

THE CORPORATION OF THE DISTRICT OF SAANICH

BYLAW NO. 9204

A BYLAW TO REGULATE OR PROHIBIT THE DEPOSIT OF FILL
ON LANDS IN THE DISTRICT

WHEREAS Section 8(3)(m) of the Community Charter allows a Council, by bylaw, to regulate, prohibit and impose requirements for the deposit of soil or other material; and

- WHEREAS "Official Community Plan Bylaw, 2008, No. 8940" contains policies to:
- protect and restore habitats that support native species of plants and animals, and
 - promote and encourage the protection and designation of indigenous, significant trees, and
 - retain the stormwater holding capacity of natural storage areas to reduce peak flows, and
 - discourage the deposit of fill on rural and Agricultural Land Reserve lands that results in the soil's agricultural capability being diminished, and
 - update and streamline business policy and regulatory processes that improve customer service.

NOW THEREFORE, the Municipal Council of The Corporation of the District of Saanich in open meeting enacts as follows:

Definitions

1. In this Bylaw:

BUILDING ENVELOPE means that portion of a lot within the building setbacks for the principal building or buildings permitted on the lot by the provisions of the "Zoning Bylaw, 2003, No. 8200", or any successor bylaw.

CORPORATION means The Corporation of the District of Saanich.

COUNCIL means the Municipal Council of The Corporation of the District of Saanich.

DEPOSIT OF FILL means the moving and placing of fill on any land within the District of Saanich from which the fill did not originate or the relocation of fill within the boundaries of a lot.

DIKE means an embankment composed of fill that is constructed to prevent the flooding of land.

DIRECTOR OF ENGINEERING means the Director of Engineering of The Corporation of the District of Saanich, or their duly appointed representative.

ENVIRONMENTAL DEVELOPMENT PERMIT means a development permit issued by the District of Saanich for the protection of the natural environment, its ecosystems and biodiversity in environmentally significant areas as outlined in Appendix "N" to the "Official Community Plan Bylaw, 2008, No. 8940", or any successor bylaw.

FILL means soil, silt, clay, sand, gravel, rock or any other material which can be used to alter the contours of land.

FLOODPLAIN means land contained within the boundary of an elevation contour line, the approximate location of which is shown on the maps attached hereto and marked as Schedule “A” to this bylaw, and lying below the elevation of the said elevation contour lines but does not include a highway or portion of a highway.

FLOODWAY means all lands defined as floodplain under this bylaw, and all lands within 15 metres of the centre line of a stream or portion of a stream or lands otherwise dimensioned that are identified on the maps attached as Schedule “A” to this bylaw.

HIGHWAY means a street, road, lane, bridge, viaduct and any other way open to public use, but does not include a private right-of-way on private property.

MUNICIPALITY means the geographic area of the District of Saanich or any part thereof.

NATURAL BOUNDARY means the visible high water mark of any lake, river, stream or other body of water where the presence and action of the water are so common and usual and so long continued in all ordinary years, as to mark on the soil of the bed of the body of water a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself.

PERMIT means the written authority granted by the Director of Engineering for deposit of fill on lands within the Municipality, upon the terms, conditions, plans and specifications applicable to the application for such deposit.

PERSON means an individual, a body corporate, a firm, partnership, association or any other legal entity of an employee or agent thereof.

STOCKPILE means to store fill in a pile with the intention of later removing all or part of the pile.

STREAM means a natural watercourse or source of water supply, whether usually containing water or not, and a lake, river, creek, spring, ravine, swamp and gulch.

STREAMSIDE DEVELOPMENT PERMIT means a development permit issued by the District of Saanich for the protection and restoration of streams as outlined in Appendix “N” to the “Official Community Plan Bylaw, 2008, No. 8940”, or any successor bylaw.

TOPSOIL means the upper portion of a soil, usually dark colored and rich in organic material.

TREE means any living, erect, woody plant which is 5 metres or more in height or 10 centimetres or more in diameter at 1.4 metres above grade.

Floodway Prohibition

2. (a) No person shall deposit, cause or permit to be deposited any fill upon any lands lying within a floodway, except pursuant to a permit issued under section 3 or section 9(a) of this bylaw.

