

**CAPITAL REGIONAL DISTRICT
BYLAW NO. 3941**

**A BYLAW TO REGULATE THE REMOVAL OR DEPOSIT OF SOIL ON LANDS
WITHIN THE JUAN DE FUCA ELECTORAL AREA**

WHEREAS:

- A. Under the Supplementary Letters Patent issued on February 12, 1973 (Division XI), as amended by the Supplementary Letters Patent dated August 25, 1986, the Capital Regional District was given authority to undertake the function of regulating the removal and deposit of soil;
- B. Section 723 of the *Local Government Act* authorizes a Regional District to regulate or prohibit the Removal of Soil, including sand, gravel, and rock, and the Deposit of Soil and other materials on any land within the electoral areas, to make different regulations and prohibitions for different areas, and to require permits and impose fees;
- C. The Board of the Capital Regional District wishes to regulate both the Removal of Soil and the Deposit of Soil and other materials within the Juan de Fuca Electoral Area of the Capital Regional District;
- D. The Capital Regional District recognizes that within areas designated as Agricultural Land Reserve (ALR) under the *Agricultural Land Commission Act (ALC Act)* this bylaw has no force or effect unless the soil deposit or extraction is permitted under the *ALC Act or Regulations*, or approval from the Agricultural Land Commission for soil deposit or extraction has been obtained through an application or notification process.

NOW THEREFORE the Board of the Capital Regional District, in open meeting assembled, enacts as follows:

1.0 DEFINITIONS

In this bylaw, the following definitions apply:

AGENT means a person who has been authorized in writing by an owner to apply for a permit and to act on the owner's behalf.

AGRICULTURAL LAND COMMISSION (ALC) means the Provincial Agricultural Land Commission established under Section 4 of the *ALC Act*.

AGRICULTURAL LAND RESERVE (ALR) means agricultural land designated as an agricultural land reserve under the *ALC Act* and includes an agricultural land reserve under a former Act.

APPLICANT means an owner, or their agent, who has submitted an application.

APPLICATION means an application for a permit to deposit or remove soil.

BOARD means the Capital Regional District Board.

COMPOST means a product which is:

- (a) a stabilized earthy matter having the properties and structure of humus;
- (b) beneficial to plant growth when used as a soil amendment;
- (c) produced by composting; and
- (d) only derived from organic matter.

DEPOSIT means the act of moving soil and placing it upon a parcel of land on which such soil and other material did not previously exist or stand.

ELECTORAL AREA means the Juan de Fuca Electoral Area of the Capital Regional District.

GENERAL MANAGER means the General Manager, Planning and Protective Services, Capital Regional District, or a person authorized to act on his or her behalf.

HOLIDAY means:

- (a) Sunday, Christmas Day, Good Friday and Easter Monday;
- (b) Canada Day, Victoria Day, British Columbia Day, Labour Day, Remembrance Day, Family Day and New Year's Day;
- (c) December 26; and
- (d) a day set by the Parliament of Canada or by the Legislature, or appointed by proclamation of the Governor General or the Lieutenant Governor, to be observed as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday.

LAND USE BYLAW means the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, Malahat Land Use Bylaw, 1982, Bylaw No. 980, Rural Resource Lands, Land Use Bylaw No. 3602, Port Renfrew Comprehensive Community Plan, Bylaw No. 3109 and the Willis Point Comprehensive Community Plan, Bylaw No. 3027.

LAND USE COMMITTEE means the individuals from the Juan de Fuca Electoral Area appointed by Board, to advise the Board on matters associated with Part 26 of the *Local Government Act*.

PARCEL means a lot, block or other area in which real property is held or into which real property is subdivided, and includes a strata lot created under the *Strata Property Act*, with the exception of a strata plan that contains strata lots, all the boundaries of which are coterminous with the walls of a building, with the exception of a balcony or a private exterior space that does not exceed 20% of the total floor area of the strata lot.

PERMIT means the written authority issued by the General Manager for the removal from or deposit of soil to any parcel.

