

THE CORPORATION OF THE DISTRICT OF PEACHLAND

Bylaw Number 1934

A Bylaw to Regulate the Removal, Movement and Deposit
of Soil, Sand, Gravel, Rock or other Substance of which Land is Composed
From, On and to Lands within the District of Peachland

WHEREAS Section 8(3)(m) of the Community Charter authorizes Council, by bylaw, to regulate, prohibit and impose requirements in relation to the removal of soil and the deposit of soil and other material;

AND WHEREAS Section 9 of the Community Charter provides that a bylaw under section 8(3)(m) that prohibits soil removal, or that prohibits the deposit of soil or other material, making reference to quality of the soil or to contamination, cannot be adopted unless the bylaw is approved by the Minister of Energy, Mines and Petroleum Resources;

AND WHEREAS Section 195 of the Community Charter provides that Council may, by bylaw, do one or both of the following:

- (a) impose rates or levels of fees for a permit required under a municipal bylaw for
 - (i) the removal of soil from, or
 - (ii) the deposit of soil or other material on any land in the municipality or in any area of the municipality;
- (b) impose rates or levels of fees for the activities referred to in paragraph (a);

AND WHEREAS Section 12(1) of the Community Charter provides that a bylaw under the Charter may do one or more of the following:

- (a) make different provisions for different areas, times, conditions or circumstances as described by bylaw;
- (b) establish different classes of persons, places, activities, property or things;
- (c) make different provisions, including exceptions, for different classes established under paragraph (b).

AND WHEREAS Section 195 further provides that without limiting section 12(1) of the Community Charter, fees under section 195 may vary according to the quantity of soil removed or the quantity of soil or other material deposited and may be different for different areas of the municipality;

AND WHEREAS Section 195 further provides that a bylaw under that section has no effect until it is approved by the Minister of Community and Rural Development;

AND WHEREAS Section 8(3)(j) of the Community Charter authorizes Council, by bylaw, to regulate, prohibit and impose requirements in relation to protection of the natural environment, subject to Section 9;

AND WHEREAS Section 2(1)(a) of the Spheres of Concurrent Jurisdiction - Environment and Wildlife Regulation, enacted pursuant to section 9(4) of the Community Charter, authorizes a municipality to regulate, prohibit and impose requirements in relation to polluting or obstructing, or impeding the flow of, a stream, creek, waterway, watercourse, waterworks, ditch, drain or sewer, whether or not it is located on private property;

NOW THEREFORE, pursuant to the above recited and other authority, the Council of the Corporation of the District of Peachland, in open meeting assembled, enacts as follows:

PART ONE - DEFINITIONS, PURPOSE AND APPLICATION

TITLE

1. This Bylaw may be cited as "Soil Deposit and Removal Bylaw No. 1934, 2010".

REPEAL

2. This Bylaw repeals "Earthwork Control Bylaw Number 832, 1982" and "Earthworks Control Bylaw No. 832 Amendment Bylaw Number 1852, 2007".

DEFINITIONS

3. In this Bylaw, the following terms shall have the following meanings:

"Council" means the Municipal Council of the District;

"deposit" includes the act of moving soil and placing it on any parcel, highway or in any water, and includes creating a stockpile or other storage facility or otherwise storing soil;

"Director" means:

- (a) the person named, from time to time, to fill the position of Director of Operations, or such other name, from time to time, for the head of the District's public works department;
- (b) his or her deputy; and
- (c) any consulting engineer appointed by the District to carry out the duties of the Director under this Bylaw;

"District" means the District of Peachland;

"farm business" means a business in which one or more farm operations are conducted, and includes a farm education or farm research institution to the extent that the institution conducts one or more farm operations;

“farm operations” means any of the following activities involved in carrying on a farm business:

- (a) growing, producing, raising or keeping animals or plants, including mushrooms, or the primary products of those plants or animals;
- (b) clearing, draining, irrigating or cultivating land;
- (c) using farm machinery, equipment, devices, materials and structures;
- (d) applying fertilizers, manure, pesticides and biological control agents, including by ground and aerial spraying;
- (e) conducting any other agricultural activity on, in or over agricultural land;

