a. MAXIMUM HEIGHT = 2.5M ABOVE EXISTING CENTRELINE ELEVATION OF HIGHWAY 26
 - b. SIDE SLOPES = 3:1 (MAX.)
 - c. TOE OF SLOPE ADJACENT TO MTO/PUBLIC ROWS TO TERMINATE 3M OFFSET FROM ROW LIMIT.
 - d. WIDTH OF BERM AREA ADJACENT TO HIGHWAY 26 ROW TO BE 40M (MAX.)
2. CONTRACTOR TO CONFIRM CENTRELINE ELEVATIONS OF HIGHWAY 26 PRIOR TO STARTING FILL PLACEMENT OPERATIONS.
3. ALL DISTURBED AREAS TO BE RESTORED TO EXISTING CONDITIONS OR PER TOWN STANDARDS.
4. CONTRACTOR TO MAINTAIN DRAINAGE ONSITE TO PREVENT PONDING.
5. MUD MAT TO BE INSTALLED PER TOWN STANDARDS AT EXISTING ENTRANCE. ACCESS TO BE PROVIDED VIA CHRISTIE BEACH ROAD
6. HEAVY DUTY SILT FENCE (HDSF) TO BE INSTALLED PER OPSD 219.130. HDSF TO BE LOCATED 1M OFFSET FROM ROW LIMITS.
7. COMPOSITION, PRIOR TO PLACEMENT, OF FILL MATERIAL IMPORTED TO BE REVIEWED BY A QUALIFIED PROFESSIONAL PER O. REG. 153/04.
8. COMPACTION OF FILL MATERIAL PLACED TO BE REVIEWED BY A QUALIFIED PROFESSIONAL ONSITE.
9. OPERATIONS ASSOCIATED WITH HANDLING AND MOVEMENT EXCESS FILL MATERIAL SHALL FOLLOW O. REG. 406/19 AS OF JANUARY 1, 2021.
10. TREE CLEARING TO BE COMPLETED TO LIMITS OF SILT FENCING (IF REQUIRED).



CROZIER CONSULTING ENGINEERS
 2800 HIGH POINT DRIVE
 SUITE 100
 MILTON, ON L9T 6P4
 905-875-0026 T
 905-875-4915 F
 WWW.CFCROZIER.CA

Drawn: A.K. Design: Project No. 469-3061
 Check: A.S. Check: Scale: Dwg. 101

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No.	ISSUE / REVISION	YYYY/MM/DD
Project: LORA BAY BERM		
Drawing: CONSTRUCTION NOTES		

FILL, EXCESS SOIL & ALTERATION OF GRADE AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2021 (“Effective Date”)

BETWEEN:

LORA BAY CORPORATION

(hereinafter called the “Owner”)

And

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

(hereinafter called the “Town”)

WHEREAS The Owner is the owner of lands located at _____ (the “Lands”)

AND WHEREAS Section 142 of the Municipal Act, 2001 SO 2001 c.25, authorizes a municipality to prohibit or regulate the placing or dumping of fill;

AND WHEREAS By-law 2002-78 of the Town regulates fill in the Town of The Blue Mountains;

AND WHEREAS the owner has obtained, a Permit pursuant to By-law 2002-78 of the Town of The Blue Mountains respecting the removal of fill and excess soil from a residential development site;

AND WHEREAS the Owner wishes to deposit said excess soil and fill in the form of a Berm on the Reuse Site;

AND WHEREAS By-law 2002-78 prohibits the deposit/dumping of fill unless, among other exemptions, the Owner has entered into an Agreement with the Town;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants hereinafter expressed and the exchange of ten dollars (\$10.00) paid by each Party hereto to the other, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree with the other as follows:

