

CAPITAL REGIONAL DISTRICT

BYLAW NO. 3297

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 portion of the Capital Regional District;

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

1.0 DEFINITIONS

In this bylaw, unless the context requires otherwise, the following definitions apply:

"Agent" means a person who has been authorized in writing by an owner to apply for a Permit on the owner's behalf.

"Applicant" means an owner, or their Agent, who has filled out the forms attached as schedules "A" ~~of "C"~~ and has paid the prescribed fee.

"Application" means the forms attached as schedules "A" ~~or "C"~~ completed by the Applicant or Agent and submitted with the prescribed fee to request permission for a Deposit or Removal.

"Berm" means an embankment built of Soil for the purpose of providing a visual barrier and/or for noise attenuation relevant to a Permit Area.

"Board" means the Capital Regional District Board.

"Deposit" means the act of moving Soil from one Parcel of Land and placing it on another Parcel of Land within the Electoral Area.

"Electoral Area" means the Juan de Fuca Electoral Area of the Capital Regional District, ~~as outlined upon Map 1, attached to and forming a part of this bylaw.~~

"Engineer's Report" means a report, or reports, prepared by a Registered Professional in compliance with this bylaw.

"General Manager" means the General Manager of ~~the Environmental Services Department~~Planning and Protective Services, Capital Regional District, or his authorized agent.

"Holiday" means New Year's Day, Good Friday, Easter Monday, Victoria Day, Canada Day, British Columbia Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day.

"Land Use Committee" means a committee established by the Capital Regional District Board for the purpose of making land use recommendations, within the Juan de Fuca Electoral Area, to the Board.

"Natural Boundary" means the visible high-water mark of a Watercourse where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark upon the Soil of the bed of the body of water a character distinct from that of the banks thereof, in respect to vegetation, as well as in respect to the nature of the Soil itself.

"Parcel of Land" means any unit shown on the records of the Provincial Land Title Registry in which land is held or subdivided and includes a bare land strata lot created pursuant to the *Strata Property Act*.

"Permit" means the written authority in the form attached as Schedule "B" ~~or "D"~~ granted by the Board or its delegate for the Removal of or Deposit of Soil from or to any Parcel of Land within the Electoral Area.

"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 of Land.

"Registered Professional" means a person who is registered or licensed as a Registered Professional.

"Removal" means the act of removing Soil from any Parcel of Land in the Electoral Area.

"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 manure from animals, or household or farm compost material.

"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 natural drainage course or source of water, whether usually containing water or not, including a lake, pond, river, stream, creek, spring, ravine, swamp and gulch, and also includes a man-made depression with well-defined banks and a bed 0.6 m (2') or more below the surrounding land serving to give direction to a current of water at least six (6) months of the year or having a drainage area of 0.32 km² (0.12 miles²), any of which may be enclosed in a conduit, but excludes roadside ditches.

2.0 SEVERABILITY

If any section, subsection, sentence, paragraph, schedule or map 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, schedule or map may be severed from the bylaw without affecting the validity of the bylaw or any portion of the bylaw or remaining schedules or maps.

3.0 INCORPORATION OF MAPS, TABLE AND SCHEDULES

~~Map 4~~, Table A and Schedules "A" ~~and~~ "B", ~~"C" and "D"~~ attached hereto are hereby made a part of this bylaw.

4.0 REPEAL AND REPLACEMENT OF BYLAWS

The following bylaws are hereby repealed in their entirety:

- (a) Capital Regional District Bylaw No. 1472, cited as the "Soil Removal Prohibition Bylaw No. 2, 1986"; and
- (b) Capital Regional District Bylaw No. 1473, cited as the "Deposit of Soil Prohibition Bylaw No. 2, 1986"

and replaced by this bylaw.

5.0 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 of Land, unless or until a Permit allowing the Removal has first been obtained;
- (b) cause or permit the Deposit of Soil on any Parcel of Land, unless or until a Permit allowing the Deposit has first been obtained;
- (c) cause or permit the Deposit of Unsuitable Material on any Parcel of Land; or
- (d) remove or Deposit Soil in or around a Watercourse unless in compliance with the Provincial Riparian Area Regulation.