and includes

- (f) intensively cultivating in plantations, any
 - (i) specialty wood crops, or
 - (ii) specialty fibre crops prescribed by the minister;
- (g) conducting turf production
 - (i) outside of an agricultural land reserve, or
 - (ii) in an agricultural land reserve with the approval under the Agricultural Land Commission Act of the Provincial Agricultural Land Commission;
- (h) aquaculture as defined in the Fisheries Act if carried on by a person licensed, under Part 3 of that Act, to carry on the business of aquaculture;
- (i) raising or keeping game, within the meaning of the Game Farm Act, by a person licensed to do so under that Act;
- (j) raising or keeping fur bearing animals, within the meaning of the Fur Farm Act, by a person licensed to do so under that Act;
- (k) processing or direct marketing by a farmer of one or both of
 - (i) the products of a farm owned or operated by the farmer, and
 - (ii) within limits prescribed by the Minister of Agriculture and Lands pursuant to the Farm Practices Protection (Right to Farm) Act, products not of that farm, to the extent that the processing or marketing of those products is conducted on the farmer's farm;

but does not include

- (l) an activity, other than grazing or hay cutting, if the activity constitutes a forest practice as defined in the Forest and Range Practices Act;
- (m) breeding pets or operating a kennel;
- (n) growing, producing, raising or keeping exotic animals, except types of exotic animals prescribed by the Minister of Agriculture and Lands pursuant to the Farm Practices Protection (Right to Farm) Act;

“permit” means a soil removal or soil deposit permit issued under this Bylaw;

“reclamation plan” means the plan referred to in section 18(ff);

“registered professional” means an engineer, geoscientist, agrologist, environmental consultant, or land surveyor who is registered with a professional association that is regulated by a statute, appointed to act in the capacities described under the sections of this Bylaw requiring a registered professional;

“remove” means the act of excavating or removing soil, rock or topsoil from its naturally occurring location on any parcel or land including creek beds, river beds and submerged lands or from a stockpile or other storage facility;

“stockpile” means any accumulation of soil which has been removed from its natural position;

“topsoil” means the surface layer of soil which contains organic material and is capable of supporting plant growth.

4. The following definitions apply to this Bylaw by virtue of their presence in the Schedule of the Community Charter:

“owner” means, in respect of real property,

- (a) the registered owner of an estate in fee simple,
- (b) the tenant for life under a registered life estate,
- (c) the registered holder of the last registered agreement for sale,
- (d) the holder or occupier of land held in the manner referred to in section 228 [taxation of Crown land used by others] or section 229 [taxation of municipal land used by others], and
- (e) an Indian who is an owner under the letters patent of a municipality incorporated under section 12 [incorporation of reserve residents as a village] of the Local Government Act;

“parcel” means any lot, block or other area in which land is held or into which it is subdivided, but does not include a highway;

“soil” includes sand, gravel, rock and other substances of which land is composed.

5. For clarity, the term “soil” includes topsoil, silt, clay, peat and any combination of soil materials.
6. For clarity, the term “parcel” includes a strata lot and strata common property.

APPLICATION OF BYLAW

7. This Bylaw applies to the removal of soil from one parcel within the District and its deposit on another parcel within the District.
8. This Bylaw applies to removal of soil from one portion of a parcel and its deposit on another portion of the same parcel.
9. This Bylaw applies to deposit within the District of soil removed from outside the District.
10. This Bylaw applies to the removal of soil from the District, even though the removed soil is deposited or is intended to be deposited outside the District.
11. This Bylaw applies to the removal of soil from and the deposit of soil to creek beds, river beds, and other lands covered by water, and the foreshore of such watercourses.

PART TWO - REQUIREMENT FOR PERMIT AND EXCEPTIONS

REQUIREMENT FOR PERMIT

12. Unless exempted by this Bylaw, no person shall remove soil from within the District or deposit soil within the District unless the person has been issued a permit pursuant to this Bylaw and unless the person is in strict compliance with the permit.

EXCEPTIONS TO PERMIT REQUIREMENT

13. A permit is not required under this Bylaw for:
 - (a) Building Permit - soil deposit or removal required for the construction, alteration, repair or demolition of a building, retaining wall, swimming pool or other structure for which a valid building permit has been issued by the District;
 - (b) Sewage Disposal System - soil deposit or removal required for the installation of a sewage disposal system for which all permits and approvals have been issued;
 - (c) Retaining Wall - soil deposit or removal required for the construction of a retaining wall for which a building permit is not required, namely one which does not exceed 1.5 metres in height from the ground level on one side to the ground level on the opposite side, and which is intended to hold the ground in place against the forces of gravity;
 - (d) Subdivision Servicing Works - soil deposit or removal undertaken in the course of construction of works in connection with a subdivision servicing agreement pursuant to section 940 of the Local Government Act and in accordance with engineering plans that have been approved by the District;