PERMIT AREA means the area of land over which the soil removal or soil deposit occurs, or is proposed to occur, within the subject parcel.

PROFESSIONAL REPORT means a report, or reports, prepared by a Qualified Professional in compliance with this bylaw.

QUALIFIED PROFESSIONAL (QP) may include a landscape architect, qualified environmental professional, a registered professional biologist, a professional geologist or hydro-geologist, a registered professional agrologist or a registered professional engineer, who is working within their field of expertise and is in good standing with the applicable professional organization.

REMOVAL means the act of removing soil from any parcel on which it exists and shall include the removal of soil which has been placed into a stockpile or storage facility.

SECURITY DEPOSIT means a cash deposit, certified cheque or irrevocable letter of credit provided by the applicant to ensure all works will be carried out in compliance with the conditions of the bylaw.

SOIL means topsoil, sand, gravel, rock and other substances of which land is composed, or any other combination of these substances, but does not include minerals as defined in the *Mineral Tenure Act or Regulation*; or manure from animals, or household or farm compost material placed on land as a soil amendment or conditioner.

UNSUITABLE MATERIAL means any rubbish, derelict vehicle, metals, demolition wastes, garbage or waste materials, including containers, packages, bottles, cans or parts thereof; or any abandoned or discarded article, product or goods of manufacture.

WATERCOURSE means a permanent or non-permanent (containing water at least six months of the year) source of water supply that is natural or man-made, including a pond, lake, river, creek, brook, ditch, spring or wetland that is integral to a stream, with well-defined banks and a bed of 0.6 m or more below the surrounding land serving to give direction to or containing a current of water but does not apply to a man-made pond that does not connect to a stream.

2.0 PURPOSE

This bylaw has been enacted for the purpose of regulating the removal and deposit of soil within the Juan de Fuca Electoral Area of the Capital Regional District in the general public interest. The purpose of this bylaw does not extend:

- (a) to the protection of owners, occupiers or persons involved in the removal or deposit of soil from economic loss;
- (b) to the assumption of the Capital Regional District or any officer or employee of the Capital Regional District of any responsibility for ensuring compliance by a person involved in the removal or deposit of soil on land, his or her representatives, or any employees, contractors, or agents with this bylaw, or any other enactments applicable to the removal or deposit of soil or the development of land;
- (c) to providing any person with a warranty that any deposit or removal of soil will not violate this bylaw, any other enactment or create any nuisance of any type;
- (d) to relieving applicants from any liability relating to damaging highways or depositing materials on highways; or
- (e) to lands within the ALR except where allowed under the *ALC Act or Regulations* or as approved by the ALC through an application/notification process.

3.0 BYLAW APPLICATION

This bylaw applies within the Juan de Fuca Electoral Area except when in conflict with the *ALC Act or Regulations*.

4.0 SEVERABILITY

If any section, subsection, sentence, paragraph, or schedule forming part of this bylaw is for any reason held to be invalid by the decision of any Court of competent jurisdiction, the section, subsection, paragraph, or schedule may be severed from the bylaw without affecting the validity of the bylaw or any portion of the bylaw or remaining schedules.

5.0 INCORPORATION OF SCHEDULES

Schedule "A", attached hereto is hereby made a part of this bylaw.

6.0 REPEAL AND REPLACEMENT OF BYLAWS

The following bylaw is hereby repealed in its entirety:

- (a) Capital Regional District Bylaw No. 3297, cited as the "Juan de Fuca Electoral Area Soil Removal and Deposit Bylaw No. 1, 2006".

and replaced by this bylaw.