- (b) No person shall deposit, cause or permit to be deposited any fill upon any lands lying within a floodway for the purpose of constructing a dike.
- (c) For certainty, the authority of the Director of Engineering to issue a permit under this bylaw does not include the authority to approve a permit for the deposit of fill where prohibited under subsection 2(b).

Floodway Fill Prohibition Exemptions by Permit

3. A permit may be issued for the deposit of fill in a floodway for the purpose of:
- (a) Constructing a driveway, where:
 - (i) the proposed driveway is to serve an existing or proposed building where the building is on land which is outside the floodway,
 - (ii) the proposed driveway is the only reasonable access to the existing or a proposed building,
 - (iii) a compensating flood storage area designed by a Professional Engineer, having a storage volume at least equal to the volume of fill deposited for the driveway, and approved by the Director of Engineering, is constructed and maintained within the floodway on the same parcel as the parcel on which the driveway is being constructed, and
 - (iv) the proposed deposit of fill and excavation of the compensating flood storage area would not significantly impair the agricultural capability of the remainder of the parcel.
 - (b) Constructing a bridge where the fill is to be used in the construction or support of a bridge over a stream.
 - (c) Constructing a new building or structure or modifying an existing building or structure intruding into a floodplain where:
 - (i) a portion of the footprint of the building or structure is located outside of the floodplain,
 - (ii) those portions of a building or structure capable of human habitation are located above the floodplain elevation,
 - (iii) those portions of a building or structure located in the floodplain are on the area of the floodplain which has a natural geodetic elevation not more than 60 cm below the geodetic floodplain elevation, and
 - (iv) the building or structure foundation is designed to minimize the loss of floodplain storage.
 - (d) Constructing ecological restoration and enhancement projects approved by the District of Saanich.
 - (e) Constructing works authorized by a license under the *Water Act* (British Columbia).

- 3.1** Nothing in this bylaw authorizes issuance of a Permit to deposit fill on lands in a floodway within:
- a) a Streamside Development Permit Area, unless a Streamside Development Permit has been issued which includes the proposed fill, or
 - b) an Environmental Development Permit Area, unless an Environmental Development Permit has been issued which includes the proposed fill.

Non Floodway Prohibition

- 4.**
- (a) No person shall deposit, cause or permit to be deposited fill on any lands within the municipality which are not located within a floodway without holding a valid and subsisting permit for such deposit issued by the Director of Engineering pursuant to this bylaw.
 - (b) No person shall deposit fill on a lot and no permit shall be issued for the deposit of fill which:
 - (i) will cause more than 15% of the area of a lot to be covered with fill deposited on the lot, or
 - (ii) will result in a volume of fill being deposited on a lot that will exceed 2000 cubic metres per hectare of the land area of the lot.
 - (c) Fill deposited on a lot prior to the adoption of this bylaw or prior to the application for a permit shall be included in the calculations of the areas and volumes under section 4(b).
 - (d) Section 4(b) shall not apply to any deposit of fill required to restore or partially restore a previous excavation.

Non Floodway Exemptions

- 5.** Despite section 4, a permit is not required to deposit fill on any land not located within the floodway where:
- (a) the amount of fill placed is less than or equal to 40 cubic metres in any one calendar year,
 - (b) the fill is placed in accordance with detailed design drawings approved pursuant to a valid development permit,
 - (c) the fill is placed in accordance with a valid building permit,
 - (d) the fill is placed in accordance with a driveway access permit,
 - (e) the fill is required to construct an on-site sewage disposal system designed in accordance with provincial regulations, or
 - (f) the fill is placed in accordance with detail design drawings approved pursuant to a Conditional Approval of a Subdivision.

