

# REGIONAL DISTRICT OF NORTH OKANAGAN

## BYLAW No. 2647

A bylaw to regulate permits for the removal and deposit of soil material within Electoral Areas “B” and “C” of the Regional District of North Okanagan.

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**WHEREAS** Sections 723 and 797.1 of the *Local Government Act*, authorize the Board of Directors of the Regional District of North Okanagan to regulate the removal of soil including sand, gravel and rock, and the deposit of soil on any land within the Regional District, to make different regulations for different areas, and to require permits;

**AND WHEREAS** the Board of Directors desires to regulate, and require permits for, both the removal and deposit of soil within Electoral Areas “B” and “C” the Regional District of North Okanagan;

**NOW THEREFORE** the Board of the Regional District of North Okanagan in an open meeting assembled, hereby **ENACTS AS FOLLOWS**:

### CITATION

1. This Bylaw may be cited as “***Regional District of North Okanagan Soil Removal and Deposit Bylaw No. 2647, 2014***”.

### BYLAW

#### 1. ADMINISTRATION

This Bylaw applies to all land within Electoral Areas “B” and “C” of the Regional District of North Okanagan.

#### 2. DEFINITIONS

For the purpose of this bylaw:

***Administrator*** means the Chief Administrative Officer (CAO) of the Regional District or the officer delegated by the Board of Directors to act on the CAO's behalf.

***Agencies*** mean Regional District of North Okanagan departments and advisory committees, adjacent local governments, First Nations and Senior Government Ministries and Agencies.

***ALR*** means Agricultural Land Reserve.

***Berm*** means an embankment or buffer built of Soil, with a minimum width of seven (7) metres, for the purpose of reducing the transmission of noise and dust and providing screening of the Soil Removal and Deposit, as specified within the terms of the Permit. All Berms must be vegetated to provide an aesthetic separation between the Soil Removal and Deposit and adjacent properties and nearby lots, parks, trails, green spaces, roads and other uses.

***Buffer Zone*** means a strip of land a minimum of seven (7) metres in width that is either retained in a natural state or landscaped in accordance with the terms of the Permit to

provide a visual, aesthetic and sound barrier between the Permit area and adjacent and nearby lots, parks, trails, green spaces, roads and other uses.

**Deposit** means the placement, storage, filling, spilling or releasing, directly or indirectly, of Soil on lands in the Regional District where the Soil was not previously located.

**Development Permit** means a Permit issued under Section 920 of the *Local Government Act*.

**General Manager** means the General Manager, Planning and Building of the Regional District or staff delegated by the General Manager to act on his or her behalf.

**Mine** means a mine as defined in the *Mines Act*, as amended.

**Mine Permit** means a permit issued by the Minister pursuant to the *Mines Act*, as amended.

**Qualified Professional** means a person who is registered or duly licensed as a Professional Engineer or a Professional Geoscientist under the provisions of the *Engineers and Geoscientists Act*.

**Permit** means a valid Permit for the Removal or Deposit of Soil issued under this bylaw.

**Permit Holder** means the person who is the holder of a valid and subsisting Permit issued under this bylaw.

**Processing** is any activity that is not required for the Removal or Deposit of Soil, including washing, screening, grading or crushing of Soil.

**Professional Agrologist** means a person registered as an agrologist under the *Agrologist Act*, as amended.

**Regional District** means the Regional District of North Okanagan.

**Remove** includes the act of removing, excavating, or transporting Soil from any lands where it originally existed, including the movement of Soil from one location to another location within the same lot.

**Soil** means soil, sand, gravel, rock, silt, clay, peat, or any other substance of which land is composed, or any combination of them, whether or not it is in or put in a stockpile or storage facility, and does not include any compost or biosolids placed on land as a soil amendment or conditioner.

**Stockpile** means any accumulation of Soil which has been removed from its natural position.

### 3. REGULATIONS

#### a) Applicability

All lands within Electoral Areas “B” and “C” in the Regional District are designated Soil Removal and Deposit Permit Areas.

**b) Requirement for Soil Removal and Deposit Permit**

- i. Subject to the other terms of this Bylaw, no person shall Remove, Deposit, or cause to be removed or deposited any Soil from or on any land in Electoral Areas “B” and “C” unless the person:
  - a. has applied for and been issued a valid and subsisting Permit for such Removal or Deposit; and,
  - b. carried out the Removal or Deposit in accordance with this bylaw and the terms and conditions set out in the Permit.