- (e) Development Servicing Works - soil deposit or removal undertaken in the course of construction of works in connection with a development servicing agreement pursuant to section 940 of the Local Government Act and in accordance with engineering plans that have been approved by the District;
- (f) Utility Works - soil deposit or removal undertaken in the course of installation and maintenance of water works, sanitary sewerage works, stormwater drainage works, electrical lines, gas supply lines, telecommunications lines, and other utility works;
- (g) Driveway Maintenance - soil deposit or removal undertaken in the course of maintenance and repair of an existing residential driveway or parking area;
- (h) Golf Course Maintenance - soil deposit or removal undertaken as part of maintenance of a golf course;
- (i) Nursery Business - soil deposit or removal undertaken by a florist, nurseryman, or horticulturist where such soil is required for the business and used on the parcel on which that person carries on the business;
- (j) Public Works - soil deposit or removal in any way connected with public works and activities undertaken by or on behalf of the District, a regional district, or a provincial ministry, including landscaping, parks development and maintenance, landfill and composting operations, and highway, trail and pathway construction and maintenance;
- (k) Farm Operations - soil deposit or removal up to 200 cubic metres per calendar year undertaken as part of a farm operation;
- (l) Minor Quantities - soil deposit or removal, from any parcel in any calendar year, of less than 50 cubic metres in total of all soil deposited and removed, to a maximum depth of excavation or height of deposit of 1.0 metre, unless the Director determines, after inspecting the parcel, that such soil deposit or removal could reasonably be expected to create a hazard to an occupier of the parcel, an owner or occupier of an adjacent parcel, or persons using an adjacent highway.

PART THREE - APPLICATIONS FOR PERMITS

PERMIT APPLICATION

- 14. An application for a permit must be made in the form prepared for that purpose by the Director.
- 15. 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.
- 16. The permit application must be signed by the applicant, and if the applicant is not the owner, by all owners of the parcel, and by any other person the Director considers has an interest in the property and ought to consent to the application, and in the case of strata property, by an authorized representative of the strata corporation, plus the strata lot owner.

PERMIT APPLICATION FEE

17. At the time of applying for a permit, the applicant must pay a non-refundable application fee to the District as follows:
- (a) if the total amount of soil proposed to be deposited or removed under a permit is 100 cubic metres or less - \$200.00;
 - (b) if the amount is greater than 100 cubic metres but less than 1000 cubic metres - \$500.00;
 - (c) if the amount is greater than 1,000 cubic metres - \$1,500.00.

PERMIT APPLICATION INFORMATION

18. Unless directed otherwise by the Director, every application for a permit shall include the following information, all to the satisfaction of the Director:
- (a) Parcel Identification - the civic address and legal description of the parcel from which soil is to be removed or to which soil is to be deposited, together with a recent land title search of the parcel;
 - (b) Corporate Information - where the applicant, the owner or both are corporations, a Corporate Registry search confirming the company is incorporated, not in bankruptcy or receivership, and in good standing as to the filing of annual reports;
 - (c) Registered Charges - copies of all easements, rights of way, covenants and other charges registered against title to the parcel, together with copies of relevant plans;
 - (d) Purpose - the purpose for the soil deposit or removal;
 - (e) Quantity of Soil to be Removed - the quantity of soil to be removed from the parcel for the year of the permit and for future years under proposed renewals of the permit;
 - (f) Quantity of Soil to be Deposited - the quantity of soil to be deposited onto the parcel for the year of the permit and future years under proposed renewals of the permit;
 - (g) Soil Removal/Deposit Areas - a plan showing the area or areas on the parcel from which soil will be removed or to which soil will be deposited;
 - (h) Source/Destination of Soil - information about the source of soil to be deposited or the destination of soil to be removed;
 - (i) Hauling Routes - a plan showing the routes, on-site and off-site, over which the soil will be moved;
 - (j) Hauling Vehicles - size, weight, ownership and other information about the vehicles by which the soil will be transported, both on-site and off-site;
 - (k) Commencement Date - date of commencement of the soil removal or deposit;
 - (l) Duration - requested duration of the permit and information about proposed renewals of the permit;