7.0 PROHIBITIONS

No person shall do any of the following anywhere in the Electoral Area:

- (a) cause or permit the removal of soil from any parcel, unless or until a permit allowing the removal has first been obtained or unless the removal does not require a permit as set out in Section 8.0;
- (b) cause or permit the deposit of soil on any parcel, unless or until a permit allowing the deposit has first been obtained or unless the deposit does not require a permit as set out in Section 8.0;
- (c) cause or permit the deposit of unsuitable material or soil contaminated with invasive species on any parcel;
- (d) remove or deposit soil in or around a watercourse unless in compliance with the provincial *Riparian Area Regulation* and the *Water Act*, or Part 9 of the *Health Safety and Reclamation Code*; or
- (e) remove or deposit any soil material on land in the ALR unless permitted by the *ALC Act or Regulations* or as approved by the ALC through an application/notification process.

8.0 PERMIT EXEMPTIONS

- 8.1 Subject to meeting the requirements set out in Sections 8.2 and 8.3, a person may remove soil from a parcel or deposit soil onto a parcel without a permit provided the parcel is located outside of the ALR, and that at least one of the following conditions is satisfied:
- (a) on a parcel less than 0.4 ha (1 acre) in area, where the total quantity of soil removed or deposited does not exceed 60 m³ in any calendar year;
 - (b) on a parcel 0.4 ha (1 acre) or greater in area, where the total quantity of soil removed or deposited does not exceed 250 m³ in any calendar year;
 - (c) the removal or deposit is required for the construction or repair of works, roads, highways or services by or on behalf of the Capital Regional District, or the Ministry of Transportation and Infrastructure, and the removal is from or the deposit is onto a parcel owned or leased by one of these authorities;
 - (d) the removal is from a parcel owned or leased by the federal or provincial government provided that this exemption does not apply to the removal of soil on a parcel that is leased or licensed by the provincial or federal government to a third party;
 - (e) the deposit is to a parcel owned or leased by the federal or provincial government provided that this exemption does not apply to the deposit on a parcel that is leased or licensed by the provincial or federal government to a third party;
 - (f) the removal or deposit of soil is necessary for the construction of basements and foundations or installation of works and services including septic fields and driveways associated with the construction of a building under a valid building permit;
 - (g) the soil is being relocated within the boundaries of the parcel from which it originates;
 - (h) the removal or deposit of soil is on land used for commercial landscape supply, horticultural use or as a nursery in compliance with the Land Use Bylaw and the *ALC Act*, and such deposit or removal is necessary as part of the landscape supply, horticultural or nursery operation.
- 8.2 The onus of demonstrating compliance with Section 8.1 shall be at all times on the person undertaking the removal and/or deposit of soil, who shall provide to the Capital Regional District sufficient documentation to confirm that the person meets the conditions for granting an exemption. Such documentation must be received by the CRD at least 10 days prior to the commencement of the deposit or removal.
- 8.3 A person who intends to deposit soil under Section 8.1 must submit to the CRD, at least 10 days before the proposed deposit, a site profile, as set out in Schedule 1 of the Contaminated Sites Regulation of the *Environmental Management Act* of British Columbia, of the site from which the soil originated.

9.0 PERMIT APPLICATION REQUIREMENTS

- 9.1 Every applicant for a permit must file with their application the following information about the parcel on which the permit area is located, as follows:
- (a) the street address;
 - (b) the legal description;
 - (c) a title search, and copies of all registered encumbrances, including water licenses obtained within 30 days of application;
 - (d) the name of the registered owner;
 - (e) the signature of the applicant and the owner if the owner is not the applicant;
 - (f) the applicable security deposit and permit fees (see Schedule "A");
 - (g) a plan of the property showing the location of any structures, the area where soil is to be removed or deposited, and the access points to and from the property;
 - (h) the volume of soil to be removed or deposited;

