

VILLAGE OF PEMBERTON
BYLAW No. 822, 2017

A bylaw to regulate Site Alterations within the Village of Pemberton

WHEREAS under the *Community Charter*, Council may enact bylaws to regulate, prohibit and impose requirements in relation to trees, the removal and deposit of soil and other material, to protect the environment and the well-being of the community, and may impose fees for the exercise of authority to so regulate, prohibit and impose requirements;

AND WHEREAS Council considers that site alteration involving the deposit or removal of cut trees, soil and other materials should be orderly, in keeping with good practices and so as to minimize nuisance, safety concerns and the spread of invasive species within the community;

NOW THEREFORE, the Council of the Village of Pemberton, in open meeting assembled, enacts as follows:

1.0 TITLE

- 1.1 This bylaw may be cited for all purposes as the “Village of Pemberton Site Alteration Bylaw No. 822, 2017”.

2.0 APPLICATION

- 2.1 This Bylaw applies to all lands within the Village of Pemberton.
- 2.2 Nothing in this Bylaw shall preclude anyone from complying with the provisions of any other local, provincial, or federal regulations or enactment.

3.0 INTERPRETATION

- 3.1 In this Bylaw, except as otherwise indicated, words and phrases are to be construed in accordance with the *Community Charter* and *Interpretation Act*. A reference to a statute refers to a statute of the Province of British Columbia and a reference to any statute, regulation, or bylaw refers to that enactment as amended or replaced from time to time. If any section or portion of this Bylaw is held to be invalid by a court of competent jurisdiction, such invalid section or portion is severed and does not affect the remainder of this Bylaw.
- 3.2 Schedule A is attached to and forms part of this Bylaw.

4.0 DEFINITIONS

4.1 In this Bylaw, the following definitions apply:

Bylaw Enforcement Officer means a person appointed by the Village to act on matters of bylaw enforcement.

Council means the elected Council members for the Village.

Deposit means the placement, storage, filling, spilling or releasing, directly or indirectly, of soil, other materials or cut trees on lands in the Village where the soil or trees were not previously located.

Manager means a person who holds the position of Manager of Operations & Development Services for the Village or a person designated to act on their behalf in the administration of this Bylaw.

Invasive Species means any alien invasive species of plant identified in the *Spheres of Concurrent Jurisdiction – Environment and Wildlife Regulation* under the *Community Charter*.

Landscaping Materials means any materials used for hard or soft landscaping such as, but not limited to, brick, gravel, stone, rock, concrete, timber, metals, plants, grasses, shrubs, trees used to improve landscape or outdoor space.

Other Materials includes, but is not limited to, construction and demolition waste, masonry rubble, concrete, asphalt, wood waste, unchipped lumber, drywall, refuse, undecomposed organic matter, soil containing invasive species, and other similar matter.

Owner means an owner as defined in the *Community Charter*, and in relation to the common property of a strata corporation, includes the strata corporation.

Parcel means any lot, block or area in which land is held or into which it is subdivided.

Parcel Line means any boundary of a parcel.

Permit means the written authority for Site Alteration granted by the Manager or designate pursuant to this Bylaw.

Permit Holder means a person holding a permit issued by the Village.

Registered Professional means an arborist, engineer, geoscientist, agrologist, environmental consultant, soil scientist, biologist, 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;

Removal or remove means to remove trees or to take, excavate, or extract soil or other material from a parcel on which it exists or has been deposited.

Site means any parcel of land and any group of lots or parcels of land.

Site Alteration means any of the following, or combination of the following:

- (a) the placing, dumping or deposit of cut trees, soil or other materials on land,
- (b) the removal of vegetation, trees or soil or other materials from land,
- (c) the alteration of the grade of the land by any means including placing soil, clearing and grubbing,
- (d) the compaction of soil or the creation of impervious surfaces; and

to **alter a site** means to direct, cause, allow or suffer a site alteration.

Soil means clay, silt, topsoil, fill, sand, gravel, cobbles, boulders, peat or other substance of which land is naturally composed, down to and including the bedrock but does not include other material.

Stockpile means a human-made accumulation of soil or other material held in reserve for future use, distribution or removal.

Tree means any living erect, woody plant which is 10cm (4") or more in diameter measured 1.4 m (4.5') above ground, and for the purpose of this Bylaw does not include a hedge.

Village means the Village of Pemberton.

Wood waste means wood residue in mechanically shredded form and includes sawdust, hog fuel, bark, chips, slabs, shavings, trimmings, edgings, or other such waste which is the result of any manufacturing process involved in the production of lumber or other wood products.

5.0 PROHIBITION

- 5.1 No person shall cause, direct, suffer or allow site alteration on any parcel or site within the Village except in accordance with this Bylaw.

