



The Corporation of the District of North Cowichan

Soil Removal and Deposit Bylaw, 2009

Bylaw 3311

[Consolidated and printed by authority of the Corporate Officer under section 139 of the Community Charter. Current to May 20, 2016. Last amended December 16, 2015. Amendments: 3570, 3548, 3567.]

Whereas section 8 of the *Community Charter* authorizes Council to regulate, prohibit, and impose requirements in relation to the removal of soil and the deposit of soil or other material;

And whereas Council desires to regulate the removal and deposit of soil and other material in order to

- (a) safeguard natural assets in the community,
- (b) protect the viability of agricultural land,
- (c) reduce the negative impact to the public from dust and drainage issues,
- (d) protect the natural state of the ocean foreshore, lakeshore, and environmentally sensitive areas, including flood plain areas, and
- (e) allow for the appropriate use of land after measures are taken to deposit or remove soil or other material.

Now therefore, the Council of The Corporation of the District of North Cowichan, enacts as follows:

Interpretation

1 In this Bylaw:

“application” means a soil removal or deposit permit application, generally in the form of Schedule “A”;

“body of water” means a permanent or intermittent stream, lake, pond, wetland, flood plain, ditch, seasonal drainage route, marsh, river, watercourse, ocean, or other body of natural or artificial surface water;

“deposit” means the act of placing fill on land or in any body of water where the fill did not previously exist or stand, including on a stockpile or in a storage facility;

“development permit” means a permit authorized under section 920 [*development permits*] of the *Local Government Act*;

“Director of Engineering and Operations” means the person so appointed by the Chief Administrative Officer;

“fill” means soil or other material, and for certainty does not include compost, manure, mulches, fertilizer or soil conditioners;

“North Cowichan” means the Corporation of the District of North Cowichan;

"other material" means

- (a) hog fuel, sawdust shavings or other such by-products resulting from any manufacturing process involved in the production of lumber or other wood products,
- (b) yard waste,
- (c) stumps,
- (d) construction or demolition waste such as dimensional lumber, roofing materials, wallboard, masonry rubble, concrete rubble or asphalt;

"permit" means a permit to remove soil or deposit fill issued by the Director of Engineering and Operations, generally in the form of Schedule "B";

"permittee" means a person who holds a valid permit under this Bylaw;

"registered professional" means an engineer, geoscientist, or agrologist who is registered with a professional association that is regulated by a statute;

"remove" or **"removal"** means the act of removing soil from land where it existed or stood, including from a stockpile or storage facility;

"soil" means soil, sand, gravel, rock, silt, clay, peat or any other substance of which land is composed, or any combination of these substances;

"soil removal or deposit area" means an area for which a permit has been issued. [BL3548]

Application to other laws

- 2** Nothing in this Bylaw precludes or relieves a person from complying with the provisions of the *Agricultural Land Commission Act* and regulations, or any other applicable local, provincial or federal enactment.

Rules and regulations relating to soil removal or deposit

- 3**
- (1) No person may remove soil or deposit fill without first having obtained a permit, unless an exemption under section 4 [*permit exemptions*] applies.
 - (2) Permitted removal and deposit activities may 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 Director of Engineering and Operations. [BL3548]
 - (3) No permit may be issued in respect of, nor may any person remove soil or deposit fill on, any land
 - (a) within the Agricultural Land Reserve unless the removal or deposit is permitted by the Agricultural Land Commission, or
 - (b) in a development permit area designated in the Official Community Plan until a development permit has been issued to authorize the alteration of the land.

- (4) No person may remove or deposit soil so as to do the following:
- (a) pollute, obstruct, divert, damage, destroy, or introduce soil to any body of water, drain, or sewer 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 Department of Fisheries and Oceans;
 - (b) change local drainage to the detriment of a neighbouring property;
 - (c) result in soil on the land or on adjacent land becoming unstable or susceptible to erosion, slippage, landslide, slumping or settling;
 - (d) damage or destroy a building, structure, service or utility;
 - (e) threaten the health, safety or welfare of the public;
 - (f) permit dust, dirt or noise to escape that may cause a private or public nuisance;
 - (g) reduce the viability of agricultural land, as determined by a registered agrologist;
 - (h) contravene a North Cowichan bylaw.
- (5) For clarity, a person must not remove soil or deposit fill within 30 m of a body of water without having first obtained a development permit.
- (6) During and after the removal or deposit,
- (a) the topsoil layer must be salvaged, stored on the parcel, and used for rehabilitation of the disturbed area where possible, and
 - (b) the disturbed area must be covered with at least four inches of topsoil, graded and sown with grass or other protective vegetation cover, unless the Director of Engineering and Operations allows otherwise. [BL3548]
- (7) The finished slope of the deposited fill must meet good engineering practices.
- (8) The Director of Engineering and Operations may require that upon completing permitted soil removal or deposit activities, a permittee provide a certificate from a registered professional stating that all works substantially comply with all requirements of the permit. [BL 3548]