- (i) the proposed completion dates for stages of soil deposit or removal, if applicable;
 - (j) for soil deposit, a site profile, as set out in Schedule 1 of the Contaminated Sites Regulation of the *Environmental Management Act* of British Columbia, of the site from which the soil originated; and
 - (k) for soil removal, except soil removal related to a *Mines Act* Permit, the location (address and/or legal description) where the soil is to be deposited.
- 9.2 Subject to Section 10.3 for soil volumes that are 500 m³ or more in a calendar year, every applicant shall provide with their application a Professional Report and site remediation plan, which address the following:
- (a) plans, drawn to a scale of not less than 1:1,000, showing the existing contours with contour intervals of not more than 2 m; and the location of buildings or structures; watercourses, tree cover, wells, known aquifers; sewage disposal fields, public utilities; the proposed permit area; driveways; and ingress and egress points from the proposed permit area to a highway.
 - (b) the applicant is to provide certification by a British Columbia Land Surveyor, if in the opinion of the General Manager, the nature or type of deposit or removal requires accurate topographic information or the determination of the location of natural features, structures, services and property lines;
 - (c) the proposed contours of the parcel in its final state upon completion of the permit activities with contour intervals of not more than 2 m;
 - (d) the proposed slopes, which will be maintained upon completion of the removal or deposit;
 - (e) the method proposed to control the erosion of the banks of the soil;
 - (f) the proposed completion dates for stages of deposit or removal, if applicable;
 - (g) the proposed methods to control: dust, noise, odour, smoke, vibration and visual impacts caused by the deposit or removal on adjacent parcels, and the tracking of soil or other material onto highways;
 - (h) plans to ensure that no silt seeps or flows into any watercourse, well or aquifer on, under or flowing through the parcel;
 - (i) the proposed methods of drainage control and protection of connecting or nearby watercourses, wells or aquifers during the proposed deposit or removal; and
 - (j) methods to stabilize the slopes of the soil, including any revegetation upon completion of the removal or deposit.
- 9.3 If the applicant is not the owner of the parcel of land, the applicant must include with his application a signed letter from the owner of the parcel of land authorizing the applicant to carry out the works on behalf of the owner.
- 9.4 Subject to Section 14.2, an applicant may provide the reports, plans and documents submitted in support of a *Mines Act* Permit for a parcel in satisfaction of the requirements set out in Section 9.2.
- 10.0 AUTHORITY TO ISSUE THE PERMIT**
- 10.1 The Board hereby delegates to the General Manager, Planning and Protective Services the authority to issue a soil deposit or removal permit.
- 10.2 The General Manager may require the application be referred to the Juan de Fuca Land Use Committee for consideration and recommendation to the Board.
- 10.3 The General Manager may request that the applicant provide a Professional Report, which shall certify at the applicant's expense that:
- (a) the plans, specifications and reports for the proposed soil removal or deposit have been prepared in compliance with good engineering practices; and

- (b) upon completion of the soil removal or deposit, the works substantially comply with the terms of the permit and the conditions specified in the plans, specifications and the Professional Report prepared by the Qualified Professional; and
- (c) the land within the permit area after the soil removal or deposit is completed is safe for the intended use, and has been suitably stabilized to mitigate impacts of erosion, sloughing and instability.

10.4 The General Manager or the Board, where a permit has been referred to the Board, may refuse to issue a permit where the applicant has not provided to the Capital Regional District sufficient evidence that the deposit or removal of soil can be carried out without creating a hazard to persons or property, damage to the environment, or irreparable damage to highways or other public property.

11.0 CONSULTATION

11.1 Staff will provide notice in writing, by regular mail, to the owner of a parcel that abuts a parcel with a pending soil removal/deposit application a minimum of 10 working days prior to a decision on the permit application.

11.2 Except for a pending soil removal/deposit application related to an existing *Mines Act* Permit, staff will refer applications for amounts greater than 250 m³ to the Ministry of Transportation and Infrastructure, the provincial Archaeological Branch and the Ministry of Environment for comment. Each agency has 20 working days after the application has been referred to them, to provide any comments. If after 20 working days the agency has not notified the Regional District in writing about their concerns, the agency, will be considered to have no concerns.

11.3 The General Manager may call for or receive public comment upon any permit or renewal application. If the General Manager decides that the community should have an opportunity to comment, then the General Manager may:

- (a) refer the application to the Juan de Fuca Land Use Committee for its consideration and recommendation to the Board; and/or
- (b) require notice to be placed in two consecutive local newspaper publications, paid for at the applicant's expense.