- (m) Operator - if different from the applicant, name of the person or corporation who will manage the soil deposit or removal operation;
- (n) Hauler - if different from the applicant, name of the person or corporation who will transport the soil off-site;
- (o) Surrounding Areas - a plan showing the location of the parcel in relation to surrounding land areas, together with information about the ownership and use of the surrounding land areas;
- (p) Description of Parcel - a plan showing all pertinent features of the parcel, including buildings, structures, utility works, driveways, roadways, retaining walls, equipment, other improvements, and lakes, streams and other watercourses on the parcel;
- (q) Screening - proposed methods of providing screening, by landscaping, berming or otherwise;
- (r) Communications - a proposed communications plan to advise and inform residents adjacent to the site on a periodic basis as to the soil removal and deposit operations;
- (s) Topographical Plan - a topographical plan of the parcel and surrounding downstream land areas;
- (t) Drainage - a plan showing the proposed control of stormwater drainage during the soil removal or deposit operation, including drainage measures, and measures to control siltation of watercourses and drainage works;
- (u) Compaction - information about the compaction of fill;
- (v) Erosion - information about the susceptibility of proposed soil deposit and removal areas to erosion or subsidence, and measures to control erosion and subsidence;
- (w) Dust Control - the dust control measures proposed to be undertaken to ensure that soil materials are not blown from the parcel during the conduct of the operations;
- (x) Tree Cover - a plan and other information showing the extent and areas of trees and other vegetation that would be affected by the soil deposit or removal;
- (y) Wildlife - a plan and other information showing the extent and areas of birds and wildlife that would be affected by the soil deposit or removal;
- (z) Hours/Days/Months - the hours and days of the week and months of the year proposed for soil deposit or removal;
- (aa) Noise Control - information about noise control measures;
- (bb) Stockpiling - a plan and other information showing the location and configuration of proposed stockpiling of soil, and measures proposed to maintain it so as not to adversely affect adjacent property;

- (cc) **Slope Details** – information about the final slope of any deposited soil and/or excavated areas;
- (dd) **Public Safety** - proposed public safety precautions;
- (ee) **Site Profile** - if required under section 946.2 of the Local Government Act, a site profile under the Environmental Management Act;
- (ff) **Reclamation Plan** - a reclamation plan and estimated cost for the reclamation of the soil removal or deposit site after completion of the soil deposit or removal, including the steps to be taken to ensure the site is covered with topsoil, seeded or otherwise treated to encourage growth of vegetation and control erosion, and provided with adequate surface drainage works;
- (gg) **Agricultural Land Reserve** - for land within the agricultural land reserve, confirmation satisfactory to the Director that the proposed soil deposit or removal is permitted by the Agriculture Land Reserve Use, Subdivision and Procedure Regulation or the owner has received approval from the Provincial Agricultural Land Commission for a non-farm use;
- (hh) **Other Information** - other plans and information considered relevant by the Director.

PROFESSIONAL REPORTS

- 19. The Director may require the applicant for a permit to engage the services of a registered professional satisfactory to the Director to provide information and certifications related to the application for the permit.

INSPECTION OF PARCEL

- 20. The Director may inspect any parcel that is the subject of an application for a permit for any purpose related to this Bylaw.

PART FOUR - ISSUANCE AND REFUSAL OF PERMITS

PERMIT ISSUANCE

- 21. When all conditions have been met for the issuance of the permit pursuant to this Bylaw, a permit shall be issued, subject to the terms and conditions of this Bylaw.

PERMIT CONDITIONS

- 22. The Director shall not issue a permit unless the Director is satisfied that the application information satisfies all of the following conditions:
 - (a) **Engineering Principles** - soil deposit and removal be undertaken in accordance with sound geotechnical engineering principles;
 - (b) **Surface Drainage** - positive gravity surface drainage be maintained in all soil deposit and removal areas, and surface drainage of adjacent land not be interrupted;

- (c) Highway Damage - damage to District highways and damage to District drainage facilities caused by the transportation of soil be immediately repaired or corrected in accordance with requirements of the Director;
- (d) Change of Owner - the District must be immediately notified of any change or prospective change to the ownership of the parcel to which the permit applies;
- (e) Maximum Slopes - unless the Director authorizes otherwise, a stockpile of soil and an excavation must not exceed a slope of 2:1 or two (2) metres of run in one (1) metre of rise;
- (f) Maximum Height of Stockpiles - unless the Director authorizes, a stockpile of soil must be limited to a height of 3.0 metres;
- (g) Hours and Months of Operation - the hours and months of permitted soil removal or deposit are 7:00 a.m. to 5:00 p.m. Monday through Friday, except statutory holidays, January through December, or shorter hours or fewer months as specified in the permit application or as specified in a Mines Act permit;
- (h) No Interference with Watercourse - the permit holder must not foul, pollute the water quality of, obstruct, divert, impede the flow of, damage or destroy any watercourse, ditch, drain, sewer or water utility;
- (i) No Interference with Adjoining Lands - the permit holder must not damage or destroy amenities on the parcel or adjacent lands including, without limitation, any utilities, works or services, structures, buildings, improvements or highways;
- (j) No Bylaw Contravention - the permit holder must not contravene any bylaw of the District;
- (k) Public Safety - the permit holder must not do anything that threatens the health, safety or welfare of the public;
- (l) Zoning - the permit holder must not do anything that could result in the use of the parcel in a manner inconsistent with the zoning for the parcel, to the extent the zoning bylaw is applicable;
- (m) No Erosion - the permit holder must not do anything that could result in soil on the parcel or on adjacent parcels becoming susceptible to erosion, slippage, landslides, slumping or settling;
- (n) No Nuisance - the permit holder must not permit dust, dirt or noise to escape so as to constitute a private or public nuisance;
- (o) Repair of Damage - all damage to municipally or privately-owned drainage facilities, highways, lands, or other property, or natural watercourses, resulting from the deposit or removal, or any activities related directly to the deposit or removal, shall be, at the option of the Director, repaired by the permit holder at its own cost or the permit holder shall pay the District's costs of repairs and for this purpose, the Director may use the security provided by the holder under section 37;