6.0 PERMIT EXEMPTIONS

6.1 A person may remove Soil from a Parcel of Land in the Electoral Area without a Permit provided that at least one of the following conditions is satisfied:

- ~~(a)~~ (a) On parcels less than 4,000m² in size the Removal of Soil does not exceed a total of 60 cubic meters in any calendar year;
- ~~(a)(b)~~ On parcels greater than 4,000m² in size the Removal of Soil does not exceed a total of 200 cubic meters in any calendar year;
- (b) the Removal 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 is from Parcels of Land owned or leased by one of these authorities; or
- (c) the Removal is from land owned or leased by the federal or provincial government

6.2 A person may deposit Soil on a Parcel of Land in the Electoral Area without a Permit provided that at least one of the following conditions is satisfied:

- ~~(a)~~ (a) On parcels less than 4,000m² in size the Deposit of Soil does not exceed a total of 60 cubic meters in any calendar year;
- ~~(a)(b)~~ On parcels greater than 4,000m² in size the Deposit of Soil does not exceed a total of 200 cubic meters in any calendar year;
- (b) the 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 is from Parcels of Land owned or leased by one of these authorities; or
- (c) the Deposit is from land owned or leased by the federal or provincial government

6.3 The onus of demonstrating compliance with sections 6.1 and 6.2 shall be at all times on the person undertaking the Removal and/or Deposit of Soil. The Board, or the General Manager,

may request documentation to confirm that the conditions for granting an exemption are satisfactorily addressed.

6.4 Only one deposit or removal permit is required if both actions occur within the same parcel of land.

6.5 Where the removal or deposit of up to 200 cubic metres of soil is for the construction of basements and foundations or installation of works and services e.g., septic fields and driveways associated with the construction of a building, the soil removal or deposit permit will be issued as part of the building permit.

7.0 PERMIT APPLICATION REQUIREMENTS

7.1 Every Applicant for a Permit must file with their Application the following information about the Parcel of Land containing the Permit Area, as follows:

- (a) the street address;
- (b) the legal description;
- (c) a title search, and copies of all registered encumbrances, including water licenses;
- (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 Table 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 general description and volume of Soil to be removed or deposited, along with a declaration that the Soil to be removed or deposited is not contaminated under the Contaminated Site Regulation of the *Environmental Management Act*;
- (i) the proposed completion dates for stages of Soil Deposit or Removal, if applicable;
- (j) subject to Section 8.2 for Soil volumes that are 250 m^3 -cubic metres or more or at the determination of the CRD site inspector, an Engineer's Report and site remediation plan, which address the following:
 - (i) plans, drawn to a scale of not less than 1:1000, showing the existing contours with contour intervals of not more than two (2) metres; 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;
 - (ii) the proposed contours of the Parcel of Land in its final state upon completion of the Permit activities with contour intervals of not more than two (2) metres;
 - (iii) the proposed slopes, which will be maintained upon completion of the Removal or Deposit;
 - (iv) the method proposed to control the erosion of the banks of the Soil;
 - (v) the proposed completion dates for stages of fill, if applicable;
 - (vi) the proposed methods to control: dust, noise, odour, smoke, vibration and visual impacts caused by the Deposit or Removal on adjacent Parcels of Land, and the tracking of Soil or other material onto highways;
 - (vii) plans to ensure that no silt seeps or flows into any Watercourse, well or aquifer on, under or flowing through the Parcel of Land;
 - (viii) the proposed methods of drainage control and protection of connecting or nearby Watercourses, wells or aquifers during the proposed Deposit or Removal; and

- (ix) methods to stabilize the slopes of the Soil, including any revegetation upon completion of the Removal or Deposit

7.2 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.

8.0 AUTHORITY TO ISSUE THE PERMIT

8.1 The Board delegates to the General Manager the authority to issue a Permit for volumes of Soil proposed to be removed or deposited up to and including 5,000 m³. For applications where volumes are greater than 5,000 m³, the applications are to be referred to the Land Use Committee for consideration and recommendation to the Board.

8.2 The Board delegates to the General Manager the authority to request that the Applicant include an Engineer's 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 Engineer's Report prepared by the Registered 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.

9.0 COMMUNITY INVOLVEMENT

9.1 Staff will advise in writing, by mail, the adjacent neighbours of a pending Soil Removal/Deposit Application a minimum of ten (10) working days prior to decision on the Permit Application.

9.2 The Board, or, if delegated to the General Manager, the General Manager may choose to have the public comment upon any Application of 5,000 m³ or less. If the Board or the General Manager decides that the community should be informed, then the Board or the General Manager may:

- (a) refer the Application to the 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.

10.0 PERMIT CONDITIONS

10.1 The Permit may be issued with or without any one or more of the conditions pertaining to subsections 7.1(g) to (j) of this bylaw.

10.2 No person shall engage in either the Removal or Deposit of Soil on any Sunday or Holiday. No Deposit or Removal of Soil shall occur except between the hours of ~~9-8~~ a.m. and 6 p.m. on those days operations are not prohibited.