6.0 PERMIT REQUIREMENTS

- 6.1 Subject to an exemption in this Bylaw or under an enactment of British Columbia or Canada, no person shall cause, permit, suffer or allow the alteration of a parcel or site within the Village unless the person:
- a) has applied for and been issued a valid and subsisting permit for such alterations; and
 - b) carries out the alterations in accordance with this Bylaw and the terms and conditions set out in the permit.

7.0 PERMIT EXEMPTIONS

7.1 Despite section 5 of this Bylaw, a permit is not required where the site alteration:

- a) results in the deposit or removal of less than 10 cubic metres (m³) of soil in a calendar year;
- b) is for the purpose of constructing or maintaining provincial roadways, forest service roads, walkways or trails;
- c) is on land owned by, or works undertaken by, the Village (or its appointed agents);
- d) is on land managed under the *Forest Act* or regulated under the *Highways Act* and for which a provincial soil permit has been obtained, so long as the land continues to be used as managed forest or highways;
- e) is related to and in accordance with a valid building permit issued by the Village;
- f) is required as part of the clean-up or remediation of a parcel of land as directed and approved by the *Ministry of Environment*;
- g) is undertaken as a permitted farm use on land located within the Agricultural Land Reserve (ALR), as specified within the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*. (For certainty, soil deposit or removal as a non-farm use or for non-farm uses require a permit under this Bylaw);
- h) is undertaken as flood protection works in emergency circumstances by or on behalf of a dyking authority; or,
- i) is undertaken to resolve emergency situations that present an immediate danger related to flooding, erosion or other immediate threats to life or property, including removal of hazardous trees, provided the Village's Manager has been informed;
- j) is carried out only for the purpose of landscaping a property using proper landscaping materials subject to the landscaping being completed within four (4) months.

8.0 PERMIT APPLICATION

8.1 An application for a permit must be made on a form provided by the Village.

8.2 A separate application for a separate permit must be made for each parcel that is to be altered, in accordance with section 10.0 (Permit Application Requirements).

8.3 The permit application must be signed by the applicant, and

- a) If the applicant is not the owner, by all owners of the parcel or site, and
- b) In the case of strata property:

- i. by an authorized representative(s) of the strata corporation plus the strata lot owner for the property where the site is to be altered; and
- ii. by resolution of the strata council if the site alterations apply to common property.

9.0 PERMIT APPLICATION FEES

- 9.1 An application for a permit must be accompanied by a non-refundable permit fee and a refundable deposit as set out in Schedule "A";
- 9.2 In the event of unpermitted work carried out in advance of a Permit being issued, a surcharge in addition to the site alteration permit application will be required as set out in Schedule "A".

10.0 PERMIT APPLICATION REQUIREMENTS

10.1 Subject to section 10.2, every application for a site alteration permit which includes between 50 cubic metres (m³) and 100 cubic metres (m³) of soil, other material or trees shall be accompanied by:

- a) the location of the parcel or site:
 - (i) from which trees, soil and other material are to be removed, in the case of their being deposited, or
 - (ii) the location of the parcel or site to which cut trees, soil or other material are to be deposited, in the case of their removal;
- b) the general description and volume of the soil, other material or trees to be deposited or removed;
- c) a tree management plan, prepared by a registered professional arborist identifying removal and protection areas within the parcel or site as may be applicable along with a rationale for the removal of the trees; and
- d) if required by the Manager, detailed plans, data and specifications for the proposed parcel or site prepared by a Registered Professional to a scale of not more than 1:1,000, unless otherwise authorized by the Manager, showing the contour of the ground in its current state and containing information regarding the site alteration with respect to any (or all) of the matters set out in section 10.3.

10.2 Where an application under section 10.1 relates to a parcel (or portion thereof) that is:

- a) situated within the Agricultural Land Reserve (ALR);
- b) subject to flooding or floodplain hazards, including flood construction level covenants, save harmless covenants or identified on provincial flood mapping; or
- c) situated within a development permit area pursuant to section 488(1)(a) of the *Local Government Act* (protection of the natural environment, its ecosystems and biological diversity),

if required by the Manager, the application must include detailed plans, data and specifications for the proposed site prepared by a Registered Professional to a scale of not more than 1:1,000, unless otherwise authorized by the Manager, showing the contour of the ground in its current state and containing information regarding the site alteration with respect to any or all of the matters set out in section 10.3.