Permit exemptions

4 No permit is required under this Bylaw if the soil removal or deposit

- (a) is to accommodate construction of a single or two-family dwelling,
- (b) relates to work authorized under the *Mines Act*,
- (c) is carried out by, or on behalf of, North Cowichan,
- (d) is outside of the Agricultural Land Reserve and is
 - (i) otherwise authorized or required by North Cowichan, or

- (ii) the lesser of 300 m³ per parcel of land or 60 m³ per 4047 m² (1 acre), per calendar year,
- (e) is for a parcel of land smaller than 1 ha in size, or
- (f) relates to work for which North Cowichan has granted construction approval.

Permit application

- 5** (1) An application for a permit must comply with section 6 [application requirements] and
- (a) include a completed and signed application form, generally as set out in Schedule "A", and
 - (b) the fee under section 12(1) [permit fee].
- (2) An application that does not comply with this section or the following section is incomplete, and the Director of Engineering and Operations is not obliged to process it. [BL3548]

Application requirements

- 6** (1) The application must
- (a) include the matters set out in Schedule "A", along with any other information the Director of Engineering and Operations may require to determine if the proposed permit complies with this bylaw, and
 - (b) be accompanied by detailed plans, drawn to scale, for the proposed site of the removal or deposit area and adjacent lands within 25 m (82 feet) of that site. [BL3548]
- (2) The Director of Engineering and Operations may require that the permit application be prepared by a registered professional. [BL3548]

Permit issuance

- 7** (1) When all conditions have been met to obtain a permit, the permit must be issued subject to the terms and conditions required by this Bylaw, and the plans, specifications and information contained in the application.
- (2) A permit issued under this Bylaw grants permission to conduct only those removal or deposit activities described in the permit.
- (3) A permit may be issued for a maximum of three years and expires upon the earlier of
- (a) the removal or deposit of the volume authorized to be removed or deposited by the permit, and
 - (b) the expiry date of the permit.

Permit suspension, cancellation and amendment

- 8** The Director of Engineering and Operations may suspend, cancel or amend a permit if
- (a) a person has contravened a term or condition of a permit,

- (b) a permit was issued on the basis of a statement made in an application, report, declaration, or record required under this bylaw that is false or misleading, or
- (c) the permittee has not paid a fee under section 12 [fees]. [BL3548]

Permit transfer

- 9** (1) A permittee may transfer a permit to a transferee by providing the Director of Engineering and Operations with a written notice of transfer, and payment of the fee under Section 12 (2) [fees]. [BL3548]
- (2) Once the Director of Engineering and Operations receives the fee and notice under the previous subsection, the transferee becomes the permittee for all purposes of this Bylaw, and North Cowichan may enforce all the provisions of this Bylaw against the transferee. [BL3548]
- (3) Acceptance of a transfer under this section does not constitute a representation by North Cowichan of the validity of the permit, or that an action authorized by the permit was undertaken in compliance with this Bylaw or the permit.

Permit renewal

- 10** If a permittee applies to renew a permit, the Director of Engineering and Operations must issue the renewal if
- (a) all applicable drawings and specifications for the soil removal or deposit area are updated as necessary by a registered professional, or as required by the Director of Engineering and Operations, to identify material changes to site conditions and to demonstrate compliance with the permit, current bylaws and regulations, and
 - (b) the permittee has deposited with North Cowichan the fee under section 12 (2) [fees], and additional security under section 13 [security] to cover the cost of additional reclamation requirements associated with material changes to the permit. [BL3548]