General Exemptions

6. Despite any provision of the bylaw, this bylaw shall not prohibit:
- (a) Any person, who is authorized by the appropriate authority having jurisdiction over the highway, to deposit, cause or permit to be deposited, fill on any highway in the Municipality.
 - (b) Construction, maintenance or operation of municipal works and services undertaken or authorized by the District of Saanich.
 - (c) Emergency actions required to prevent, control or reduce an immediate threat to human life, the natural environment or public or private property.
 - (d) The relocation of fill from one place to another within the boundaries of a lot in any zone district, other than a rural zone as defined in the "Zoning Bylaw, 2003, No. 8200" or any successor bylaw.
 - (e) Construction of fences provided that no changes are made to the contours of the land.
 - (f) The deposit of fertilizers, manure, composts, mulches or soil conditioners for agricultural, farming, horticulture, nursery or domestic landscaping and gardening purposes placed in accordance with good agricultural practices.
 - (g) Plowing, tilling, planting or harvesting in accordance with good agricultural practices.
 - (h) Filling in accordance with an approved Solid Waste Management Plan at the Hartland Landfill (Lot 1, Sections 54, 55 and 65, Highland District, Plan VIP64898).

Permit Application

7. Permit applications shall be made by persons, or their authorized agents, having a registered interest in the land in respect of which the permit application is made. The application shall be in writing in a form satisfactory to the Director of Engineering and shall be accompanied by the non-refundable permit application fee as outlined in Schedule "B" attached to this bylaw. The Director of Engineering is authorized to refuse to accept a permit application if the plans, data and specifications do not meet the requirements of this bylaw and satisfactory engineering standards.

Required Application Information

8. Each application for a permit shall include detailed plans, data and specifications prepared by a Professional Engineer registered in the Province of British Columbia, registered British Columbia Land Surveyor or other professional approved by the Director of Engineering, showing the contours of the ground in its current state with contour intervals of not more than 1 metre using geodetic datum or with contours otherwise shown according to accepted engineering standards. The application shall contain the following information:
- (a) the legal description and civic address of the land on which fill is to be placed,
 - (b) the name, address, email address and other relevant contact information of the

- person applying for the permit,
- (c) the name, address, email address and other relevant contact information of the registered owner(s) of the land on which fill is to be placed. Where there is more than one registered owner, the names, addresses, email addresses and telephone/fax numbers of all registered owners must be provided,
 - (d) a current State of Title for all lands proposed to be filled,
 - (e) calculations determining the volume of fill to be placed,
 - (f) all pertinent topographic features, buildings, wells, onsite sewage disposal systems, access routes, existing drainage patterns, legal boundaries, structures, and building envelopes,
 - (g) the location, size and species of all trees on the land and of trees on adjacent lands or highways which may be affected by the proposed filling on the land, and identifying all significant and protected trees, as defined in the Tree Preservation Bylaw No. 7632 or any successor bylaw,
 - (h) the location of all streams, wetlands, and areas that contain plants or animal habitat which are designated as red listed (endangered) or blue listed (vulnerable) by the Conservation Data Centre of the Province of British Columbia,
 - (i) in the case where the deposit of fill is on Agricultural Land Reserve lands or rural zoned land, a report from a Professional Agrologist identifying the impact of the filling on the agricultural capability of the land,
 - (j) the proposed slopes which will be maintained upon completion of the filling,
 - (k) the methods proposed for drainage, erosion and sedimentation control for the site during and after the filling,
 - (l) the proposed methods of access to the site during the operation, including roads to be used to bring fill to the site,
 - (m) the proposed contours of the ground in its final state upon completion of the fill operation showing the methods of access and positive methods of permanent drainage, including any proposed drainage works and easements,
 - (n) any protection measures for significant trees, protected trees and other trees, wetlands, and any endangered or vulnerable plants or animal habitat,
 - (o) the reclamation measures proposed to stabilize, landscape and restore the land upon completion of filling,
 - (p) the location of any Streamside Development Permit or Environmental Development Permit Areas on the land, and
 - (q) other information reasonably considered necessary by the Director of Engineering to adequately review the application.