PART 1 - GENERAL

1. DEFINITIONS

- a. “Agreement” means this Agreement

- b. "Alter grade"/"Altering grade" means the alteration of the grade of any land by any means including the construction of a building or addition, the removal, addition, excavation, disturbance or movement of soil or fill, landscaping, dredging, stockpiling or otherwise changing the grade of the land.
- c. "Applicable Laws" means any and all laws, statutes, orders, ordinances, requirements, regulations, policies, guidelines, and by-laws of the Town, County of Grey, Province of Ontario, or Government of Canada which apply to the Lands or activities on the Lands;
- d. "Accepted Plans" means the plans, studies, and drawings as identified in Part 2, section 1 (a) (ii) of this Agreement;
- e. "Berm" means the deposited fill on the Reuse Site in the form of an engineered stockpile of soil and fill in accordance with the Accepted Plans;
- f. "By-law" means By-law 2002-78 of the Town of The Blue Mountains, as amended;
- g. "Default" means any failure of the Owner in the performance of any of its obligations under this Agreement,
- h. "Director" means the Town's Director of Planning and Development Services, or their designate;
- i. "Dump"/"Deposit" means the depositing or placing of Fill or Soil in any location other than in the same location from where it was obtained.
- j. "Existing Grade" means the elevation of the ground surface of the lands upon which dumping and/or placing of fill is proposed prior to the dumping or placing of fill and of abutting ground surface up to 3 metres wide surrounding such lands, except that where placing or dumping of fill has occurred in contravention of the By-law, existing grade shall mean the ground surface of the lands as it existed prior to the placing or dumping of fill.
- k. "Fill" means any type of material deposited or placed on lands and includes but is not limited to sand, soil, stone, granular material, loam, sod or turf either singly or in combination, which is free of contamination.
- l. "Finished Grade" means the approved elevation of the ground surface of lands upon which Fill has been placed in accordance with this By-law.
- m. "Lands" mean the property owned by the Owner being _____.
- n. "Qualified Person" or "QP" is as defined in Ontario Regulation 406/19 *On-Site and Excess Soil Management*;

- o. "Permit" means a Permit issued in accordance with the provisions of By-law 2002-78 of the Town of The Blue Mountains, as amended.
- p. "Reuse Site" means the portion of the Lands in which Fill will be Dumped or Deposited;
- q. "Soil" means material commonly known as earth, top soil, loam, subsoil, clay, sand or gravel, free of contamination.
- r. "Town" means the Corporation of The Town of The Blue Mountains.
- s. "Works" means the dumping, depositing, stockpiling of Fill or Soil, or altering grade on the Lands, including the construction of the Berm on the Reuse Site.

2. INTERPRETATION

- a. The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- b. Unless the context otherwise requires, in this Agreement words importing the singular include the plural and vice versa and words importing a gender include all genders.
- c. Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless the context otherwise requires.
- d. References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.
- e. All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.
- f. Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.
- g. The Parties agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants

and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.

- h. All references to parts, sections, clauses, paragraphs and schedules unless otherwise specified are references to parts, sections, clauses, paragraphs and schedules of this Agreement.

3. ADMINISTRATION

- a. This Agreement shall be administered on behalf of the Town by the Director of Planning and Development Services (“Director”), or their designate, unless another Town official is specifically referred to in this Agreement. Where under the terms of this Agreement, decisions, approvals, Notices and certificates are to be made, given or issued by the Town, such decisions, approvals, Notices and certificates shall be made, given or issued by the Director or other Town official, in their sole and absolute discretion, acting reasonably.
- b. The Owner shall, at all times, comply with all Applicable Laws
- c. In the event of any conflict between this Agreement and any Applicable Laws, the Applicable Laws shall govern.
- d. The Parties covenant and agree that this Agreement is an agreement in accordance with Section 2 e) i.x of the By-law.

4. ENFORCEMENT

- a. The Owner covenants and agrees that the Town, in addition to any other remedy it may have at law, shall be entitled to enforce this Agreement in accordance with the provisions of the *Municipal Act, 2001*, including but not limited to, sections 442, 444, 445 and 446.

