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THE CORPORATION OF THE CITY OF PENTICTON

EARTHWORKS CONTROL BYLAW

NO. 2006-65

Consolidated for convenience only.

THE CORPORATION OF THE CITY OF PENTICTON
BYLAW NO. 2006-65

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 CITY OF PENTICTON

WHEREAS pursuant to the provisions of the *Community Charter*, Council may by bylaw regulate or prohibit the removal, movement, or deposit of soil, sand, gravel, rock or other such substance of which land is composed from on or to any land within the City, or within any area or areas within the City, and may require the holding of a permit for such purpose and fix a fee for such permit;

AND WHEREAS it is considered that the uncontrolled removal, movement, or deposit of soil, sand, gravel, rock or other substance of which land is composed from on or to certain areas of the City would have a harmful effect upon adjacent lands, upon public highways and statutory right of ways, and may create or cause a hazardous situation:

NOW THEREFORE the Council of the Corporation of the City of Penticton, in open meeting assembled, enacts as follows:

1. TITLE

1.1 This Bylaw may be cited as "Earthwork Control Bylaw No. 2006-65" of The Corporation of the City of Penticton.

2. APPLICATION

2.1 This Bylaw applies to any Land within the boundaries of the City unless otherwise excepted herein.

3. DEFINITIONS

3.1 All words or phrases shall have their normal or common meaning except where this is changed, modified or expanded by the definitions set forth in this section.

"City" shall mean The Corporation of the City of Penticton.

"Council" shall mean the Municipal Council of the City.

"Director" shall mean the Director of Development and Engineering Services of the City and any other Person or Persons designated by the Director from time to time to act on his behalf.

"Earthwork" shall mean any work carried out on a given parcel or parcels of Land as it pertains to this Bylaw and shall include the excavation, Movement, Removal or deposit of Soils.

"Land" shall mean any land within the boundaries of the City.

"Movement" or "Moved" shall mean the changing of lines and grades of Land, but does not include the removal or deposit of Soils therefrom.

"Natural Watercourse" shall mean a natural recessed channel that may or may not contain water on a permanent basis, but may flow intermittently or seasonally.

"Notice of Suspension" shall mean as described in paragraph 11.1 herein.

"Other Material" shall mean non-degradable destruction or demolition waste such as masonry rubble, concrete rubble, asphalt and contaminated soils regulated under the *Environmental Management Act*, as amended. The individual size of such pieces shall not exceed one (1) metre in length or not more than one (1) cubic metre in volume.

"Permit" shall mean the written authority granted by the Director for the Removal of Soils within the City.

"Permit Lands" shall mean the Lands described in the Permit.

"Person" shall mean an individual, body corporate, firm, partnership, association or any other legal entity or an employee or agent thereof.

"Professional Engineer" shall mean a Person currently certified under the provisions of the *Engineers Act* of the Province of British Columbia.

"Qualified Professional" shall mean a Professional Engineer who is qualified because of knowledge, training and experience to organize, supervise and perform the duty required in this Bylaw.

"Remove" or "Removal" shall mean Soil Moved, removed or taken from any Lands at which it was or stood and shall include that which may temporarily be placed into a Stockpile or other storage.

"Soils" shall mean rock, gravel, sand, silt, clay, peat, Topsoil or any other substance of which Lands are composed or any combination thereof, including Other Material.

"Stockpile" shall mean any accumulation of Soils which has been removed from its natural position.

"Topsoil" shall mean all of the substance of which Land is composed from the surface of the Land to a depth of .30 meters.

"Turf Farm" shall mean a commercial farming operation whose purpose is to grow grass and then excavate the grass and root structure for sale as landscaping material.

"Utilities" shall mean all underground infrastructure and equipment relating thereto of the City, including but not limited to, communication lines, storm sewers, sanitary sewers, irrigation water mains and treated water mains.

4. PERMIT APPLICATION

- 4.1 Except as provided in Section 5, it shall be unlawful for any Person to engage in Earthwork within the City without first having applied for and obtained a Permit therefore from the Director subject to any exclusion herein.

