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TSAWWASSEN FIRST NATION
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Community Governance Act

SOIL TRANSPORT, DEPOSIT AND REMOVAL REGULATION

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Citation and Application

- 1 (1) This Regulation may be cited as the Tsawwassen First Nation Soil Transport, Deposit and Removal Regulation, 2009.
- (2) This Regulation applies to all lands, the surface of water and water lots within the Tsawwassen Lands.

Interpretation & Application

- 2 (1) Unless specifically defined herein, words and phrases used in this Regulation shall be construed in accordance with the meanings assigned to them in the Tsawwassen First Nation Final Agreement or the Community Governance Act, as the context and circumstances require.
- (2) In this Regulation:

“buffer zone” means a natural strip of land seven (7) metres in width, to screen a Permit Area from view from a Tsawwassen Road or from a parcel other than that in respect of which a Permit is issued and to provide setbacks between adjacent properties and highways;

“clean fill” means soil that :

- (a) contains only mineral soil or top soil and does not contain woodwaste, construction waste, refuse or other matter that may adversely affect the geotechnical quality of the fill;
- (b) meets the applicable Contaminated Sites Regulation for the intended use of the land on which it is deposited; and
- (c) is free of any substance or liquid likely to cause contamination, hazard or injury when in place;

“Contaminated Sites Regulation” means B.C. Regulation 375/96 under the *Environmental Management Act* (British Columbia) as amended or replaced from time to time;

“Director of Lands” means the Director of Lands appointed by the Executive Council under the *Government Organization Act* or a person designated by the Director to act in his or her place;

“Land Holder” means, in respect of real property, the holder of an interest in Tsawwassen Lands;

“originating site” means the site from which any soil is taken that is subsequently deposited on Tsawwassen Lands;

“Permit” means a written permit issued by the Director of Lands in a form prescribed by the Director from time to time for the purposes of this Regulation;

“Permit Area” means an area within the Tsawwassen Lands in respect of which a Permit is required, applied for or has been issued pursuant to this Regulation;

“Professional Engineer” means a person registered as a professional engineer with the Association of Professional Engineers and Geoscientists of British Columbia;

“security personnel” means a person or persons employed or contracted by the Director of Lands to staff soil transport checkpoints and to enforce Tsawwassen laws and regulations pertaining to soil transport, deposit and removal;

“soil” means topsoil, silt, clay, sand, gravel, rock, peat or other substance of which natural land is composed;

“transport” means, in relation to soil, the transport of one or more vehicle loads;

“Tsawwassen Government” means the Tsawwassen First Nation Government;

“Tsawwassen Lands” means the Tsawwassen First Nation Lands;

“vehicle load” means a quantity of soil weighing at least one tonne being carried in a single vehicle; and

“watercourse” means any natural or manmade depression with well-defined banks and a bed 0.6 metres or more below the surrounding land serving to give direction to a current of water for at least six (6) months of the year or having a drainage area of two (2) kilometres squared or more upstream of the point of consideration.

- (3) If any section, subsection, paragraph or part of this Regulation is held to be invalid by a court of competent jurisdiction, the invalid portion may be severed and the remainder will be deemed to have been enacted without the invalid portion.

General Restrictions & Requirements

- 3 (1) A person must not:
- (a) transport soil from outside the Tsawwassen Lands to, on or over the Tsawwassen Lands,
 - (b) deposit soil on or within the Tsawwassen Lands,
 - (c) remove soil from any area in or within the Tsawwassen Lands, or
 - (d) cause, suffer or allow any such transport, deposit or removal except as specifically permitted in this Regulation.
- (2) A person must not deposit, or cause, suffer or allow to be deposited, any soil other than clean fill on any land or area within the Tsawwassen Lands. Any Permit must be construed as authorizing only the deposit of clean fill.
- (3) A person who transports, deposits or removes any soil must ensure that the transport, removal or deposit:
- (a) will not result in a deposit of soil that contravenes the *Environmental Management Act* (British Columbia) and in particular, the standards of the Contaminated Sites Regulation;
 - (b) will not result in or amount to a hazard to persons or domestic animals or a public safety hazard;
 - (c) will not contaminate any land or water or foul, obstruct or impede any stream, creek, natural waterway, watercourse or source of drinking water or any waterwork, ditch, dyke, drain or sewer;