11.4 The CRD will provide notice in writing, by regular mail, to the owner of a parcel that abuts a parcel subject to a soil permit, when the CRD receives a request for a renewal of a soil removal /deposit permit a minimum of 10 working days prior to a decision on the permit renewal.

11.5 The General Manager may make a decision regarding the renewal of a permit if he or she is satisfied that the CRD made reasonable efforts to provide notice in accordance with Section 11.3.

12.0 PERMIT CONDITIONS

12.1 The permit may include one or more conditions pertaining to Subsections 9.1(g) to (k) of this bylaw.

12.2 No person shall engage in the removal or deposit of soil:

- (a) on any Sunday or Holiday; or
- (b) between 7 o'clock p.m. and 7 o'clock a.m. on any day not referred to in Subsection 12.2 (a).

12.3 A permit constitutes written authority under this bylaw to conduct only those activities described in the permit.

12.4 All plans, specifications and Professional Reports forming part of an application in respect of which a permit is issued shall form part of and be incorporated in the permit unless otherwise specified by the General Manager and, without limiting the foregoing, a permit issued shall be limited to the volume of soil that is to be deposited or removed.

12.5 The holder of the permit shall post a copy of the permit, or otherwise shall post a clear and legible sign, in English, indicating the duration and extent of the soil removal/deposit at the point of entry to the property from the main road. The sign is to be 1 m x 1 m square and must include the permit number on it.

- 12.6 The holder of the permit shall contact the Ministry of Transportation and Infrastructure and comply with its requirements for road maintenance and cleanup during and after the works.
- 12.7 The General Manager may require a report prepared by a Qualified Professional indicating compliance with the permit conditions.
- 12.8 The holder will comply with the provisions of the *Heritage Conservation Act*, if and when archeological evidence is uncovered.

13.0 ADMINISTRATION

- 13.1 Every permit issued under this bylaw, with the exception of permits noted in 13.2, expires upon the earlier of:
- (a) the removal or deposit of the total amount of soil authorized to be removed or deposited by the permit has occurred; or
 - (b) the expiry date expressly stated in the permit; or
 - (c) one year after the date of permit issuance.
- 13.2 In the case of a soil permit for a parcel which has an active *Mines Act* Permit, the soil permit under this bylaw will only be renewed in accordance with renewals to the *Mines Act* Permit.
- 13.3 If the removal or deposit authorized in a permit is not completed before the permit expires under Section 13.1, the General Manager may renew the permit provided that:
- (a) the applicant makes a written request to the General Manager for a renewal or extension a minimum of one month prior to the expiry date;
 - (b) the applicant has paid the required renewal and security fees;
 - (c) the removal or deposit is being carried out in compliance with the original permit, including any conditions of a Professional Report which may apply;
 - (d) there is no change in scope from the original application; and
 - (e) adjacent land owners are notified as outlined in Subsection 11.3.
- 13.4 There is no limit on the number of times an applicant may apply for renewals, but no applicant has a vested right to receive any renewals. The terms and conditions that come into being at renewal time of the permit shall be those that are current at that time; there shall be no grandfathering of terms and conditions.
- 13.5 Requests for renewal which include a change in the scope of the original application will require a new removal or deposit application and fees to be submitted.

14.0 PERMIT SUSPENSION, CANCELLATION AND AMENDMENT

- 14.1 If there is a contravention of any term or condition of the permit, or the permit was issued on the basis of statements made in an application for a permit, report, declaration or record required under this bylaw that were false or misleading with respect to a material fact, or that omitted to state a material fact, the omission of which made the statement false or misleading, the General Manager may:
- (a) suspend in whole or in part the rights of the applicant under the permit;
 - (b) expire the permit;
 - (c) amend the permit; or
 - (d) attach new conditions to a permit without the consent of the applicant.
- 14.2 For any proposed material changes to the permit, the General Manager may require:
- (a) the submission of further, amended, or new information referred to in Section 9.1 or 9.2;
 - (b) further community consultation as outlined in Section 11.0; and
 - (c) the submission of a new application for a permit, along with applicable fees.