Applications on Agricultural Land Reserve Lands

9. For land proposed to be filled that is located within the Agricultural Land Reserve:
- a) in circumstances where section 9(b) of this bylaw does not apply, a permit for filling pursuant to this bylaw must be obtained prior to any deposit of fill taking place.
 - b) in any case where,
 - (i) the proposed deposit of fill is otherwise prohibited by section 2(a) or section 4(b) of this bylaw, and,
 - (ii) the proposed deposit of fill is permitted as a farm use under Section 2(2)(d) of the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation, BC Reg. 171/2002*, the following shall apply:
 - i) a permit shall be obtained pursuant to this bylaw before any depositing of fill takes place,
 - ii) all regulations prescribed by this bylaw governing the deposit of fill on non floodway lands, including applicable fees and security deposits, shall apply, and
 - iii) unless permitted under the *Water Act* or the *Environmental Management Act*, no permit shall be issued where the proposed placement of fill will:
 - 1. cause danger on or to adjacent land, structures, or rights-of-way, or
 - 2. foul, obstruct or impede the flow of any stream.
 - (c) confirmation from the Agricultural Land Commission that the placement of fill is exempt from the requirement to file an application under section 20 of the *Agricultural Land Commission Act*, or that permission has been given for the placement of fill under section 20 of the *Agricultural Land Commission Act*, or that, where applicable, notice has been given to the Agricultural Land Commission pursuant to section 4 of the *Agricultural Land Reserve Use, Subdivision and Procedure Bylaw, B.C. Reg. 171/2002*, must be provided before a permit will be issued.

Soil Deposit Requirements

10. A permit issued pursuant to this bylaw shall be subject to the following conditions:
- (a) The holder of the permit must at his or her sole cost:
 - (i) repair and restore all damage to municipal or privately-owned drainage facilities, roads, or lands, or other regionally, municipally or privately-owned property, resulting from the filling operation,
 - (ii) keep all drainage facilities and streams free of silt, clay, sand, rubble, debris, gravel and any other matter or thing originating from any deposit of fill and causing obstruction to such drainage or streams,
 - (iii) maintain pre-existing drainage patterns unless approved alternate drainage

facilities are provided, and

- (iv) repair or restore damage to areas identified for environmental protection resulting from the deposit or transport of fill including the spread of noxious weeds.
- (b) The operations by which fill is deposited shall not encroach upon, undermine or physically damage any other property.
- (c) Fill must not be placed on the existing topsoil in the area to be filled.
- (d) Fill must not be deposited within three (3) metres of any highway or over any statutory right-of-way, registered covenant area or registered easement without first obtaining the written approval of the authority having jurisdiction over the right-of-way, covenant or easement, and a copy of the written approval has been provided to the Director of Engineering.
- (e) No streams shall be altered or diverted, except with the approval of the Comptroller of Water Rights as provided for in the *Water Act* (British Columbia).
- (f) The fill shall be graded in such a manner to permit positive gravity drainage is assured at all times. The finished slope of the fill shall have a maximum slope of one (1) metre rise in two (2) metres of run.
- (g) The deposit of fill for any of the purposes set out in section 3 (c) shall be strictly in accordance with the provisions of the British Columbia Building Code, as amended from time to time.
- (h) Dust must be controlled such that no dust leaves the site.
- (i) No person shall stockpile fill or permit fill to remain stockpiled within 8 metres of any highway right-of-way for a period in excess of twelve (12) months.
- (j) The permit holder shall take all necessary measures, which may include the construction of a suitable haul road base or tire cleaning facility, to ensure that no mud, dirt or other material is tracked onto a highway as a result of fill deposit operations.
- (k) The permit holder shall ensure that each truck transporting loose or dusty fill material has its load covered with a tarp dust cover to prevent the material from falling off the truck.
- (l) Any mud, dirt or other material deposited or tracked onto the public roadway as a result of the fill deposit operation shall be removed by the permit holder immediately.
- (m) All machinery and vehicles used at lands on which fill is being deposited, or that is used to transport fill to and from such lands, shall be in good and proper working order and contain sound reducing and dust elimination equipment wherever reasonably possible.
- (n) The permit holder shall ensure that machinery and vehicles used to excavate, load or move fill do not transport plant material of invasive species or cause the spread of

noxious weeds or invasive plant species.

Notification

11. Prior to a permit being issued for the deposit of more than 2,000 cubic metres of fill, notification shall be given to the neighbourhood by the applicant posting a visible and legible sign on the proposed site for a minimum of 30 days.