- (d) will not damage, injure, undermine, obstruct or impede:
 - (i) any highway, road allowance or local road;
 - (ii) any right of way, easement, utilities or structures required by the Tsawwassen Government, the Province, Canada or another government body to be located on, under or within that land, adjacent land or other lands within the vicinity; or
 - (iii) any roads, lanes, buildings, structures, utilities, vegetation or landscaping on adjacent land or other lands within the vicinity; and
 - (e) is carried out in a manner that is consistent with existing uses of the land.
- (4) Whether or not a Permit is required or issued, for any hazard, contamination, damage, injury, obstruction, or impediment referred to in subsection 3.3 resulting from or in connection with the deposit or removal of soil, the Permit holder or Land Holder shall be responsible for the cost of remedial work and restoration, any related expenses, and administrative and professional fees and costs that may be incurred by the Tsawwassen Government.
- (5) Despite any other provision in this Regulation or under a Permit, if soil removal or deposit activity could potentially result in an alteration or diversion of a natural watercourse, or in any harm to fish habitat, the person proposing or intending to remove or deposit soil must:
- (a) obtain prior authorization in writing from the federal minister responsible for the environment or fisheries as applicable;
 - (b) notify the Director of Lands in writing prior to carrying out the work; and
 - (c) ensure that the work is carried out in accordance with any conditions, terms, restrictions and requirements imposed by the federal minister and the Tsawwassen Government.
- (6) A person operating a vehicle that is used for transporting soil must not exceed a speed limit of 20 kilometres per hour.

Requirement for Permit

- 4 (1) Unless exempted under Section 5, a person must not:
- (a) transport soil to, on or over Tsawwassen Lands;
 - (b) remove soil from Tsawwassen Lands;
 - (c) deposit soil on Tsawwassen Lands; or
 - (d) cause, suffer or allow soil to be transported, removed or deposited,
- unless the person has applied for and received a valid and subsisting Permit for such transport, removal or deposit of that soil.
- (2) A person who has been issued a Permit for soil transport, removal or deposit must comply with any restrictions, requirements and conditions of the Permit.

Exemptions from Permit Requirement

- 5 (1) A Land Holder may, without a Permit:
- (a) deposit, or cause or allow to be deposited:
 - (i) up to 24 tonnes of clean fill on that parcel within any twelve (12) month period for the purpose of landscaping; and
 - (ii) clean fill within 1 metre of the foundation footprint of a building pursuant to a building permit;

- (b) remove soil and deposit clean fill on the parcel to create, install, maintain or repair a utility work, private road, driveway or parking area that is lawfully permitted or required on the parcel or adjacent lands; or
- (c) remove soil and deposit clean fill as necessary or incidental to a florist, horticultural or nursery operation that is permitted on that land.

Permit Application

- 6 Every person who applies for a Permit must submit an application in writing to the Director of Lands, in the form prescribed by the Director of Lands from time to time for the purposes of this Regulation.

Required Consultants

- 7 (1) Every person who is required to obtain a Permit for soil deposit or removal must retain a Professional Engineer to act as the prime consultant for the work carried out under the Permit and to coordinate, prepare and present to the Director of Lands:
- (a) confirmation that the soil from the originating site meets the standards established in the Contaminated Sites Regulation for the land use designed for that site;
 - (b) interim and permanent drainage plans showing how potential impacts of the proposed activity on adjacent lands may be avoided or minimized;
 - (c) other plans, specifications and reports for the proposed works required under this Regulation, and to certify that the proposed works have been designed in compliance with the requirements of this Regulation and good engineering practices. The Professional Engineer must be retained throughout the period of the Permit and the period for required restoration to advise the applicant on compliance with this Regulation and the Permit requirements.
- (2) Upon completion of the soil deposit and removal works, the Permit holder must deliver to the Director of Lands a certificate from the Professional Engineer retained under this Section confirming that, in relation to the proposed or intended use, all works have complied with this Regulation and the Permit requirements.
- (3) Every person who transports soil to, on or over the Tsawwassen Lands from outside the Tsawwassen Lands must have documentation showing that each vehicle load of soil is from an originating site that has been assessed by a Professional Engineer, applying the Environmental Management Act (British Columbia), confirming that the soil being transported meets the standards of the Contaminated Sites Regulation made under that Act.

Information, Plans and Specifications

- 8 (1) Every person required to obtain a Permit must submit with the Permit application the following information:
- (a) detailed plans, data and specification for the proposed site, to a scale of 1:1000 or larger, showing the contour of the ground in its current state with vertical contours at such intervals as the Professional Engineer may determine in accordance with reasonable engineering standards;
 - (b) all pertinent features including buildings, structures, trees, roads, lanes, bridges, ditches and natural watercourses;
 - (c) proposed slopes which will be maintained upon completion of the operation;
 - (d) proposed methods for controlling erosion of the banks of the excavation or fill;
 - (e) proposed methods and locations of access to the site during the excavation or fill;