- (p) No Obstruction to Watercourses - all drainage facilities and natural watercourses shall be kept free from silt, clay, sand, rubble, debris, gravel and any other matter or thing originating from any deposit and causing obstruction to such drainage or natural watercourses;
- (q) No Encroachments - the deposit operations shall not encroach upon, undermine or physically damage any property;
- (r) No Alterations of Watercourses - no natural watercourse shall be altered or diverted, except with the approval of the Ministry of Environment, Lands and Parks as provided for in the Water Act;
- (s) No Affect on Views - the size and configuration of the deposit shall not adversely affect the air, light or view of adjoining or adjacent properties, nor shall it substantially alter the appearance and nature of the surrounding area;
- (t) Overall Increase in Elevation - no person shall deposit soil so as to raise the elevation of a parcel more than 1.2 metres above the natural grade of an abutting property, except as required by the Ministry of Environment, Lands and Parks for flood protection.

INCORPORATION OF APPLICATION INFORMATION

23. Any permit issued is subject to compliance with all the conditions in section 22, and in addition, all plans, specifications and other information forming part of an application, as approved by the Director, shall form part of and be incorporated in and be a condition of the permit and without limiting the foregoing, a permit shall be limited to the type and volume of soil that is to be deposited or removed in accordance with the application, as approved by the Director.

MAXIMUM ANNUAL VOLUME

24. The maximum volume of soil that a permit can authorize to be removed from and deposited to any parcel in any calendar year is 100,000 cubic metres.

PERMIT DURATION

25. The term of a permit shall be one (1) year, or the lesser term requested by the applicant. The permit expires at the end of the term.

CESSATION OF SOIL DEPOSIT/REMOVAL

26. Notwithstanding section 25, every permit issued shall cease to authorize the deposit or removal of soil as the case may be upon the earlier of:
- (a) the deposit or removal of the amount of soil authorized to be removed or deposited by the permit; and
 - (b) the expiry date stated in the permit.

NO SOIL PROCESSING

27. The issuance of a permit does not constitute authority to conduct processing of soil.

REFUSAL OF PERMIT

28. In addition to section 22, the Director may refuse to issue a permit:
- (a) Non-Compliance with Bylaw - if the applicant has not complied with the requirements of this Bylaw;
 - (b) Information Unsatisfactory - if the information supplied by the applicant is not satisfactory to the Director;
 - (c) Hazardous Conditions - if the Director considers, based on information provided by a registered professional, that the soil deposit or removal would likely create a hazard to persons or property, or damage to the environment, or irreparable damage to highways or other public property;
 - (d) Registered Charges - if the Director considers the soil deposit or removal is contrary to a registered covenant or would unreasonably interfere with a registered easement, right of way or other interest registered against title to the parcel;
 - (e) Breach of Bylaws - if the applicant or owner is in breach of the District's building bylaw, zoning bylaw, business bylaw, noise bylaw or unsightly premises bylaw in respect of the subject parcel or other properties;
 - (f) Agricultural Land – if the Director considers the soil deposit or removal would constitute a non-farm use of agricultural land within the Agricultural Land Reserve not permitted by the Agricultural Land Commission Act or its Regulation;
 - (g) Mines Permit - if the applicant has not been issued a permit required to be issued by the Ministry of Energy, Mines and Petroleum Resources;
 - (h) Other Permits - if the applicant has not been issued any other required permit or approval, including a development permit or building permit to be issued by the District; or
 - (i) Other Reason - if the Director considers there is another valid reason why the permit should not be issued.