15.0 FEES AND SECURITY DEPOSITS

- 15.1 The fee for the permit shall be as set out in Schedule "A", based upon the quantity of material to be deposited or removed, and shall be paid in full before issuance of the permit.
- 15.2 As security deposit for the due and proper compliance with all the requirements and conditions of this bylaw, the applicant shall, before receiving a permit for the removal or deposit of soil, provide a cash deposit, certified cheque, or irrevocable letter of credit drawn upon a chartered bank, in the amount as set out in Schedule "A", based upon the permit area within the subject parcel designated for soil deposit or removal. The security provided under this section must remain valid from the date of issuance of a permit to a date that is not less than six months after expiration date of the permit with confirmation of compliance with the permit conditions.
- 15.3 Should an applicant not comply with the Professional Report provided in the permit, the Capital Regional District may undertake the necessary remedial actions and the full costs shall be borne by the applicant.
- 15.4 In the case of an application for a permit for a parcel in respect of which a permit issued under the *Mines Act* has also been issued, where a security deposit has been provided to the Ministry of Energy and Mines for the purpose of site reclamation, Section 15.3 shall not apply.

16.0 VIOLATIONS AND PENALTIES

- 16.1 An offence is committed against this bylaw by a person who:
 - (a) contravenes a provision of this bylaw;
 - (b) allows or permits a contravention of this bylaw; or
 - (c) fails to comply with any terms or conditions of a permit.
- 16.2 Every person guilty of an offence is liable, on summary conviction, to a fine of not less than \$2,000.
- 16.3 A separate offence shall be deemed to be committed upon each day during and in which the contravention occurs or continues.
- 16.4 The penalties imposed under Subsection 16.2 hereof shall be in addition to and not in substitution for any other penalty or remedy imposed by this bylaw or any other statute, law or regulation.

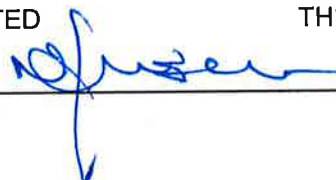
17.0 INDEMNIFICATION


- 17.1 The holder of the permit is at all times responsible for compliance with the provisions of this bylaw and any other applicable enactment and for any claim, demand, damage, loss, costs, expense, fees, or fine that may arise from a removal or deposit of soil.
- 17.2 The holder of a permit shall save harmless, indemnify and keep indemnified the Capital Regional District, its officers, employees, contractors, and elected officials from any and all claims, demands, damages, losses, costs, expenses, fees, fines, actions, proceedings whatsoever brought by any person arising from the issuance of a permit under this bylaw with respect to the removal or deposit of soil authorized under a permit.

18.0 TITLE

This bylaw may be cited for all purposes as the "Juan de Fuca Soil Removal or Deposit Bylaw No. 1, 2015".

READ A FIRST TIME	THIS	12 th	DAY OF	August	2015
READ A SECOND TIME	THIS	12 th	DAY OF	August	2015
READ A THIRD TIME	THIS	14 th	DAY OF	October	2015
ADOPTED	THIS	14 th	DAY OF	October	2015

CHAIR 

CORPORATE OFFICER 

SCHEDULE "A": FEES AND SECURITY DEPOSIT

PERMIT QUANTITY	PERMIT FEE	SECURITY DEPOSIT	RENEWAL FEE
Greater than 60 m ³ but less than 250 m ³	\$250	\$2,000 per hectare, or part of, in Permit Area to have soil removed from or deposited to	\$100
250 m ³ or greater but less than 500 m ³	\$550 Plus advertising costs, if required	\$3,000 per hectare, or part of, in Permit Area to have soil removed from or deposited to	\$200
500 m ³ or greater	\$1,000 plus advertising costs, if required	\$5,000 per hectare, or part of, in Permit Area to have soil removed from or deposited to	\$500