5. REGISTRATION OF AGREEMENT

- a. The Owner hereby agrees that this Agreement, together with any schedules thereto, will be registered upon title to the Lands and the Owner hereby authorizes the Town Solicitor or his designate to execute on behalf of the Owner all documents necessary to register this Agreement in the Land Registry Office. The covenants, agreements, conditions and undertakings herein contained on the part of the Owner shall run with the Lands and shall be binding upon it, its successors and assigns as Owners and occupiers from time to time and this covenant shall be to the benefit of the Town and its lands and highways

appurtenant and adjacent to the Lands. The Owner further covenants and agrees to pay to the Town the cost of registration of this Agreement, as well as any further costs incurred by the Town as a result of the registration of any other documents pertaining to this Agreement.

6. PUBLICATION OF AGREEMENT

- a. The Owner covenants and agrees that this Agreement and all schedules or attachments hereto shall be made publicly available and may be posted on the Town's website or otherwise made freely available to all members of the public and the Owner hereby consents to such disclosure.

7. NOTICE

- a. If any notice is required to be given by the Town to the Owner with respect to this Agreement, such notice shall be mailed, delivered or sent by email transmission to the Owner as shown on Schedule "A" or such other address of which the Owner has notified the Town, in writing, and any such notice mailed, delivered or sent by email transmission shall be deemed good and sufficient notice under the terms of this Agreement.
- b. If any notice is required to be given by the Owner to the Town with respect to this Agreement, such notice shall be mailed, delivered or sent by email transmission to:
 - i. Director of Planning and Development Services
The Corporation of the Town of The Blue Mountains
32 Mill St. Box 310
Thornbury, ON
N0H2P0
directorplanningdevelopment@thebluemountains.ca
 - ii. Or such other address of which the Town has notified the Owner, in writing.

8. TERM AND TERMINATION OF AGREEMENT

- a. The Term of this Agreement is two (2) years from the Effective Date.
- b. The Parties may agree to extend this Agreement at the end of the Term for additional one (1) year periods, at the Town's sole discretion.

- c. The Parties agree that, at the end of the Term, or prior to any renewal for additional one (1) year extensions, the Town may refuse to renew the Agreement or require additional or revised terms and conditions under this Agreement, at the Town's sole discretion.

9. WAIVER

- a. The failure of the Town at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall be waiver by the Town of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Town shall specifically retain its right at law to enforce this Agreement.

10. EXTENSION OF TIME

- a. Time shall always be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both the Owner and the Town, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

11. NO CHALLENGE TO AGREEMENT

- a. The parties covenant and agree with each other not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the party's right to enter into and enforce this Agreement. The law of contract applies to this Agreement and the parties are entitled to all remedies arising from it, notwithstanding any provision in s. 41 of the Planning Act interpreted to the contrary. The parties agree that adequate consideration has flowed from each party to the other and that they are not severable. This provision may be pleaded by either party in any action or proceeding as an estoppel of any denial of such right.

12. GOVERNING LAW

- a. This Agreement shall be interpreted under and be governed by the laws of the Province of Ontario.

13. INDEMNITY

- a. The Owner shall indemnify and save completely harmless the Town and its elected officials, officers, agents, contractors and employees from and against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly or in any way connected with the Works or any obligations under this Agreement, the maintenance and repair or lack of maintenance and repair of the Works by the Owner pursuant to the terms of this Agreement, the use of the Works by any person or any defect in workmanship or material with respect to the Works.

14. SCHEDULES

- a. The following Schedules which are attached hereto form part of this Agreement:
 - a) Addresses for Notice
 - b) Approved for Construction Drawings, including:
 - a. Grading and Drainage Plan
 - b. Mud, Sediment and Erosion Control Plan
 - c. Planting and Landscape Plan
 - c) Hauling Routes
 - d) MTO/County/ Provincial Permits (as applicable)
 - e) Proof of Insurance

15. SUCCESSORS AND ASSIGNS

- a. This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the parties hereto and their successors and assigns.