Permit Issuance

12. (a) The Director of Engineering has authority to issue a permit where the requirements of this bylaw have been met.
- (b) No permit shall be issued until the plans, restoration methods, mitigation measures and specifications are approved by the Director of Engineering, a Streamside Development Permit, Environmental Development Permit, or any other required permits or approvals are obtained, the permit fee as outlined in Schedule "B" is paid, and the necessary security deposit is lodged with the Municipality.
- (c) The Director of Engineering may add conditions to a permit when required to ensure compliance with this bylaw.
- (d) The Director of Engineering may refuse to issue a permit if the proposed deposit of fill does not comply with a requirement set out in section 9, section 11 or any other section of this bylaw, or if the proposed deposit of fill on rural zoned lands or Agricultural Land Reserve lands may result in the agricultural capability of the soil being diminished.
- (e) A permit applies only to the deposit of fill in the area(s) specifically set out and described in the permit.
- (f) A permit shall allow the holder thereof to deposit fill on land described in the permit for a period of twelve (12) months from the date the permit is issued.

Hours of Operation

13. (a) No deposit of fill operation of any kind whatsoever shall occur on any Sunday or statutory holiday.
- (b) No deposit of fill operations in which the total amount of fill to be deposited is 1,000 cubic metres or less shall be carried out except between the hours of 7:00 a.m. and 9:00 p.m.
- (c) No deposit of fill operations in which the total amount exceeds 1,000 cubic metres shall be carried out except between the hours of 7:00 a.m. and 5:00 p.m., Monday to Friday inclusive.

Permit Completion

14. Upon completion of filling, the permit holder will, prior to the expiry of the permit:
- (a) restore and landscape the site in accordance with the plans and specifications in the

permit,

- (b) protect the boundaries of all adjacent lands, dedicated rights-of-way, and easements from erosion and sedimentation, and
- (c) complete all requirements and conditions of the permit and provide certification from the applicant's Professional Engineer that the filling has been completed in accordance with the permit.

Permit Transfer or Amendment

- 15. (a) Application for transfer of a permit can be made and must be accompanied by the non-refundable permit transfer fee.
- (b) The Director of Engineering may issue the transfer if all applicable drawings and specifications for the fill are updated to identify any material changes to site conditions and to demonstrate compliance with current bylaws and regulations.
- (c) Where the holder of a permit wishes to amend an existing permit to increase the volume of fill being placed or to expand the area being filled on his own land or additional lands he acquires, then he must make a new application for the additional fill volume or area and obtain a further permit. A permit application fee must accompany the application and additional permit fees will be levied for any additional volume of fill.
- (d) There is no obligation for the District of Saanich to transfer or amend a permit.

Administration and Enforcement

- 16. (a) The Director of Engineering, or appointed employees, is hereby authorized to enter, at all reasonable times and in a reasonable manner, upon any property for the purpose of administering and enforcing this bylaw.
- (b) Except in the case of an emergency, the Director of Engineering, or appointed employees, must take reasonable steps to notify the owner or occupier of the property before entering the property.
- (c) The Director of Engineering may give notice to any person of a breach of any of the provisions of the bylaw, or a permit issued pursuant thereto, and such person shall forthwith cease and desist from depositing any further fill until such breach is remedied.
- (d) Where the Director of Engineering determines that a person has contravened the terms and conditions of a permit, or is placing fill on land without a permit, then the following actions may be taken:
 - (i) suspend the permit until the contravention has ceased, or
 - (ii) cancel the permit if the person has, by reason of the contravention, put it beyond his power to comply with the terms and conditions of the permit, or

- (iii) order the person to stop the contravention, or
 - (iv) order the person who caused fill to be placed on the land without a permit, or in contravention of the terms and conditions of the permit, to remove the fill and restore the land and vegetation to its previous state.
- (e) Any person who fails to obey an order of the Director of Engineering under this section thereby commits an offence and shall be liable to the penalties provided under this bylaw.
- (f) Where fill has been deposited on a lot without a permit required by this bylaw or otherwise contrary to the provisions of this bylaw, no building permit shall be issued for the construction of a building or structure upon the lot until:
- (i) the fill has been removed, or
 - (ii) a permit has been issued to authorize the deposit of fill, or
 - (iii) the deposit of fill has otherwise been brought into compliance with this bylaw.