**c) Exemptions**

- i. Notwithstanding Section 3.b, a Permit is not required where the Removal or Deposit of Soil:
  - a. is less than 350 m<sup>3</sup> of Soil in a calendar year;
  - b. is for the purpose of constructing or maintaining provincial roadways, forest service roads, walkways or trails;
  - c. is on land owned by, or works undertaken by, the Regional District or its member municipalities;
  - d. is on land managed under the *Forest Act* or regulated under the *Highways Act* and for which a provincial soil permit has been obtained, so long as the land continues to be used as managed forest or highways;
  - e. is related to and in accordance with a valid building permit;
  - f. is required as part of a solid waste processing and disposal operation, including composting facilities, which has approval pursuant to applicable federal, provincial and Regional District regulations and bylaws;
  - g. is required as part of the clean-up or remediation of contaminated soils as directed and approved by the Ministry of Environment;
  - h. is required for the construction or maintenance of a private sewage disposal system for which a sewage disposal permit pursuant to the *Health Act* has been issued;
  - i. is undertaken as a permitted farm use on land located within the Agricultural Land Reserve (ALR), as specified within the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*. (For certainty, Soil Removal or Deposit as or for non-farm uses require a Permit under this bylaw); or,
  - j. is undertaken under a valid active Mine Permit issued by the Ministry of Energy and Mines prior to the adoption date of this Bylaw.
- ii. The onus of demonstrating compliance with Section 3.c shall be at all times on the person undertaking the Removal or Deposit of Soil. The General Manager or their delegate may request documentation to confirm that the conditions for granting an exemption are satisfactorily addressed.

**d) Permit Application**

- i. A separate application for a separate Permit must be made for each parcel from which Soil is to be Removed or onto which Soil is to be deposited, as per Section 3.f.

- ii. The Permit application must be signed by the applicant, and
  - a. if the applicant is not the owner, by all owners of the parcel, and
  - b. in the case of strata property:
    - i. by an authorized representative(s) of the strata corporation plus the strata lot owner for the property where the Soil is to be Removed or Deposited; and
    - ii. by all strata lot owners if the Soil is to be Removed or Deposited on common property.

**e) Permit Application Fees**

An application for a Permit must be submitted with the appropriate fee as prescribed by the *Regional District of North Okanagan Development Application Procedures and Administrative Fees Bylaw No. 2315, 2008*, as amended.

**f) Permit Application Required Information**

- i. Every application for a Permit shall be accompanied by detailed plans, data, and specifications for the proposed site prepared by a Qualified Professional to a scale of not more than 1:500, unless otherwise authorized by the General Manager, showing the contour of the ground in its current state and shall contain information regarding the proposed Soil Removal or Deposit with respect to the following matters:
  - a. all features including buildings, structures, tree cover, roads, bridges, and natural watercourses;
  - b. land uses and designations, such as ALR, zoning, floodplain area, environmentally sensitive area, and First Nations reserve land;
  - c. the proposed slopes which will be maintained upon completion of the Soil Removal or Deposit;
  - d. the proposed methods to control the erosion of the banks of the Soil Removal or Deposit;
  - e. the proposed methods of drainage control during the Soil Removal or Deposit;
  - f. the proposed methods to control noise and dust generated by the proposed Soil Removal or Deposit;
  - g. the proposed methods and locations of access to the site during the Soil Removal or Deposit;
  - h. the proposed grading and rehabilitation plan for the Soil Removal or Deposit site during and upon completion of the proposed Soil Removal and Deposit operation, copies of any remediation or site closure plans filed with the Ministry of Energy and Mines and any Agricultural Land Commission remediation requirements;
  - i. the proposed location of machinery, buildings, scales, and all other proposed structures and improvements;
  - j. the proposed location of buffers and tree cover, and the location and grade width of berms;
  - k. the proposed schedule for the Removal or Deposit of Soil, indicating the amounts to be either removed or deposited on a monthly basis;
  - l. the proposed routes to and from a Soil Removal or Deposit area;
  - m. a traffic management plan, which would include but not be limited to a description of the frequency of trucks, signage, placement of safety