PART 2- FILL AND EXCESS SOIL REQUIREMENTS

1. DUMPING AND DESPOSIT OF FILL AND SOIL

- a. The Owner shall not Dump or Deposit any Fill or Soil, or cause or permit to be Dumped or Deposited any Soil or Fill, on the Lands or Reuse Site until:
 - i. The Qualified Person has confirmed to the Town that the requirements of Ontario Regulation 406/19 *On-site and Excess Soil Management* have been satisfied, and the Works and project are in compliance thereto; and,

ii. The Owner has delivered to the Town, and the Town has approved the following, which are the Accepted Plans:

1. Approved for Construction (AFC) Drawings, including:

- a. Grading and Drainage Plan
- b. Mud, Sediment and Erosion Control Plan
- c. Planting and Landscape Plan

2. Hauling Routes

3. MTO/County/ Provincial Permits (as applicable)

4. Proof of Insurance

b. The Owner covenants and agrees that no Fill or Soil shall be Dumped or Deposited on the Lands or Reuse Site unless said Fill or Soil is also subject to a Permit issued pursuant to the By-law.

c. The Owner covenants and agrees to provide to the Town Engineered Record Drawings of the Berm within six (6) months of completion of the Works.

d. The Owner covenants and agrees that no Fill or Soil shall be deposited or permitted to be deposited on the Lands other than within the Reuse Site.

2. PROJECT LEADER

a. The Owner covenants and agrees that they are the Project Leader as defined in Ontario Regulation 406/19.

3. QUALIFIED PERSON

a. The Owner shall retain the services of a Qualified Person as defined in Ontario Regulation 406/19, as amended. The QP shall be approved by the Director prior to any Fill or Soil being received at the Reuse Site.

b. Any change in the QP responsible for the Reuse Site must also be pre-approved by the Director.

c. Any and all QPs must confirm in writing to the Town that they have no conflict of interest including but not limited to direct, indirect or any other relations other than providing professional services for compliance with this Agreement the Applicable Laws and O. Reg 406/19.

4. GRADING AND DRAINAGE PLAN

- a. The Owner shall prepare a Grading and Drainage Plan to the satisfaction of the Town
- b. The Owner shall at all times comply with the Grading Plan/Site Plan which is attached to this Agreement at Schedule C.
- c. The Owner shall retain a Professional Engineer to prepare pre-fill and post-fill topographic plans for the Reuse Site and, where possible and with permission from the relevant land owners, include 30 metres beyond the property lines to clearly show the detailed existing topography of the Site and the adjacent lands.
- d. The Parties agree that the Grading Plan/Site Plan will specify a maximum volume of Fill to be received at the Reuse Site under this Agreement.
- e. No deviance from the approved Grading Plan/Site Plan is authorized without amendment to this Agreement.
- f. The Grading Plan/Site Plan shall contain such reasonable conditions to guarantee that the Reuse Site is operated in accordance with this Agreement and Municipal By-Laws.
- g. Conditions of the Grading Plan/Site Plan shall include details such as:
 - i. Limiting quantity of Fill or Soil to be received and or managed at the Reuse Site;
 - ii. Final contours and compaction;
 - iii. Reconciliation of volumes, and
 - iv. Reporting timeframes.

5. DUST CONTROL

- a. The Owner agrees to control and mitigate dust, arising from the operation of the Works on the Reuse Site, on adjacent lands and on construction access roads to and from the Reuse Site to the reasonable satisfaction of the Director.

6. MUD, EROSION AND SEDIMENT CONTROL

- a. The Owner shall prepare a Mud, Sediment and Erosion Control Plan to the satisfaction of the Town.
- b. The Owner shall at all times comply with the Mud, Sediment and Erosion Control Plan attached at Schedule E.
- c. The Owner shall not take or cause any work to be done that will adversely affect drainage from or onto neighbouring properties in the vicinity of the Reuse Site, and the Owner shall

with the prior approval of the Municipality, at the Owner's expense, construct such drainage works as may be required.