PART FIVE - PERMIT FEES

PERMIT FEE

29. For each permit issued by the Director under this Bylaw, at the time of issuance of a permit, the applicant must pay a non-refundable permit fee as follows:
- (a) for soil authorized to be deposited or removed in an amount of 100 cubic metres or less - \$100.00
 - (b) the soil authorized to be deposited or removed in any amount greater than 100 cubic metres - \$100.00 plus \$1.10 per cubic metre above 100 cubic metres.

EXTRAORDINARY TRAFFIC AGREEMENT

30. If a permit holder has entered into an extraordinary traffic agreement with the District pursuant to section 42 of the Community Charter, 87% of the volumetric permit fee payable under section 29(b) of this Bylaw will be reduced by the amount of money paid to the District in that same year under the extraordinary traffic agreement.

NO REFUND OF PERMIT FEE

31. In no circumstance will any portion of the permit fee be refundable, even if the permit holder fails to remove or deposit soil, or fails to remove or deposit the quantity of soil authorized by the permit.

MEASUREMENT OF SOIL VOLUMES

32. For each permit which authorizes soil deposit or removal in an amount greater than 100 cubic metres, the holder of the permit shall, within ten (10) days of the end of each calendar month, provide the District with a report, prepared and certified by a registered professional, as to the total amount of soil deposited and removed from the parcel in the prior month.

CONVERSION

33. Where soil is quantified in terms of tonnes or cubic yards, the conversion table in Schedule "A" of this Bylaw applies for the purposes of the calculation of removal or deposit fees.

FEE FOR EXCESS SOIL DEPOSIT OR REMOVAL

34. No holder of a permit may deposit or remove soil in excess of the volume authorized by the permit.
35. Notwithstanding section 34, if the reports provided to the District pursuant to section 32 indicate that excess soil has been removed or deposited, or if the District otherwise learns that excess soil has been removed or deposited, then without limiting the enforcement steps the District may take, the permit holder must pay to the District an additional fee for the excess soil of \$.50 per cubic metre over and above the basic rate.

FEEES FOR SOIL DEPOSIT OR REMOVAL WITHOUT A PERMIT

36. Where a person removes or deposits soil without a permit in breach of this Bylaw, without limiting the enforcement steps the District may take, the person shall pay to the District a fee, in the amount of \$2.20 for each and every cubic metre of soil removed or deposited, whether or not a permit is subsequently issued.

PART SIX - SECURITY AND INSURANCE

SECURITY

37. Prior to the issuance of a permit, the applicant is required to provide to the Director security in the form of:
- (a) a certified cheque or bank draft; or

- (b) a clean, unconditional, irrevocable standby letter of credit drawn on a Canadian chartered bank and capable of presentation at a branch of the chartered bank situated within the District and otherwise in a form acceptable to the Director in an amount equal to 30% of the estimated cost of the reclamation work to be performed under the permit to a maximum of ten thousand dollars (\$10,000.00), to ensure full and proper compliance with the provisions of this Bylaw and all terms and conditions of the permit.
- 38. If a person does not comply with this Bylaw or permit conditions, the District, by its employees, agents, or contractors, may, but is not required to, enter upon the lands where the non-compliance has occurred and carry out any works required to remedy such non-compliance, or repair any resultant damage using the security provided by the permit holder pursuant to section 37.
- 39. If any part of the security is used by the District pursuant to section 38, the permit holder shall provide additional security to replace the security used.
- 40. Unless a permit is renewed under this Bylaw, then within three (3) months after expiry of a permit, the permit holder shall complete reclamation of the site in accordance with the approved reclamation plan.
- 41. Subject to section 42, the security shall be returned to the permit holder provided that:
 - (a) the area authorized by the permit has been reclaimed in accordance with the reclamation plan; and,
 - (b) a report by a registered professional has been received and accepted by the District, confirming that the area authorized by the permit has been reclaimed in accordance with the reclamation plan, that the land is safe for any use intended and that the terms of the permit are completely satisfied.
- 42. Within thirty (30) days of receiving the report from the registered professional pursuant to section 41(b), the District must:
 - (a) return the security to the permit holder; or
 - (b) 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.
- 43. If the permit holder has not remedied any deficiencies referred to in section 42(b) within sixty (60) days of receipt of the notice pursuant to section 42(b), the District may use the security to perform the work.