- control devices, and other traffic control that would minimize the disturbance created;
  - n. copies of all other necessary approvals and permits from Federal and Provincial authorities required by statute or regulation in connection with the proposed soil removal or deposit;
  - o. if the proposed soil deposit on or removal takes place on ALR land, information on the past and proposed farming activity, the relationship of the soil deposit or removal to existing or proposed farming activity on the land, impact on the agricultural capability of the land, and a report, prepared by a Professional Agrologist, identifying the positive benefit of the proposed soil deposit or removal to agriculture; and,
  - p. any other information the Regional District deems necessary to review the Permit application for the lands in question, as directed by the General Manager.
- ii. If a Mine, in addition to 3.f.i., the Permit application must include a copy of the Mine Permit application or Mine Permit, if issued.

#### **g) Permit Issuance**

- i. Where
- a. a complete application for a Permit under this bylaw has been submitted; and,
  - b. the proposed Soil Removal or Deposit set out in the application conforms with this bylaw, all other bylaws of the Regional District, and all other applicable enactments; and,
  - c. the applicant for the Permit has paid to the Regional District the required application fees and security; and,
  - d. Public notification has been undertaken and a public information meeting has been held in accordance with *Regional District of North Okanagan Development Application Procedures and Administrative Fees Bylaw No. 2315, 2008*, and the Regional District Board has received a report of the public information meeting from the applicant; and,
  - e. the Board of Directors, at their discretion, may hold a public information session to receive input from the community directly;
  - f. The application for a Permit under this bylaw has been referred to Agencies for a 30 day period and all Agency comments are presented to the Board of Directors prior to consideration of Permit issuance.

The Board of Directors may issue the Permit, issue the Permit with conditions or refuse the Permit for non-compliance with the bylaw.

#### **h) Permit Conditions**

- i. All Soil Removal and Deposit Permits issued under this bylaw are subject to the following rules and regulations:
- a. Permitted removal and deposit activities may only occur between the hours of 7:00 a.m. to 8:00 p.m. Monday through Saturday, and 9:00 a.m. to 6:00 p.m. Sunday and statutory holidays, unless otherwise restricted by the Permit.

- b. No person may Remove or Deposit Soil so as to do any of the following:
  - i. pollute, obstruct, divert, damage, destroy, or introduce soil to any body of water without the completion of a hydrological report by a Registered Professional Hydrologist and the subsequent approval of the provincial Ministry of Environment, and if applicable, the federal Fisheries and Oceans Canada;
  - ii. change local drainage to the detriment of a neighboring property;
  - iii. result in Soil on the land or on adjacent land becoming unstable or susceptible to erosion, slippage, landslide, slumping or settling;
  - iv. damage or destroy a building, structure, service or utility;
  - v. threaten the health, safety or welfare of the public;
  - vi. permit dust, dirt or noise to escape the property boundary that may cause a private or public nuisance;
  - vii. in the case of Deposit or Removal of Soil from ALR land, fail to provide a positive benefit to agriculture; or,
  - viii. impair the agricultural capability of adjacent ALR lands; or,
  - ix. contravene a Regional District bylaw.
- c. No person may Remove Soil or Deposit in contravention of the *Riparian Area Regulations*.
- d. All descriptions, plans and specifications submitted by the applicant in support of the Permit application and marked 'FINAL' by the Regional District form part of and are incorporated into the Permit and the Permit specifically limits soil removal or deposit in accordance with the descriptions, plans and specifications accepted by the Regional District.
- e. The holder of a Permit is responsible for the conditions of the Permit and is responsible for any damage or harm to person or property caused directly or indirectly by the work authorized by the Permit and saves harmless the Regional District from all claims whatsoever in respect of the work and Permit.
- f. A Buffer Zone shall be maintained at all times around the perimeter of each lot subject to a Permit except to the extent required to maintain vehicular access as indicated on the Permit. As a Permit Condition, a Buffer Zone may be required to exceed seven (7) metres if adjacent to a Residential, Small Holding (S.H.) or Country Residential (C.R.) Zoned lot.
- g. If permitted by the Permit, Stockpiles of Soil will be maintained in such a manner so that they do not adversely affect or damage adjacent properties or encroach into Buffer Zones.
- h. All vehicles and machinery used for Soil Removal and Deposit shall be kept outside of the Buffer Zone at all times.
- i. At the discretion of the Board of Directors, a Berm may be substituted for a Buffer Zone to provide a visual, aesthetic and sound barrier between the Permit Area and adjacent and nearby lots, parks, trails, green spaces, roads and other uses.
- ii. Furthermore, the applicant is required to receive approval from the Ministry of Transportation and Infrastructure for any access to a Ministry road pursuant to

Section 5 of the *Industrial Road Act* and/or Section 48 of the *Transportation Act* as a condition of Permit issuance.