5. EXCLUSIONS

- 5.1 Save and except for paragraph 10.1 herein nothing in this Bylaw shall be construed so as to apply to any Person engaged in Earthwork:
- a) which results in the excavation or deposit of Soils having a depth of less than one meter (1.0m) in all areas of the City except for within 5.0m of any irrigation water main located on Lands in the Agricultural Land Reserve where the depth shall be half of one meter (0.5m) to a maximum volume of 50 m³ unless, in the opinion of the Director, such Earthwork is deemed to be a potential hazard to the occupant or a hazard or nuisance to adjacent properties, public or private including Utilities;
 - b) in the construction, alteration, repair or demolition of a building or structure for which a valid Building Permit has been issued by the City;
 - c) in the construction of a swimming pool, retaining wall, driveway or landscaping for which a valid Building Permit has been issued by the City;
 - d) carried out in accordance with a subdivision of Land which has received the approval of the City;
 - e) for normal maintenance of underground facilities by the City;
 - f) for the construction of parks, roadways, lanes water, sewer and storm by the City;
 - g) undertaken pursuant to a permit issued under any bylaw of the City;

- h) on a commercial gravel pit or quarry;
- i) for stockpiling Soils where such Stockpiles are part of a business for which a valid business license exists;
- j) for creation or maintenance of a public trail or recreation facility;
- k) for processing and disposal operation of a solid waste facility which has approval pursuant to Federal, Provincial, or Municipal regulations or bylaws;
- l) for cleanup or remediation of contaminated soils as directed or approved by the Minister of the Environment;
- m) for emergency measures related to flood control or;
- n) on a commercial Turf Farm.

6. INTERPRETATION

6.1 Any provision of this Bylaw which would be invalid as being inconsistent with or in conflict with any Provincial or Federal legislation requiring either consistency or that Municipal Bylaws not be in conflict, then such provision shall be construed in a manner that preserves the validity and application of the provisions to the broadest extent possible. A provision of this Bylaw is not necessarily inconsistent or in conflict with any Provincial legislation merely because it enacts a higher or more onerous standard or requirement, provided a Person may comply with such Bylaw provision and the Provincial legislation.

6.2 No Permit shall be authorized for Earthwork, which includes the extraction of Soil or the placement of fill on Lands designated within the Agricultural Land Reserve as defined pursuant to the *Agricultural Land Commission Act S.B.C. 2002 (c.36)* unless prior written approval has been obtained from the Provincial Agricultural Land Commission provided, however, and notwithstanding anything herein to the contrary, a Permit for Earthwork may be issued if the Earthwork is limited to Movement.

7. PERMIT

7.1 Upon application for a Permit, on the form provided by the Director, the Director may issue a Permit, provided there is compliance with all provisions of this Bylaw.

7.2 Every application for a Permit shall be accompanied by a non-refundable application fee as set out in the City's Fees and Charges Bylaw 2000-25.

7.3 Every application for a Permit for Earthwork shall be made in writing to the Director and shall include the following:

- a) the purpose for which the Earthwork will be carried out;
- b) the legal description and the area of the Land upon which the Earthwork will take place;
- c) a copy of all right of way and easement plans and documents over the Land on which the Earthworks will take place;
- d) the name, address and signature of the applicant;
- e) commencement and end date of the Earthworks;
- f) the written consent of the Land owner if the Land owner is not the applicant;
- g) the quantity of Soils to be removed, deposited or moved;
- h) if required by the Director, detailed plans, data and specifications prepared by a registered Professional Engineer on a scale of 1:500, which show the contour of the ground in its current state with contour intervals of not more than one (1) meter using City datum or with contours according to reasonable engineering standards, and shall contain information with respect to the following:
 - i) all pertinent topographic features, buildings, structures and tree cover;
 - ii) the proposed method of drainage and control during and after the Earthwork;
 - iii) the proposed methods of access to the site during and after the Earthwork;
 - iv) the proposed truck route plan to bring in or take off material from the site;
 - v) the proposed methods of fencing and signing to protect against any hazard as determined by the Director;
 - vi) the proposed contour of the ground in its final stage at 1.0 m contour intervals;
 - vii) the proposed landscape plan for reclamation of the Permit area showing all plantings, including groundcover and trees, and the commencement of completion date for each restoration stage;
 - viii) plan of dust control;
 - ix) a plan of underground utilities within the area of the Land where the Earthwork will take place;
 - x) a current land title search for the Land referred to in the application; and
 - xi) such other information as required by the Director.
- i) security in the form of an irrevocable stand-by letter of credit or cash in the amount of five thousand (\$5,000) dollars or such greater amount as determined