Right to enter and inspect

- 11** To determine compliance with this Bylaw, the Director of Engineering and Operations may
- (a) enter a soil removal or deposit area at all reasonable times and inspect all aspects of the removal or deposit, and
 - (b) request records of removal and deposit volumes maintained by a permittee. [BL3548]

Fees

- 12** (1) A permit processing fee in the amount prescribed in the Fees Bylaw must accompany each application. [BL3470]
- (2) A processing fee in the amount prescribed in the Fees Bylaw must accompany each request to renew or transfer a permit. [BL3470]

- (3) The fee in subsection (1) and security in section 13 [*security*] is waived if the soil removal or deposit
 - (a) involves the movement of existing soil within the boundaries of a single legal parcel of land, or a single development site spanning adjacent parcels of land,
 - (b) is for agricultural purposes, on land zoned for agricultural use or within the Agricultural Land Reserve, or
 - (c) is required for the regular operation and maintenance of a golf course.

Security

- 13**
- (1) A permittee must provide North Cowichan with an irrevocable letter of credit generally in the form of Schedule "C" as security for full compliance with the requirements specified in the permit.
 - (2) The amount of the security must be \$4,000.00, plus \$4,000.00 on a prorated basis for each 2.47 acres (1 hectare) of land to be disturbed on the soil removal or deposit area.
 - (3) Every letter of credit required to be provided under this bylaw must be drawn in favour of North Cowichan, and be a clean, unconditional and irrevocable letter of credit made by a Canadian chartered bank and capable of presentation at a branch of the bank situated within North Cowichan or the City of Duncan.
 - (4) If the permittee fails to renew or replace a letter of credit within 14 days before its expiry, North Cowichan may draw on the letter of credit.
 - (5) Subject to subsection (6), the security required under this section must be returned to the permittee if
 - (a) the soil removal or deposit area has been reclaimed in accordance with the plans submitted as part of the application, and
 - (b) the Director of Engineering and Operations has received a report confirming that the removal or deposit area has been reclaimed in accordance with the plans, and that the land is safe for the use intended. [BL3548]
 - (6) Within 30 days of receiving the report under subsection (5), the Director of Engineering and Operations must return the security to the permittee, or reject the report and give notice to the permittee of the deficiencies in the report or in the reclamation of the removal or deposit area. [BL3548]
 - (7) If the permittee has not remedied the deficiencies within 60 days of receipt of the notice under subsection (6), the security may, at the discretion of the Director of Engineering and Operations, be forfeited to North Cowichan. [BL3548]
 - (8) If the Director of Engineering and Operations has not received, and deemed acceptable, a report by a registered professional under subsection (5), the security will be forfeited to North Cowichan on the last day of the ninth month following the suspension or cancellation of the permit, under section 8 [permit suspension and cancellation]. [BL3548]

Insurance

- 14** A permittee must maintain at all times during activities authorized by a permit, including reclamation works, comprehensive liability insurance in the amount of 2 million dollars per occurrence that
- (a) names North Cowichan as an additional insured, and
 - (b) provides that no expiry, cancellation, or material change in the policy is effective until after 30 days notice of such cancellation or change is given to North Cowichan by registered mail.

Offences

- 15** A person commits an offence against this Bylaw who
- (a) removes soil or deposits fill 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.

Penalties

- 16** (1) A person who commits an offence under this Bylaw is liable upon summary conviction to a fine not exceeding \$10 000.
- (2) Each day of a violation, contravention or breach of this Bylaw or a permit issued under it must be considered to be a separate and distinct offence.

Severability

- 17** If any part of this bylaw is held to be invalid by a court it must be severed without affecting the validity of the remaining provisions of this Bylaw.

Schedules

- 18** Schedules "A", "B", and "C" are attached to and form part of this Bylaw.

- 19-20** [Repealed; BL3567].

Read a first time on March 18, 2009.

Read a second time on April 1, 2009.

Read a third time on May 6, 2009.

Third reading rescinded and read a third time, as amended, on February 3, 2010.

Approved by the Agricultural Land Commission on April 12, 2010.

Approved by the Minister of Community and Rural Development on October 24, 2011.