- iii. The issuance of a Permit does not constitute authority to conduct Processing of Soil on the property if not appropriately zoned for such use.
  - iv. No Permit issued pursuant to the terms of this bylaw may be transferred, assigned or sold.
  - v. Before a Permit is issued, the applicant shall have first obtained all permits and permissions required from the Regional District and any other authority having jurisdiction and, without limiting such requirements, a Mine Permit if the *Mines Act* applies to the Soil Removal and Deposit.
- i) Permit Duration**
- i. The term of the Permit shall be one (1) year, or a greater term if required by the Board of Directors; or,
  - ii. The expiration date of a Permit shall correspond with the expiration date of the Mine Permit, issued under the *Mines Act* and associated Regulations, for the proposed Soil Removal and Deposit.
- j) Permit Expiry**
- i. Every Permit issued under this bylaw shall lapse and be without further force and effect at the earlier of:
    - a. the Soil Removal or Deposit authorized by the Permit is not commenced within six months of the date of issuance of the Permit;
    - b. the Soil Removal or Deposit authorized by the Permit discontinued for a continuous period of twelve months or greater;
    - c. the Soil Removal or Deposit authorized by the Permit is completed;
    - d. the subject property is transferred or otherwise disposed of; or
    - e. the expiry date identified within the Permit.
- k) Security**
- i. Soil Removal or Deposit operations that have a valid Mine Permit on the date of the adoption of this Bylaw are exempt from Section 3.k for the properties that are included within the Mine Permit. Section 3.k will have full effect on these Soil and Deposit operations at such a time as the Mine Permit is deemed invalid or inactive by the Ministry of Energy and Mines.
  - ii. For Soil Removal and Deposit that are defined as a Mine within the *Mines Act* and prior to the issuance of a Permit, the amount of the security specified in Section 3.k.iii, as an irrevocable Letter of Credit in a form acceptable to the Regional District, a certified cheque or cash, will be paid to the Regional District.
  - iii. The amount of security to be provided to the Regional District by the applicant is \$5,000.00, plus \$5,000.00 for each additional hectare or fraction thereof land to be disturbed as authorized by the Permit, to a maximum of \$100,000.
  - iv. The security shall be maintained in full force and effect throughout the Permit period.

- v. Subject to Sections 3.l and 3.m, the security required pursuant to this section shall be returned to the permit holder provided that:
  - a. the area authorized by the Permit has been reclaimed in accordance with the plans submitted as part of the application; and,
  - b. a report by a Qualified Professional has been received by the Regional District, confirming that the area authorized by the Permit has been reclaimed in accordance with the plans, that the land is safe for any use intended and that the terms of the Permit are completely satisfied.
- vi. Within thirty days of receiving the report from the Qualified Professional pursuant to Section 3.l, the Regional District must:
  - a. return the security to the Permit Holder; or
  - b. return a portion of the security to the Permit Holder, minus outstanding Soil Removal Deposit fees; or,
  - c. reject the report and give notice to the Permit Holder of the deficiencies in the report or in the reclamation of the area authorized by the Permit.
- vii. If the Permit Holder has not remedied any deficiencies referred to in Section 3.k.vi.c within sixty days of receipt of the notice, the Regional District may use the security to perform the outstanding work.
- viii. In the event that the Permit is revoked, suspended or cancelled by the Regional District, the security shall be forfeited to the Regional District, in whole or in part, and may be used at any time to remedy a noncompliance resulting from Removal or Deposit operations or reclaim the property.