- d. Notwithstanding the aforesaid, the Owner shall indemnify and save harmless the Municipality with respect to drainage from or onto lands adjoining the Reuse Site as a result of the operations hereby contemplated and the construction of any works, facilities or structures on the Reuse Site, whether approved by the Municipality or not.
- e. The Owner shall construct and install temporary or permanent erosion and siltation control devices required by the Municipality or as deemed necessary by industry best management practices, prior to importing any Fill to the Reuse Site and shall maintain these facilities in good working order.
- f. The Owner shall provide additional erosion and siltation control devices/measures as may be required by the Municipality during construction of this project, and as may be required by the Municipality thereafter from time to time.
- g. The Owner shall ensure Erosion and Sediment Control Plans are consistent with the latest guidelines for erosion measures of the Grey Sauble Conservation Authority.
- h. As a minimum:
 - i. The Owner shall report to the Municipality regarding sedimentation and erosion control inspections as detailed in the Erosion and Sediment Control Plan.
 - ii. The Owner shall inspect the Reuse Site regularly regarding erosion control. The inspection should include the following elements as a minimum:
 1. A 'walk-through' inspection of the Reuse Site must be undertaken in anticipation of rain, extended wet weather periods, snow melt events, or any conditions that could potentially yield significant runoff volumes;
 2. Regular and adequate inspections should occur during all construction stages; and
 3. The minimum frequency of inspection must be:
 - a. On a weekly basis;
 - b. Before and after every rainfall event;
 - c. After significant snowmelt events;
 - d. Monthly during inactive periods (> 30 days);
 - e. Daily during extended rain or snowmelt periods; and
 - f. More frequent inspections may be specified by the Director

7. HOURS OF OPERATION AND NOISE MITIGATION

- a. The Owner shall at all times comply with the Town's Noise By-Law Number 2002-9, as amended, for both onsite and offsite activities related to the Works.
- b. This may include providing instruction to staff and haulers or imposing requirements regarding minimizing excessive noise such as:
 - i. tailgate banging;
 - ii. the use of engine brakes along the haul routes; and
 - iii. controlling excessive vehicle idling;
- c. Notwithstanding the above, the permitted Hours of Operation for all Reuse Site activities including receipt and deposition of Fill and Soil shall be only during the period Monday to Friday 7:30 am - 4:30 pm. There shall be no fill received outside these hours or on Saturdays, Sundays or Statutory Holidays.
- d. Hours of operation will be further restricted during any period in which a wind warning for the area has been issued by Environment Canada and during any time where weather, traffic and unusual events would compromise the ability of the Reuse Site activities to be conducted in a safe and environmentally sound manner with due consideration of the public.
- e. The Owner may conduct site grading, levelling and contouring and general maintenance works on Saturdays so long as the activities comply with the Municipal Noise By-law.
- f. The Owner covenants and agrees to implement all reasonable noise mitigation strategies at the request of the Town.

8. HAUL ROUTE

- a. The Owner shall prepare a Hauling Routes Plan to the satisfaction of the Town
- b. The Owner shall at all times comply with the Hauling Routes Plan attached at Schedule H hereto.

9. PLANTING AND LANDSCAPE PLAN

- a. The Owner shall prepare a Planting and Landscape Plan to the satisfaction of the Town
- b. The Owner shall at all times comply with the Planting and Landscape Plan attached at Schedule F hereto
- c. The Planting and Landscape Plan shall, at a minimum, include provisions related to:

- i. The timing of planting;
- ii. The nature of planting and species;
- iii. The use of native plants and the removal or limitation of invasive species;
- iv. The restitution of haul routes or access ways.

10. COMPLAINT PROTOCOL

- a. The Owner shall at all times comply with the Complaint Protocol as outlined in this section.
- b. Upon receiving a complaint from a member of the public, the Owner shall:
 - a. Acknowledge the complaint within 24hrs;
 - b. Complete a public complaint form;
 - c. Investigate the complaint immediately upon notification;
 - d. Notify the Director within 24 hours of the complaint and the proposed measures to address/mitigate the complaint;
 - e. Respond to the complainant with clear direction;
 - f. Implement measures to address the complaint to the reasonable satisfaction of the Municipality;
 - g. Follow up on complaint reconciliation measures; and
 - h. Prepare and maintain a record of the complaints received in any quarter and provide this summary to the Director in a timely manner.
- c. If, in the opinion of the Town, the Owner has failed to reasonably address the complaint, such failure shall constitute a Default and the Town may take such action and do such thing as may be required to rectify the Default, but in doing so the Town shall not take on any liability or responsibility or the completion of the Works as contemplated in this Agreement.