Adopted on November 2, 2011

SCHEDULE "A"

Soil Removal or Deposit Permit Application

APPLICANT INFORMATION

Name of applicant _____

(if company, insert company name and registered professional applying on behalf of company)

Applicant's address _____

Applicant's telephone number _____

Applicant's fax number _____

LAND IDENTIFICATION INFORMATION

Legal description _____

Street Address _____

LAND OWNERSHIP

Registered owner _____

Address of owner _____

Lease holder _____

Address of lease holder _____

SOIL REMOVAL OR DEPOSIT INFORMATION (Prepared by Registered Professional)

1. Estimated quantity of Soil	Type of Material	Quantity (m³)
(a) To be removed	_____	_____
(b) To be deposited	_____	_____

2. Proposed date of commencement: _____

3. Proposed date of completion: _____

Estimate prepared by: _____

Date: _____

SCHEDULE "A" (...continued)

REPORT AND PLANS

Attached, as part of this application, is the following information as required by the Director of Engineering and Operations under Bylaw No. 3311, being the "Soil Removal and Deposit Bylaw, 2009":

- method, purpose, scale and volume of the proposed soil removal or deposit of fill;
- site plan illustrating all significant topographic and hydraulic features, buildings, structures and vegetation, including the location of all wetlands, seasonal drainage routes, watercourses, waterworks, wells, ditches, drains, sewers, septic fields, catch basins, culverts, manholes, rights-of-way, legal and geodetic survey monuments and markers, public utilities and public works, and the measures proposed to protect them;
- methods of drainage control during and after the excavation or filling;
- storm water management plan including erosion and silt control measures,
- a groundwater management plan that locates, identifies, and monitors wells on the subject property and the immediate adjacent lands;
- methods to control dust, mud, soil on road, noise and visual impacts from affecting adjacent lands and roads;
- methods of access to the site during soil removal and deposit;
- methods of providing landscape screening, if any;
- communications plan to advise adjacent residents on a periodic basis of the operations' activities;
- if the land is within the Agricultural Land Reserve, a copy of the Agricultural Land Commission resolution letter that indicates an approval and associated conditions resulting from an application for the placement of fill as a non-farm use, or a copy of the Commission letter indicating an authorization and associated conditions applied under the Notice of Intent provisions for the removal of soil and placement of fill for a specified use;
- an irrevocable letter of credit under section 13 [security];
- evidence that the person or firm responsible is covered by liability insurance with a minimum coverage of \$2 000 000;
- the permit fee and reclamation security.

I, _____, as applicant on my behalf, or as authorized by
signatory of the applicant

_____, make this permit application.
print company name

SCHEDULE "B"

Soil Removal or Deposit Permit No. _____

PERMIT ISSUED ON: _____

PERMIT EXPIRES ON: _____

Under the authority of Bylaw No. 3311, being the "Soil Removal and Deposit Bylaw, 2009", this soil removal or deposit permit No. _____ is hereby issued to:

_____ (the permittee) of

Address *Telephone*

for the: removal or deposit of _____ m³ of soil on:

Address of Property

Legal Description of Property

The property zoning is: _____

The property is within the ALR: Yes No

The soil removal or deposit is expected to occur within 30 m of the natural boundary of an ocean foreshore, lake, river or stream: Yes No

The purpose of removal or deposit is: _____

The permittee is subject to compliance with the above-stated bylaw and the reports, plans and other supporting documents which form part of this permit and constitute the terms and conditions of this permit.

Director of Engineering and Operations *Date*

SCHEDULE "C"

Letter of Credit Format

TO BE ON BANK LETTERHEAD

Date _____

Municipality of North Cowichan
7030 Trans Canada Highway
Box 278
DUNCAN, BC V9L 3X4

Dear Sir/Madam

Re: Irrevocable Commercial Letter of Credit No. _____

We hereby authorize you to draw on (Name of Bank), (Address of Bank), Province of British Columbia, for account of (Name of Tenderer), up to an aggregate amount of _____ available by drafts at sight for 10% of tender value;

1. Drawings are to be made in writing to (Name of Bank).
2. Partial drawings may be made.
3. The Bank will not ask whether North Cowichan has a right to make a demand on this Letter of Credit.
4. This Letter of Credit is irrevocable up to the expiry date.

DRAFTS MUST BE DRAWN AND NEGOTIATED NOT LATER THAN _____.

The drafts under this credit are to be endorsed hereon and shall state on their face that they are drawn under (Name of Bank), (Address of Bank), Letter of Credit No. _____.

Yours truly

Manager
(Name of Bank)