INSURANCE

- 44. The permit holder shall maintain at all times during activities authorized by a permit (including reclamation works) comprehensive liability insurance in the amount of \$5,000,000.00 per occurrence, which policy names the District as an additional insured. The insurance policy shall provide that no expiry, cancellation, or material change in the policy shall become effective until after thirty (30) days of notice of such cancellation or change is given to the District by registered mail. The permit holder shall deliver to the District true copies of the policy of insurance and the

receipts of payment. The permit holder must provide the District with a Certificate of Insurance supplied by the Insurance Company, undertaking that the insurance company will not cancel insurance without a registered letter of notice to the District.

PART SEVEN - PERMIT RENEWALS, TRANSFERS, AMENDMENTS, SUSPENSIONS AND CANCELLATIONS

PERMIT RENEWAL

45. An applicant can apply for permit renewal if:
- (a) all applicable drawings and specifications for the soil removal or deposit are updated as necessary to identify any material changes to site conditions and to demonstrate compliance with current bylaws and regulations;
 - (b) the permit holder has complied with the terms of the permit and this Bylaw and all fees are paid up to date;
 - (c) the permit holder has applied to the Director for a renewal of the permit, on the same terms and conditions as the previous permit;
 - (d) the permit holder has provided the security required under section 37; and
 - (e) the permit holder has paid a renewal fee of:
 - (i) for soil authorized to be deposited or removed in an amount of 100 cubic metres or less - \$75.00; or
 - (ii) for soil authorized to be deposited or removed in any amount greater than 100 cubic metres - \$75.00 plus \$1.10 per cubic metre above 100 cubic metres;

then the permit holder would be entitled to renewal of the permit.

NO PERMIT TRANSFERS

46. If the parcel to which a permit applies is transferred to a new owner, the permit will be deemed to be terminated and the new owner must apply to the Director for a new permit.

PERMIT AMENDMENTS

47. The permit holder shall, prior to undertaking the removal or deposit of any soil that deviates from the plans, data, specifications or other requirements of the permit, retain a registered professional to determine if these deviations are in compliance with good environmental and engineering practices and if so, the permit holder may apply to the Director for an amendment to the permit and the fee for permit amendment shall be \$100.00, and soil shall not be disturbed until the permit is amended.

PERMIT SUSPENSIONS AND CANCELLATIONS

48. If:
- (a) the permit holder fails to comply with this Bylaw;

- (b) the permit holder fails to comply with the permit; or
- (c) the permit was issued on the basis of statements made in an application, 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; or

then the Director may:

- (i) suspend in whole or in part the rights of the permit holder under a permit,
- (ii) cancel the permit, or
- (iii) amend or attach new conditions to a permit consistent with the conditions in section 22, without the consent of the permit holder.

NOTICE OF PERMIT SUSPENSION OR CANCELLATION

49. If the Director intends to suspend or cancel a permit or amend permit conditions or impose new conditions, the Director must give a permit holder reasonable written notice of the suspension, cancellation or amendment of conditions or additional conditions and the Director's reasons, and if the permit holder does not remedy the matter within the stipulated notice period, the Director may, without any further notice, suspend, modify or cancel the permit, depending on the Director's assessment of all relevant factors.

RE-CONSIDERATION

50. Where an applicant for a permit or a permit holder subject to a decision made by the Director pursuant to section 28 or 48 of this Bylaw is dissatisfied with the decision, the applicant or permit holder may apply to the Council for reconsideration of the matter within thirty (30) days of the decision being communicated to him or her.
51. An application for re-consideration must be delivered in writing to the Corporate Officer of the District and must set out the grounds upon which the applicant or permit holder considers the decision of the Director is inappropriate and what, if any, decision the applicant considers the Council ought to substitute.
52. The Corporate Officer of the District must place each application for re-consideration on the agenda of a regular meeting of Council and must notify the applicant and any other party who the Corporate Officer reasonably considers may be affected by the reconsideration, of the date of the meeting at which the re-consideration will occur.
53. At the meeting, the Council may hear from the applicant and any other person interested in the matter under re-consideration who wishes to be heard, and may either confirm the decision of the Director or substitute its own decision.

PART EIGHT - POST-PERMIT REPORT

COMPLETION OF OPERATIONS

54. Unless a permit is renewed under this Bylaw, then within one (1) month after expiry of a permit, the permit holder shall deliver to the Director:

- (a) a certificate from a registered professional stating that all works have substantially complied with the requirements of the permit and good environmental and engineering practices; and
- (b) a declaration stating the total amount of soil removed and/or deposited in the form attached in Schedule "B".