- (f) proposed contour of the ground in its final state upon completion of the operation with vertical contours as specified above and showing the method of access and position methods of permanent drainage on a separate plan;
 - (g) proposed location of machinery, buildings, scales, and all other proposed structures and improvements, if known by the applicant;
 - (h) proposed location of buffer zones and tree cover, and the location and grade width of any berms;
 - (i) water table elevations, actual or potential impacts on lands or lots adjacent to the Permit Area by the proposed activity, and proposed methods of drainage to avoid or minimize such impacts;
 - (j) where applicable, proposed method of extraction and processing, including sorting, washing, crushing, and any other proposed processing activities; and
 - (k) proposed routes over Tsawwassen Roads to and from the Permit Area and a proposed traffic management plan consistent with Tsawwassen Regulations for traffic and nuisance, specifying entry and exit routes, signing and traffic control measures, cleaning activities, frequency of haul routes; days of the week and times of the day.
- (2) Every person who transports, removes or deposits soil within the Tsawwassen Lands must maintain accurate and up to date records of information required under this Regulation, and must make these records available for inspection by the Director of Lands on request.

Soil Transport Checkpoint

- 9 (1) Every operator of a vehicle used to bring a load of soil to, on or over the Tsawwassen Lands from outside the Tsawwassen Lands must:
- (a) carry in his or her possession documented proof that the soil in the vehicle is from an originating site that has been approved by the Director of Lands and has been assessed for contaminants by a Professional Engineer or other qualified professional based on the *Environmental Assessment Act* (British Columbia) and meets the standards of the *Contaminated Sites Regulation*; and
 - (b) stop the vehicle at a gate or sign designated by the Director of Lands as a “Soil Transport Checkpoint”, report to security personnel, present the document described in paragraph (a), and cooperate with security personnel in verifying the originating site, the amount and quality of soil being transported, the site and location where the soil will be deposited and any other information required under this Regulation.
- (2) The Director of Lands may refuse entry by vehicles used for transporting soil from outside the Tsawwassen Lands if it appears that any of the requirements of this Regulation have not been met. The operator of such a vehicle must comply with a refusal under this section and remedy any non-compliant conditions before making any further attempts to enter.

Conditions of Permit

- 10 (1) In addition to the requirements of this Regulation and of any Provincial or Federal standards or conditions applicable to soil removal or deposit work on Tsawwassen Lands, the following conditions apply to each Permit issued and the Permit holder is responsible to ensure that these conditions are met:
- (a) A buffer zone must be maintained at all times around each Permit Area, except
 - (i) to the extent required to maintain vehicular access to and from the site; or
 - (ii) where two Permit Areas abut each other and, in the case of two or more parcels, the Director of Lands has received written consent by the Land Holder of any abutting Permit Area to waive the buffer zone.
 - (b) The elevation of any deposit of fill resulting from soil deposit must not exceed a height of 3.5 metres Geodetic Survey of Canada (GSC).
 - (c) Stockpiles of soil must be confined to the Permit Area and must be maintained so that they do not present a nuisance or adversely affect or damage buffer zones or adjacent properties, and in

particular, any mound of soil must be spread and compacted so that it does not exceed 3.5 metres GSC.

- (d) The operation by which the soil is removed or deposited must not encroach upon, undermine, or physically damage any adjacent property.
 - (e) The finished grade of any excavation or fill resulting from soil removal or deposit works must, after reclamation, conform to such overall grading plans for the area as have been established in the Permit.
 - (f) Soil may not be transported, deposited or removed on Saturday, Sunday or statutory holidays. On other days, soil may only be transported, deposited or removed between the hours of 8:30 a.m. and 4:30 p.m.
 - (g) Care must be taken to prevent soil from accumulating on Tsawwassen roads and dust from collecting in the air, so that residents, businesses and members of the public are not inconvenienced or presented with health problems as a result of soil transport, removal and deposit operations.
 - (h) Vehicles and equipment used to transport, remove or deposit soil, the soil itself, and the roads over which soil is transported must be hosed or otherwise watered as necessary to avoid nuisance from soil and dust accumulations, but a person must not use a fire hydrant for this purpose.
 - (i) Access to a Permit Area must be controlled at all times by a gate or other device to prevent unauthorized dumping or excavation, and that the Permit Area is kept free of hazards at all times. The Permit holder shall be responsible for clean up, lawful removal and disposal, and remediation of any unauthorized dumping, excavation or hazards thereon, including any costs incurred by the Tsawwassen First Nation.
- (2) A Permit holder must not interfere with or obstruct entry or inspection under Section 12, and must strictly comply with any directions, requirements or conditions imposed by the Director of Lands in relation to the Permit.
- (3) The Permit holder must comply with, and ensure that any agents, servants, employees or contractors comply with any and all Tsawwassen First Nation laws and regulations, including, without limitation, the Traffic and Parking Regulation, 2009 and the Good Neighbour Regulation, 2009.