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

10.4 All plans, specifications and Engineer's Reports forming part of an Application in respect of which a Permit is issued shall form part of and be incorporated in the Permit and, without limiting the

- foregoing, a Permit issued shall be limited to the type and volume of Soil that is to be deposited or removed.
- 10.5 A Permit for the Removal or Deposit of Soil shall not be issued if it is deemed to be in conflict with the policies and guidelines established in the Official Community Plan and/or the permitted uses pertaining to the Parcel of Land established by the Land Use Bylaws of the Electoral Area.
- 10.6 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.
- 10.7 The holder of the Permit shall contact the Ministry of Transportation and comply with its requirements for road maintenance and cleanup during and after the works.
- 10.8 A permit issued for the Removal or Deposit of Soil does not authorize:
- a. Damage to drainage facilities, roads, or lands, or other property or natural water courses.
 - b. Obstructions to drainage facilities or natural water courses with silt, clay, sand, gravel, rubble, debris. Or any other matter or thing originating from any deposit or removal of fill.
 - c. The operations by which fill is deposited or removed to encroach upon, under or physically damage any property.
 - d. Alteration or diversion of natural water courses, except with the approval of the Ministry of Environment.
 - e. The size and configuration of the fill depositor removal shall not adversely affect the air, light or view of adjoining or adjacent properties, or to alter the appearance or nature of the surrounding area.
 - f. Fill to be deposited or permitted to remain within eight metres of any road right of way.
 - a-g. Fill to be deposited or permitted to remain or removed from and area within 30 metres from the natural boundary of a stream unless supported by an environmental report prepared by a qualified professional.

11.0 ADMINISTRATION

- 11.1 Every Permit issued shall cease to authorize the Removal or Deposit as the case may be 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. The term for any Permit shall not exceed one (1) year.
- 11.2 If the Removal or Deposit authorized in a Permit is not completed before the Permit expires, the Board or the General Manager may renew or extend the Permit provided that:
- (a) the Applicant requests a renewal or extension in writing a minimum of two (2) weeks 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 an Engineer's Report which may apply; and
 - (d) there is no change in scope from the original Application.
- 11.3 There is no limit on the number of times an Applicant may apply for renewals or extensions, but no Applicant has a vested right to receive any renewals or extensions. 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.

12.0 PERMIT SUSPENSION, CANCELLATION AND AMENDMENT

12.1 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 Board or the General Manager may:

- (a) suspend in whole or in part the rights of the Applicant under the Permit;
- (b) cancel the Permit;
- (c) amend the Permit; or
- (d) attach new conditions to a Permit without the consent of the Applicant.

12.2 For any proposed material changes to the Permit, the General Manager may require the submission of:

- (a) amended plans, data and specifications; and
- (b) a new Application for a Permit, along with associated fees.

13.0 OFFENCES

13.1 An offence is committed against this bylaw by every person who:

- (a) conducts Soil Removal or Deposit without a Permit where a Permit is required;
- (b) violates any of the provisions of this bylaw;
- (c) fails to comply with any of the terms or conditions of a Permit;
- (d) allows any act or thing to be done in contravention or violation of this bylaw or any part of a Permit; or
- (e) in the case of the owner of a Parcel of Land, fails to prevent any other person from contravening any part of this bylaw or a Permit issued under it, or fails to comply with any order or notice given under this bylaw.

14.0 FEES AND SECURITY DEPOSITS

14.1 A Permit shall allow the Applicant to Remove or Deposit Soil from/to the Permit Area as authorized by the Permit for a period of twelve (12) months from the date of issuance of the Permit, or as otherwise established under Section 11.1.

14.2 The fee for the Permit shall be as detailed in Table A, based upon the quantity of material to be deposited or removed, and shall be paid in full before issuance of the Permit.

14.3 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 detailed in Table A, based upon the Permit Area within the subject Parcel of Land designated for Soil Deposit or Removal. The duration for the Security Deposit shall be from issuance of Permit to six (6) months after expiration of Permit.

15.0 VIOLATIONS AND PENALTIES

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- 15.1 No person shall do any act or suffer or permit any act or thing to be done in contravention of this bylaw.
- 15.2 Every person who contravenes this bylaw, by doing any act which it forbids, or omits to do any act which it requires to be done, is guilty of an offence and is liable, on summary conviction, to a fine of not less than that prescribed in the *Offence Act* [RSBC, 1996] Chapter 338. A separate offence shall be deemed to be committed upon each day during and in which the contravention occurs or continues.
- 15.3 The penalties imposed under subsection (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.