Security Deposits

17. (a) As security for the due and proper compliance with all of the requirements and conditions of this bylaw, every person shall, before receiving a permit or a renewal of a permit for deposit of fill, provide security deposit in the amount outlined in Schedule "B" attached to this bylaw.
- (b) The security deposit shall be either cash, bank draft, or irrevocable letter of credit drawn upon a chartered bank or credit union, in a form acceptable to the Director of Engineering.
- (c) The security shall be maintained in full force and effect throughout the permit period and shall not be released until the filling is complete and all conditions of this bylaw or the permit are met. If a letter of credit is used it must be valid for a minimum of fifteen (15) months from the date of permit issuance.
- (d) In the event the permit holder fails to comply with any requirements or conditions of this bylaw or a permit issued under this bylaw, the Director of Engineering may cause the deposit to be forfeited to the municipality and may use the funds to correct any damage or disturbance.

Penalty

18. (a) Every person who violates, contravenes or commits any breach of the provisions of this bylaw shall be guilty of an offence punishable on summary conviction and shall be liable to forfeit and pay a fine of not less than One Hundred Dollars (\$100.00) and not more than Two Thousand Dollars (\$2,000.00). Each day any violation, contravention or breach of this bylaw continues shall be a separate and distinct offence.
- (b) The penalties imposed under this section shall be in addition to and not in substitution for any other penalty or remedy imposed by this bylaw.

Severability

19. If any section or lesser portion of this bylaw is held invalid, it will be severed and the validity of the remaining provisions will not be affected.

Repeal of Previous Bylaws

20. Bylaw No. 7058, being the “Deposit of Fill Bylaw, 1993, No. 7058” is hereby repealed except insofar as it repeals any other bylaw.

Citation

21. This bylaw may be cited for all purposes as the “**DEPOSIT OF FILL BYLAW, 2012, NO. 9204**”.

Read a first time this 19th day of November, 2012.

Read a second time this 19th day of November, 2012.

Read a third time this 11th day of March, 2013.

Approved by the Minister of Community, Sport and Cultural Development this 22nd day of August, 2013.

Adopted by Council, signed by the Mayor and Clerk and sealed with the Seal of the Corporation on the 9th day of September, 2013.

“DONNA DUPAS”

Municipal Clerk

“FRANK LEONARD”

Mayor

SCHEDULE "B"

Schedule of Fees and Security Deposits

Non-Refundable Permit Application Fees

1. (a) The permit application fee shall be paid at the time of application for a permit.
- (b) The permit application fee shall be:

(i)	for applications of 2,000 cubic metres or less	\$ 300
(ii)	for applications of 2,000 to 50,000 cubic metres	\$1,000
(iii)	for applications greater than 50,000 cubic metres	\$2,000
- (c) No fee shall be charged for a permit application under section 3(d), ecological restoration and enhancement projects.
- (d) For applications in the Agricultural Land Reserve, the fee set by the Agricultural Land Commission is in addition to the permit application fee specified in section 1(b) of Schedule "B".

Permit Fees

2. (a) The permit fee shall be paid prior to a fill permit being issued.
- (b) The permit fee shall be \$0.50 per cubic metre of fill to be deposited.
- (c) No fee shall be charged for a permit issued under section 3(d), ecological restoration and enhancement projects.

Non-Refundable Permit Transfer Fee

3. A permit transfer fee of \$300 shall be paid at the time of application for transfer of a permit.

Security Deposits

4. (a) The security deposit shall be lodged with the Director of Engineering prior to a fill permit being issued.
- (b) The security deposit shall be the following amount plus the cost of landscaping, restoration and reclamation of the site upon completion of the filling as estimated by the applicant's Engineer and approved by the Director of Engineering:

(i)	for permits of 2,000 cubic metres or less	\$ 2,000
(ii)	for permits greater than 2,000 cubic metres	\$ 2,000 plus \$0.50 per cubic metre over 2,000 cubic metres
- (c) For a permit under section 3(d), ecological restoration and enhancement projects, the requirement for a security deposit may be waived at the discretion of the Director of Engineering.