Soil Transport Fees

- 11 (1) A person who transports soil into or out of the Tsawwassen Lands, or transports soil from one location to another within the Tsawwassen Lands using a vehicle, must pay fees to the Tsawwassen Government in the amounts established in Schedule A.
- (2) Fees must be paid within thirty (30) days of the date of an invoice mailed or delivered by the Tsawwassen Government and if unpaid after that period, becomes a debt owing to the Tsawwassen Government that accumulates interest at a rate of the prime rate of the Tsawwassen First Nation's principal bank plus four percent (4%), compounded annually.

Director of Lands

- 12 (1) The Director of Lands may:
- (a) enter on lands from which soil has been removed or to which soil has been deposited, and land that is within a Permit Area, to inspect for compliance with this Regulation and a Permit issued under it;
 - (b) inspect records maintained by the Permit holder in respect of the soil removal or deposit activities;

- (c) direct or require that the Permit applicant or holder to take certain measures or meet certain conditions to ensure compliance with this Regulation including, without limitation, terms and conditions for transporting soil into or out of Tsawwassen Lands, traffic control and utilization of highways and road allowances on the Tsawwassen Lands; and to prevent injury, harm, nuisance or damage to persons, property or the environment; and
 - (d) direct that soil be removed from any site where the Director is of the opinion that the soil does not comply with this Regulation, another enactment, or with a condition of the Permit.
- (2) The Director of Lands may issue a Permit when he or she is satisfied that all requirements under this Regulation have been met.
- (3) Without limiting paragraphs (c) or (d) of subsection 12.1, if at any stage of soil removal or deposit, the Director of Lands considers that further work authorized by the Permit is likely to endanger any utilities, bridges, drainage or irrigation systems, property, Tsawwassen Roads, lanes, easements or rights of way, or is likely to endanger the safety or health of persons or property, the Director of Lands may direct the Permit holder to take precautionary measures to prevent the danger, and any such directive shall be a condition of continuing to work under the Permit.
- (4) If a Permit holder fails to comply with this Regulation or any requirement or condition of the Permit, the Director of Lands may, by written notice to the Permit holder, immediately revoke the Permit.
- (5) Notice to the Permit holder is sufficient if a letter is mailed or delivered to the address of the Permit holder as shown on the Permit, and if mailed, is deemed to have been received within 1 business day.

Period of Permit & Renewal Conditions

- 13
- (1) A Permit shall remain valid until the earlier of:
 - (a) the completion of the soil removal or deposit authorized by the Permit;
 - (b) the expiry date specified in the Permit, which shall not be more than one year from the date of issuance or renewal ; or
 - (c) revocation of the Permit under this Regulation.
 - (2) Upon receiving an application for renewal of a Permit, the Director of Lands may issue the renewal if all applicable reports, plans, drawing, specifications, and information for the soil transport, removal or deposit activity and Permit Area are updated as necessary to identify any material changes to transport or site conditions and to demonstrate compliance with current regulations.

Transfer of Permit

- 14
- (1) A Permit may only be transferred or assigned by the Permit holder with the prior written approval of the Director of Lands.
 - (2) The Director of Lands may approve a transfer or assignment of the Permit where there is a change in ownership of the parcel of land if:
 - (a) a notice of the intention to transfer or assign the Permit is provided, specifying the particulars of the transferee; and

- (b) the Director of Lands is satisfied that, on any evidence requested or provided, the soil removal or deposit activity complies with this Regulation and any requirements and conditions of the Permit.

Offence and Penalty

- 15 (1) Every person who contravenes or violates any provision of this Regulation or a Permit, or who suffers or allows any act or thing to be done in contravention or violation of this Regulation or a Permit, or who fails or neglects to do anything required to be done under this Regulation or a Permit, commits an offence and where the offence is a continuing one, each day that the offence is continued shall constitute a separate and distinct offence.
- (2) Upon conviction of an offence under this Regulation, a person shall be liable to a fine not exceeding \$10,000.00.

Schedule

- 16 Schedule A is attached and forms part of this Regulation.

Effective Date

- 17 This Regulation comes into force on May 1, 2009.

Schedule A

SOIL TRANSPORT FEES

For the purposes of this Schedule, a vehicle that is attached to another vehicle is a single vehicle, and soil transported in it is a separate Vehicle Load.

| Vehicle Type | Vehicle Size | Fee per Vehicle Load |
|---------------------|----------------------------------|-----------------------------|
| Truck & Pony | approximately 24 tonnes | \$16.80 total |
| Other Trucks | identify max. capacity in tonnes | \$0.70 / tonne |