11. SECURITY

- a. The Owner shall take all necessary and reasonable steps to secure the Lands and prevent all unauthorized persons from accessing the Lands and Reuse Site.
- b. The Owner shall ensure that the Reuse Site is adequately secured to prevent use of the Reuse Site or operation of the Works outside of the Hours of Operation as described in this Agreement.

12. RIGHT OF ENTRY

- a. The Owner covenants and agrees that the Town, its employees, agents or contractors, may enter onto the Lands at any time to ensure the Works are proceeding in accordance with this Agreement.

13. REPORTING

- a. The Owner shall direct the QP to report in writing, quarterly, to the Director during the term of this Agreement, within thirty (30) days of the end of each September, December, March and June, to verify that the Reuse Site alteration proceeded in accordance with this Agreement for the preceding quarter. The report will include, but is not limited to the following information:
 - i. A list of all of the sources for fill received at the Reuse Site during the quarter including the Owner and municipal address for the Source Site;
 - ii. The total volume of Fill received at the Reuse Site for the quarter including the monthly load counts and volumes for each Source Site;
 - iii. A list of all complaints received including a brief description of the complaint, contact information of the complainant (where permitted by law), the time and date the complaint was received, the full name of the person who received the complaint and how the complaint was addressed along with any mitigation measures taken to rectify the complaint;
 - iv. The results of any testing conducted in connection with the Fill operations, including but not limited to any soil and groundwater testing on and off site and any confirmatory sampling conducted; and
 - v. A list of any incidents involving a breach of this Agreement and its Appendices, the By-Law or Permit, if applicable including the date, time, brief description, the persons involved and any mitigative actions taken;
- b. In the event of a serious single breach or a number of breaches of any requirement of this Agreement, more frequent reporting by the Owner may be required by the Director, including any further information deemed appropriate by the Director.
- c. The Director may, at any time, require such other information to be included in the quarterly reports as deemed necessary by the Director.

- d. On or before December 1 of each year, the Owner shall submit a compliance report prepared by a Professional Engineer confirming that the Works are in accordance with the Accepted Plans.

14. MAINTENANCE OF THE WORKS

- a. The Owner covenants and agrees that they shall, at all times, ensure that the Works are constructed and maintained in strict accordance with the terms of this Agreement all Applicable Laws and the Accepted Plans.

15. EMERGENCY REPAIR

- a. If, in the sole and absolute opinion of the Town, the Works require emergency or urgent repair, the Town shall have full authority and power immediately to purchase such materials, tools and machinery and to employ such contractors or workmen as in the opinion of the Town are required for the proper rectification of the emergency, to enter upon the Lands and to do all such work and things, including the installation of Works, as are necessary to rectify the emergency to the satisfaction of the Town, at the cost and expense of the Owner. Such work may be done without prior Notice but the Owner shall be notified forthwith. The cost of such work will be calculated by the Town, whose decision shall be final. It is understood and agreed that such costs shall include a management fee of fifteen per cent (15%) of the cost of the labour, materials, tools, machinery, and applicable taxes;

PART 3 - INSURANCE AND DEFAULT

2. INSURANCE

- a. Prior to commencing any work on the Lands the Owner shall take out and keep in full force and effect while construction of the Works is ongoing, at its sole cost and expense, Commercial General Liability insurance ("CGL") applying to all operations of the Owner which shall include coverage for bodily injury liability, property damage liability, products and completed operations liability, contractor's protective liability, contractual liability, non-owned automobile liability, contingent employers liability and employees as additional insureds.