16.0 INDEMNIFICATION

The holder of the Permit shall at all times bear full responsibility for any accident which may occur, or damage which may be done to any person or property whatsoever, caused directly or indirectly by the work authorized by the Permit, and shall save harmless and keep indemnified the Capital Regional District from all claims and demands whatsoever in respect of the work.

17.0 TITLE

This bylaw may be cited for all purposes as the "Juan de Fuca Electoral Area Soil Removal or Deposit Bylaw No. 1, 2006."

READ A FIRST TIME THIS	day of	2006
READ A SECOND TIME THIS	day of	2006
READ A THIRD TIME THIS	day of	2006
APPROVED BY THE MINISTER OF ENVIRONMENT THIS	day of	2006
APPROVED BY THE MINISTER OF COMMUNITY SERVICES THIS	day of	2006
ADOPTED THIS	day of	2006

CHAIR

SECRETARY

TABLE A

QUANTITY⁽¹⁾	PERMIT FEE⁽²⁾	SECURITY DEPOSIT⁽³⁾	RENEWAL FEE⁽⁴⁾
60 – 500 100 m ³	\$250 administration plus \$2.50 per m ³ of Soil to be removed or deposited	\$2,000 per hectare, or part of, in Permit Area to have soil removed from or deposited to	\$100
101 – 500 m ³	\$500 administration plus \$1.00 per m ³ of Soil to be removed or deposited	\$3,000 per hectare, or part of, in Permit Area to have soil removed from or deposited to	\$200
501 – 5,000 m ³	\$1,000 administration plus \$0.60 per m ³ of Soil to be removed or deposited	\$5,000 per hectare, or part of, in Permit Area to have soil removed from or deposited to	\$500 <u>\$100</u>
> 5,000 m ³	\$2,500 administration plus \$0.30 per m ³ of Soil to be removed or deposited	\$10,000 per hectare, or part of, in Permit Area to have soil removed from or deposited to	\$1,000 <u>\$100</u>

- (1) The Applicant is responsible for ensuring that any conditions governing Removal or Deposit of Soil as defined in the *Mines Act* are adhered to.
- (2) The Permit fee must be provided prior to the issuance of a Permit.
- (3) The Security Deposit is required prior to issuance of a Permit and must be renewed and in effect prior to renewal of any Permit. The Security Deposit will continue in effect for six (6) months after the Permit has expired.
- (4) The renewal fee is required prior to an extension to the Permit.

SCHEDULE "A"

**SOIL DEPOSIT/SOIL REMOVAL
APPLICATION FOR PERMIT**

Application Number: _____

Name: _____ Phone: _____

Address: _____

I/We being the registered owner(s) of _____

Lot _____ District Lot _____ Plan _____ Section _____

Land District _____ Electoral Area _____

I hereby make application to Deposit/Remove _____ cubic metres of Soil onto the above mentioned property.

The purpose of the Soil Deposit/Removal is as follows:

The area upon which Soil is to be deposited/removed is as shown on the attached plan and consists of _____

hectare(s) and the maximum depth to which the Soil will be deposited/removed is _____ metre(s).

Upon approval of this Application, I/We hereby guarantee to fulfill the following conditions prior to the issuance of a Permit:

- Supply a Security Deposit in the amount of \$ _____
(see Table A)
- Submit the Permit fee in the amount of \$ _____
(see Table A)

The Applicant authorizes the General Manager, or his representative, to enter the premises at all reasonable times.

Filed herewith are the plans, data and specifications required by Bylaw Number 3297.

I hereby certify that, to my knowledge, the Soil to be deposited/removed is not contaminated under the Contaminated Site Regulation.

Signature of Applicant _____

Date: _____

SCHEDULE "B"
SOIL DEPOSIT/SOIL REMOVAL PERMIT

File Number: _____
PID Number: _____
Application Number: _____

Permit Number: _____

Receipt Number: _____

Date of Issue: _____

Expiry Date: _____

Issued to: _____

Address: _____

Telephone Number: _____

Security Deposit: _____

Cash/Certified Cheque/Letter of Credit

Permit Fee: _____

This Permit authorizes the Deposit/Removal of Soil on:

LOT _____ DISTRICT LOT _____ PLAN _____ SECTION _____

LAND DISTRICT _____ ELECTORAL AREA _____

LOCATED AT: _____

Maximum depth to which Soil may be deposited/removed:

SPECIAL CONDITIONS:

The holder of the Permit shall at all times bear full responsibility for any accident which may occur, or damage which may be done to any person or property whatsoever, caused directly or indirectly by the work authorized by the Permit, and shall save harmless and keep indemnified the Capital Regional District from all claims and demands whatsoever in respect of the work.

Approved by:

Please note: This does not automatically authorize a health permit or building permit.