by the Director shall be deposited with the City, which shall be held by the City as security that the work specified in the application is carried out to completion in accordance with the plans and other information approved and deposited with the Director.

- j) Proof of Comprehensive General for bodily injury and/or property damage with policy limits of not less than Two Million (\$2,000,000) Dollars per occurrence and proof of Errors and Omissions Insurance for the Qualified Professional. The aforementioned insurance shall be in a form and with insurers acceptable to the Director and evidence of Renewal and Notice of Termination shall be provided to the City not less than thirty (30) days prior to the expiry dates or cancellation of the policies as the case may be.
- k) The permit application fee as specified in the Fees and Charges Bylaw 2000-25 as amended from time to time.

7.4 If the application, reports or plans provided pursuant to this Bylaw indicate that the Earthwork may not comply with this Bylaw or any other City Bylaw, or if the information provided with the application, reports or plans is incorrect, incomplete or misleading, the Director shall refuse to issue a Permit.

7.5 A Permit shall allow Earthwork by the Permit holder for the area described in the Permit for the period designated in the Permit and, in all cases, the said period shall not exceed twelve (12) months from the date of issuance of the Permit.

7.6 Each and every Permit issued pursuant to this Bylaw shall be subject to the following conditions:

- a) that the Earthwork on the Permit Lands shall be such that positive gravity drainage is assured and that such drainage is by gravity to a Natural Watercourse or a public drainage facility adequate for the purpose. This clause shall not be construed to prevent the operator from establishing a settling pool;
- b) that all damage to municipal or privately owned drainage facilities, roads, Utilities statutory rights of way or lanes, or other municipally or privately owned property or Natural Watercourse, resulting from the excavation or the Removal of Soils, shall be repaired;
- c) all drainage facilities and Natural Watercourses shall be kept free of silt, clay, sand, rubble, debris, gravel and any other matter or thing originating from any excavation of any Lands and which are causing obstruction to such drainage facility or Natural Watercourse;
- d) drainage facilities or Natural Watercourses shall not be impacted beyond the requirements set in section 116 and 117 of Irrigation, Sewer and Water Bylaw 2005-02 as amended from time to time.

- e) that Stockpiles shall be confined to the Permit Lands and the same shall be maintained so they do not adversely affect or damage adjacent properties or sight lines;
- f) that the Earthwork shall not encroach upon, undermine or physically damage any property, or any property/works of the City whether or not located within a statutory right of way, or make impractical the future subdivision or development of the Permit Lands for which a Permit has been issued on neighbouring Land;
- g) that water may not drain onto City or private property unless into a drainage facility approved by the Director;
- h) that no Earthwork may occur next to adjoining Land that would result in a vertical cut of more than 0.3m to the Land on which the Earthwork is to take place;
- i) that no Natural Watercourse shall be altered or diverted, except with the approval of the Comptroller of Water Rights as provided in the *Water Act* of the Province of British Columbia;
- j) that no Earthworks shall occur on environmental protection areas or riparian areas as denoted in Schedule H of the City's Official Community Plan Bylaw 2002-20;
- k) that all excavation and Stockpiling on Permit Lands and all other hazards shall, if required by the Director, have adequate fencing and be provided with suitable buffer zones or landscaping screens, suitable weather proof signs which shall be mounted and maintained on the fence at a linear distance not to exceed one hundred fifty (150) metres with wording to indicate the danger, the nature of the Earthwork, the presence of excavation and prohibiting the presence of the public;
- l) that all Earthwork undertaken shall be done according to the terms of approval of the Director and may require a Professional Engineer to supervise the work; and
- m) that all Earthwork shall be subject to a continuous program of dust control to the satisfaction of the Director.