#### **l) Security Reporting**

On completion of the work, and prior to expiration of a Permit, the Permit Holder shall submit to the Regional District a report prepared by a Qualified Professional, at the Permit Holder's expense, certifying that upon completion of the Removal or Deposit the work substantially complies with the terms of the Permit and the conditions specified in the plans, specifications and reports prepared by the Qualified Professional. This report shall also include a final determination of the volume of Soil, Removed or Deposited calculated in cubic meters.

#### **m) Quantity Reporting**

- i. The Permit Holder shall, in the case of Removal or Deposit of Soil for which a Permit is issued:
  - a. maintain accurate and up-to-date records of all Soil Removed and Deposited and make these records available for inspection by the General Manager on request; and,
  - b. submit to the General Manager an annual declaration by the 31<sup>st</sup> day of January each year, certified by a Qualified Professional, detailing all quantities of Soil Removed and Deposited in the preceding calendar year and signed by the Permit Holder indicating compliance with the provisions of this bylaw and the Permit.



#### **n) Permit Revocation and Reinstatement**

- i. The General Manager, or their delegate, may issue a stop work order, with immediate effect, acting reasonably, if Soil Removal or Deposit activities have not been undertaken in accordance with the terms and conditions of this bylaw or the Permit.
- ii. The General Manager, at the direction of the Board of Directors, may, by delivery of a 15-day written notice to a Permit Holder, revoke or suspend a Permit under this bylaw where:
  - a. the Permit Holder has contravened this bylaw, or another bylaw of the Regional District;
  - b. the Permit Holder has contravened a condition of the Permit authorizing the Soil Removal or Deposit;
  - c. The Permit was issued by the Regional District on the basis of descriptions, plans and specifications submitted by the Permit Holder in support of the Permit application which were incorrect or misleading; or,
  - d. The Permit Holder failed or refused to comply with a stop work order made pursuant to this bylaw.
- iii. The Regional District may reinstate a Permit if:
  - a. the Board of Directors accepts the recommendations and conclusions contained in a report from a Qualified Professional confirming compliance with this bylaw or providing recommendations as to how the bylaw can be complied with within a timely manner; or,
  - b. The Board of Directors is satisfied that the contravention has been adequately addressed by the Permit Holder and all conditions of the Permit have been met.

### **4. ENFORCEMENT**

#### **a) Enforcement**

- i. The General Manager, Enforcement Officer, those persons retained by the Regional District for inspection purposes, and Agents of the Regional District are authorized individually or in any combination to enter at all reasonable times on any parcel and into any building or structure to ascertain whether the provisions of this bylaw are being observed.
- ii. The General Manager, Enforcement Officer, or those persons retained by the Regional District for inspection purposes, and Agents of the Regional District shall comply with the site entry provisions of the *Health, Safety and Reclamation Code for Mines in British Columbia*.
- iii. For the purposes of ascertaining compliance with this bylaw the General Manager may require a Permit holder to provide records of Soil Removal or Deposit and/or a specified report from a Qualified Professional.

**b) Offenses**

- i. A person commits an offence against this bylaw who:
  - a. Removes or Deposits Soil without a Permit where a Permit is required;
  - b. violates a provision of this bylaw;
  - c. fails to comply with a term or condition of a Permit;
  - d. fails to comply with an order or notice given under this bylaw; or,
  - e. refuses or hinders an inspection under this bylaw.

**c) Penalties**

- i. Any person who violates any of the provisions of this bylaw, or fails to comply with a Permit or order, or prevents or obstructs those authorized to enforce this bylaw, commits an offence and on summary conviction may be liable to a penalty of \$10,000.00 per offence, plus the cost of prosecution, pursuant to the *Offence Act*.
- ii. Each day's continuance of an offence under this bylaw constitutes a new and distinct offence.

**SEVERABILITY**

If any Section or portion of this bylaw is held to be invalid by a Court of competent jurisdiction, such invalid Section or portion shall be severed and such invalidity shall not affect the remainder of this bylaw.

<b>Read a First Time</b>	this	20th	day of	August, 2014
<b>Read a Second Time, as amended</b>	this	7th	day of	January , 2015
<b>Read a Third Time, as amended</b>	this	18th	day of	February, 2015
<b>ADOPTED</b>	this	18th	day of	March, 2015



Chair  
Rick Fairbairn



Deputy Corporate Officer  
Paddy Juniper