PART NINE - ENFORCEMENT

ORDERS BY DIRECTOR

55. At any time the Director may give notice in writing to the permit holder that the permit holder is in contravention of this Bylaw or in contravention of the permit, and the Director may order the permit holder to take such steps or cease such activities as are outlined in the Director's order.

RECORDS

56. The Director may for the purposes of determining compliance with this Bylaw, request records of soil removal and deposit volumes maintained by the permit holder.

INSPECTION

57. The Director or a District Bylaw Enforcement Officer may enter at any reasonable time upon any parcel to determine whether this Bylaw is being observed or whether the terms of a permit are being observed. Any person who does not comply with this Bylaw or the conditions of a permit shall, in addition to any penalties levied by this Bylaw, be required to compensate for any resultant damage to District or Provincial drainage facilities, highways, or other District or Provincial property or facilities.

OFFENCES

58. An offence is committed against this Bylaw by every person who:
- (a) conducts any removal or deposit without a permit if a permit is required;
 - (b) fails to comply with any of the terms or conditions of a permit;
 - (c) allows any act or thing to be done in contravention or violation of this Bylaw or any part of a permit;
 - (d) being the owner or occupier of a parcel, fails to prevent any other person from contravening any part of this Bylaw or a permit issued under it;
 - (e) fails to comply with any order or notice given under this Bylaw; or
 - (f) violates any of the provisions of this Bylaw.

PENALTIES

59. Every person who commits an offence under this Bylaw or a permit issued under it is liable upon summary conviction to a fine not exceeding ten thousand dollars (\$10,000.00) and not less than one thousand dollars (\$1,000.00) for each offence.

60. Each day of any violation, contravention or breach of this Bylaw or a permit issued under it shall be deemed to be a separate and distinct offence. Where an offence is a continuous one, each day that the offence is continued shall constitute a separate offence.
61. Nothing in this Bylaw shall limit the District from pursuing any other remedy that would otherwise be available for a contravention of this Bylaw.

SEVERABILITY

62. If any section, subsection, clause or phrase of this Bylaw is for any reason held to be invalid or illegal by a decision of any court of competent jurisdiction, it shall be severable, and such a decision shall not affect the validity of the remaining sections, subsections, clauses or phrases of this Bylaw.

SECTION HEADINGS

63. Section or subsection headings are inserted in this Bylaw for ease of reference and are not to be used in interpreting this Bylaw.

READ A FIRST TIME, this 23rd day of February, 2010.

READ A SECOND TIME, this 23rd day of February, 2010.

READ A THIRD TIME, this 10th day of September, 2013.

Statutory Approval from the Minister of Community Sport and Cultural Development on this 11th day of February, 2014.

FINALLY RECONSIDERED AND ADOPTED, this 25th day of February, 2014.



Mayor



Corporate Officer

Dated at Peachland, B.C.
This 25th day of February, 2014.

SCHEDULE "A"

Attached to and forming Bylaw No. 1934

CONVERSION CHART

| <u>BANK DEPOSIT</u> | <u>STOCKPILE DEPOSIT</u> |
|----------------------------|---------------------------------|
| 1 Cubic Metre | 1.18 Cubic Metres |
| 1 Cubic Metre | 1.54 Cubic Yards |
| 1 Cubic Metre | 2.17 Metric Tonnes |

| <u>STOCKPILE DEPOSIT</u> | <u>BANK DEPOSIT</u> |
|---------------------------------|----------------------------|
| 1 Metric Tonne | 0.462 Cubic Metre |
| 1 Cubic Yard | 0.650 Cubic Metre |
| 1 Cubic Metre | 0.850 Cubic Metre |

SCHEDULE "B"

Attached to and forming Bylaw No. 1934

DECLARATION OF SOIL REMOVAL OR DEPOSIT QUANTITIES

PERMIT INFORMATION

SOIL REMOVAL OR DEPOSIT PERMIT NO. _____ Date of Issue _____

LAND IDENTIFICATION INFORMATION

Legal Description _____

Address _____

I hereby declare that during the period _____ to _____ inclusive, the volume of soil removed was _____ cubic metres, and/or that the volume of soil deposited was _____ cubic metres.

I declare that I have personal knowledge of the matters hereinafter disposed and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Signed:

(address)

(position / title / owner / signing officer of company)

| | |
|--------------------------------------|---|
| SWORN BEFORE ME at _____ |) |
| in the Province of British Columbia |) |
| this _____ day of _____, _____ |) |
| |) |
| |) |
| |) |
| |) |
| |) |
| A Notary Public in the Province |) |
| of British Columbia |) |
| A Commissioner for taking Affidavits |) |
| for British Columbia |) |