7.7 The Permit holder shall, by no later than ninety (90) days following the expiration of the Permit, restore the Permit Lands on which the Earthwork has occurred in accordance with the following standards to the satisfaction of the Director:

- a) be graded, leveled or filled so that its surface has an elevation matching those set out in the plans and specifications noted in paragraph 7.3h) and if no plans or specifications were required be graded, leveled or filled to the satisfaction of the Director;

- b) be covered with not less than 0.30 metres of Topsoil or if the depth of Topsoil on the Lands was less than 0.30 meters prior to the Earthworks the depth of Topsoil that was present prior to the start of the Earthworks; and
- c) be sown with a type of vegetation providing a protective cover thereon.

7.8 No Soil or any part thereof being excavated as part of the Earthworks shall be deposited or any equipment engaged in the Earthworks shall be permitted to remain within eight (8) metres minimum of the intersection two roads or any road allowance.

7.9 A Permit applies only to Earthwork on the Lands specifically set out in the Permit.

7.10 Where required by the Director, the applicant shall, at its expense and prior to Permit approval;

- a) undertake geotechnical investigations by a Professional Engineer of the site of the proposed work and file two copies of the report of such investigations with the Director. The geotechnical investigations shall include, inter alia, design recommendations pertaining to such matters as final slopes, compaction of the field, drainage measures, etc.;
- b) undertake such other reports or studies by a Qualified Professional; and/or
- c) require that geotechnical report(s) be registered on the title of the Lands, where the report recommends restrictions or conditions for the use, or maintenance of the Lands.

7.11 Upon receiving an application for a Permit under this Bylaw, the Director may inspect the Lands described in an application and determine whether the site conditions are compatible with the proposed Earthwork before a Permit is approved.

7.12 Stockpiles shall be confined to the location prescribed and shall be maintained so that they do not adversely affect or damage adjacent property or affect sight lines. In no case shall the height of any Stockpile exceed five (5) meters unless otherwise approved in writing by the Director.

8. HOURS OF OPERATION

8.1 All Earthwork may only be undertaken in accordance with the Penticton Nuisance and Noise Bylaw May 94-36 (1994) as amended from time to time.

9. TOPSOIL

9.1 Notwithstanding anything herein contained elsewhere in this Bylaw, no Person shall remove or cause to be removed from any Lands, Topsoil, unless approved by the Director or in the case of Lands within the Agricultural Land Reserve unless approved by the Agricultural Land Commission, except as may be necessary to gain access to the Land beneath, in which case the Topsoil shall be left as close as is reasonable to its original location, and in no event moved over the lot boundary of the Land of which it originally composed a part.

10. **TRACKING OF SOIL**

10.1 A Person engaged in Earthworks shall ensure that no Soil adheres to vehicles leaving the Permit Lands and shall remove any such Soil deposited on City roads as a result of such Earthworks within 24 hours of written notice thereof. Failure to comply with the said notice may result in the City attending to the necessary cleanup and assessing a charge therefore to the owner of the Permit Lands. Minimal tracking of Soil caused by farm equipment crossing roadways to travel from orchard to orchard will be allowed.

11. **INSPECTION**

11.1 The Director shall have the right, at all reasonable times, to enter upon and inspect any Lands for the purpose of administering and enforcing this Bylaw.

12. **SUSPENSION AND CANCELLATION**

12.1 The Director may suspend indefinitely, by Notice of Suspension, in whole or in part, a Permit, if:

- a) there has been a contravention of any term, condition or requirement of the Permit, including start or completion dates; or
- b) the application, plans or reports provided to this Bylaw for a Permit were misleading, false or omitted to state a material fact, the omission of which made the information or plans provided false or misleading; or
- c) the Permit fee has not been paid that is due pursuant to this Bylaw.