- b. Prior to commencing any work on the Lands the Owner shall take out and keep in full force and effect Environmental & Pollution Liability Insurance (“PLI”) which shall include coverage for but not limited to, bodily injury including death, property damage and remediation costs which are reasonable and necessary to investigate, neutralize, remove, remediate (including associated monitoring) or disposal of soil, Fill, surface water, groundwater or other contamination. The policy shall remain in force for a minimum of two (2) years following termination of this Agreement for whatsoever reason. The Municipality shall be named as an additional insured;
- c. Both the Commercial General Liability and Environmental & Pollution Liability Insurance as described in Sections 2 (a) and (b) above shall:
 - i. Each be written with limits of not less than FIVE MILLION DOLLARS (\$5,000,000) exclusive of interest or costs, per occurrence and shall include the Town as an additional insured;
 - ii. provide primary insurance coverage and not excess to any other insurance available to the Town.
 - iii. not be terminated, cancelled, or materially altered unless written notice, by registered mail, of such termination, cancellation, or material alteration is given by the insurers to the Town at least sixty (60) days before the effective date thereof.
 - iv. be paid initially for a period of one year and the policies shall be renewed for further one-year periods until the insurance is no longer required by this Agreement. If required by the Town, the Owner shall prove to the satisfaction of the Town that all premiums on these policies have been paid and that all insurance is in full force and effect.
 - v. deliver with this Agreement (if not previously delivered) certified copies of the policies of insurance or a certificate of insurance setting out the essential terms and conditions of insurance, the form and content of which shall be satisfactory to the Town.
 - vi. file a renewal certificate with the Town not later than one (1) month before the expiry date of any policy provided pursuant to this Agreement, until the Town has indicated in writing that the policy need not continue in force any longer. In the event that such renewal certificate is not received, the Town shall be entitled to

either renew the policy at the expense of the Owner or to order that all work on the Lands cease until the policy is renewed.

- vii. provide for cross-liability and severability of interest protecting the Town against claims by the Owner as it were separately insured and providing that the Town shall be insured notwithstanding any breach of any condition in the policies by any other insured.

d. NO RELIEF

- i. The issuance of such policies of insurance shall not be construed as relieving the Owner from responsibility for other or larger claims, if any, for which the Owner is or may be liable under this Agreement or at law.

e. NOTICE OF CANCELLATION

- i. If the Town receives notice from the insurer that it has cancelled or refused to renew the insurance, or that it intends to do so, or if the Town otherwise determines that the insurance has lapsed or is about to lapse without renewal or replacement, the Town may, on Notice to the Owner and at the sole cost and expense of the Owner, obtain insurance in accordance with this section. In such circumstances, the Town shall be entitled to obtain new insurance or add the necessary insurance coverage to the Town's blanket insurance. The Owner shall forthwith, upon receipt of Notice thereof from the Town, reimburse the Town for the cost of such insurance payable as noted above. In addition, the Town shall, at its sole discretion and option, be entitled to draw upon any Security posted under this Agreement to cover the costs of the insurance.

3. DEFAULT

- a. If, in the sole and absolute opinion of the Town, the Owner is in Default, the Town, except in cases of emergencies, shall give Notice to the Owner of the Default and require the Owner to rectify the Default. If the Default is not rectified within Twenty (20) Business Days after receipt by the Owner of such Notice or within such time period as may be designated in the Notice by the Town, then
 - i. the Town shall have full authority and power immediately to purchase such materials, tools and machinery and to employ such contractors or workmen as in the opinion of the Town are required for the proper rectification of the Default,

to enter upon the Lands and to do all such work and things, including the installation of Works, as are necessary to rectify the Default to the satisfaction of the Town, at the cost and expense of the Owner. In cases of emergencies, such work may be done without prior Notice but the Owner shall be notified forthwith. The cost of such work will be calculated by the Town, whose decision shall be final. It is understood and agreed that such costs shall include a management fee of fifteen per cent (15%) of the cost of the labour, materials, tools, machinery, and applicable taxes;

- ii. Any invoice or demand for payment for work undertaken under clause 3.a.i above shall be due and payable within 15 days of the Town issuing such invoice or demand to the Owner.
 - iii. the Town shall have the full authority, at its discretion, to terminate this Agreement.
- b. The Owner agrees that any entry on the Lands and any work done by the Town pursuant to the provisions of this section shall not be considered any acceptance of any liability or responsibility for the Works nor a release of the Owner from any of its obligations under this Agreement.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals duly attested to by their proper signing officers in that behalf.

SIGNED, SEALED AND DELIVERED

LORA BAY CORPORATION

Name:

Title:

I/We have the authority to bind the Corporation

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