12.2 The Director must provide any Notice of Suspension to the holder of the Permit.

12.3 Any Notice of Suspension must be provided in writing and must contain a written description of the reasons for suspension.

12.4 Upon the issuance of a Notice of Suspension by the Director and the posting thereof on the Lands referred to in the Permit, all Earthwork Operations shall cease until the suspension is removed in writing by the Director.

12.5 A suspension pursuant to paragraph 12.1 of this Bylaw shall remain in effect until the reason(s) for suspension is/are addressed to the satisfaction of the Director.

12.6 Council may cancel a Permit if, in Council's opinion:

- a) there is a contravention of any term, condition or requirement of the Permit, including start or completion dates; or
- b) the application, plans or reports provided pursuant to this Bylaw or Permit were misleading, false or omitted to state a material fact, the omission of which made the information or plans provided false or misleading.

13. COMPLETION OF EARTHWORK

13.1 Upon completion of the Earthwork, the approval of any further work or the issuance of any further Permits for the Permit Lands or prior to the release of the security cited in paragraph 7.3 j, the holder of a Permit shall submit to the Director a report which shall confirm the Earthwork was carried out and completed in accordance with the conditions of the Permit and if required by the Director, the said report shall be prepared by a Qualified Professional.

14. ENFORCEMENT

14.1 Any Person who does not comply with this Bylaw or Permit shall, in addition to any penalties levied by this Bylaw, compensate the City for any damage to City drainage facilities, Utilities, rights of way or other City property or facilities which occurs as a result of the Earthwork of the Person.

14.2 If a Person does not comply with this Bylaw or Permit, the City, its agents or contractors may enter upon the Permit Lands and carry out any works required to remedy such non-compliance, or repair any resulting damage at the cost of the Permit Holder.

14.3 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 (\$100) dollars and not more than two thousand (\$2,000) dollars or in default of payment thereof, imprisonment for a term not exceeding six (6) months. Each day any violation, contravention or breach of this Bylaw continues shall be a separate and distinct offence.

14.4 No Person shall prevent or obstruct or attempt to prevent or obstruct entry of the Director upon any property as authorized under this Bylaw.

14.5 Notwithstanding anything herein to the contrary, failure to comply with any of the terms and conditions of this Bylaw shall be considered an offence against this Bylaw, for which the security deposit pursuant to Section 7.3 i) or parts thereof may be forfeited in whole or part.

14.6 This Bylaw is designated as a Bylaw that may be enforced by means of Municipal Ticket information under the Community Charter or a Bylaw Notice under the *Local Government Act Bylaw Notice Enforcement Act*.

15. SEVERABILITY

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

16. INDEMNITY

16.1 In consideration of the City issuing a Permit pursuant to this Bylaw to conduct Earthwork, the holder of the Permit agrees to indemnify and save harmless, the City and its officials, employees, agents, successors and assigns from all loss, damage, cost, actions, suits, debts, accounts, claims and demands which the City or any of its elected officials, employees, agents, successors and assigns may suffer or incur or be put to arising out of or in connection with anything done or admitted to be done on the Permit Lands by the holder of the Permit or by any Person for whom the holder of the Permit is responsible in law.

17. COMING INTO FORCE

17.1 This Bylaw shall come into full force and effect **on April 1, 2007**.

READ A FIRST time this 6th day of November, 2006.

READ A SECOND time as amended this 4th day of December, 2006.

READ A THIRD time this 4th day of December, 2006.

Approved by the Ministry of Energy and Mines pursuant to the provisions of Section 9 (3) of the *Community Charter* this 14th day of February, 2007.

RECONSIDERED AND FINALLY PASSED AND ADOPTED

This 19th day of February, 2007.

Gerald J. Kimberley, Mayor

Cathy Ingram, Clerk

Certified a true copy of Bylaw
No. 2006-65 as adopted

Cathy Ingram, City Clerk