10.3 Every application for a permit for site alteration that involves more than 100 cubic metres (m³) of soil, cut trees or other material shall be accompanied by detailed plans, data, and specifications for the proposed site prepared by a Registered Professional to a scale of not more than 1:1,000, unless otherwise authorized by the Manager, showing the contour of the ground in its current state and shall contain information regarding the site alteration with respect to the following matters:

- a) the location of the site:
 - (iii) from which trees, soil and other material are to be removed, in the case of their being deposited, or
 - (iv) the location of the site to which cut trees, soil or other material are to be deposited, in the case of their removal;
- b) the general description and volume of the soil or other material to be deposited or removed;
- c) a tree management plan, prepared by a Registered Professional Arborist identifying removal and protection areas within the site and a rationale for the removal of the trees;
- d) all features including buildings, structures, tree cover, roads, bridges, and natural watercourses;
- e) land uses and designations, such as ALR, zoning, floodplain areas, environmentally sensitive areas, and First Nations reserve land;
- f) the proposed slopes which will be maintained upon completion of the site alteration;
- g) the proposed methods to control the erosion of the banks of the site alteration area;
- h) the proposed methods of drainage control during the site alterations;
- i) the proposed methods to control noise and dust generated by the proposed site alterations;
- j) the proposed methods and locations of access to the site during the site alterations;
- k) the proposed grading and rehabilitation plan for the site during and upon completion of the proposed site alterations, copies of any remediation requirements of the Agricultural Land Commission;

- l) the proposed location of buffers and tree cover, and the location and grade width of berms as may be required;
- m) the proposed schedule for the deposit or removal of soil, cut trees or other materials, indicating the amounts to be either removed or deposited on a monthly basis;
- n) the proposed routes to and from the site;
- o) a traffic management plan, which would include but not be limited to a description of the frequency of vehicles, signage, placement of safety control devices, and other traffic control that would minimize the disturbance created;
- p) copies of all other necessary approvals and permits from Federal and Provincial authorities required by statute or regulation in connection with the proposed site alteration;
- q) if the proposed site alteration takes place on ALR land, information on the past and proposed farming activity, if applicable, the relationship of the soil deposit or removal to existing or proposed farming activity on the land, impact on the agricultural capability of the land, and a report, prepared by a registered professional agrologist, identifying the positive benefit of the proposed soil deposit or removal to agriculture;
- r) a site reclamation plan including an Invasive Species Management Plan, prepared by a registered professional to be incorporated into the permit.

10.4 Without limiting information required as part of an application under subsections 10.1, 10.2 or 10.3, the Manager may require an applicant to provide any other information the Manager considers appropriate or necessary to facilitate the review of the Permit application.

11.0 PERMIT ISSUANCE

11.1 Where the Manager is satisfied that:

- a) an application for a permit under this Bylaw has been submitted in complete form;
- b) the proposed site alteration set out in the application conforms with this Bylaw and other applicable bylaws of the Village; and
- c) the applicant for the permit has paid the Village the required application fees and the refundable deposit;

the Manager may issue the permit.

11.2 The Manager may make orders with respect to a particular site, if the Manager considers that an application or site alteration in progress is not in compliance with this Bylaw, and to ensure compliance, may impose specific terms, restrictions, and requirements as a condition of permitting site alteration work to proceed.

- 11.3 The Manager may impose conditions on a permit that restrict the location of deposit or removal and the type and volume of soil, other materials or trees to be deposited or removed based on the information supplied by the applicant under sections 10.1, 10.2 or 10.3, to ensure the deposit or removal occurs in the manner and amount specified in the application. Where the applicant is required to submit detailed plans, data and specifications under section 10.2 or 10.3, the Manager may issue the permit on conditions pertaining to subsections 10.3, to ensure the applicant undertakes the site alterations in accordance with the detailed plans, data and specifications provided.
- 11.4 For the purposes of ascertaining compliance with this Bylaw, the Manager may require an owner or Permit Holder to provide records in relation to the parcel or site or site alteration and without limitation, may require a report from a Registered Professional in relation to the parcel, site, or site alteration.
- 11.5 Every owner and Permit Holder of a parcel or site that is the subject of a site alteration must comply with all conditions set out in the Permit or in an order respecting the parcel or site, as well as with the conditions, restrictions and requirements of this Bylaw.
- 11.6 In the event that site alterations begin without a permit, the Manager has the discretion to waive or reduce the surcharge as identified in Schedule A.

12.0 GENERAL CONDITIONS

- 12.1 Subject to any further restrictions imposed by the Manager, or a variation authorized by the Manager in writing, site alteration activities may only occur between the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday, and 9:00 a.m. to 6:00 p.m. Saturday. These hours may be varied by the Manager where the Manager considers the work cannot be carried out effectively within these hours.
- 12.2 Site Alteration activities are not permitted on Sundays or statutory holidays unless prior written authorization from the Manager is provided.
- 12.3 No person may undertake any site alterations so as to do any of the following:
- a) foul, obstruct, divert, or impede the flow of or damage or destroy any watercourse, municipal infrastructure, ditch, drain, sewer, or other water utility, whether privately or publicly owned;
 - b) damage or destroy amenities on the lands or adjacent lands including, without limitation, any utilities, works or services, municipal infrastructure, statutory rights of way, structures, buildings or improvements;
 - c) contravene any Village bylaw or provincial or federal law;
 - d) threaten the health and safety of the public;
 - e) result in the use of any parcel or site in a manner inconsistent with the current zoning for the permit lands;

- f) compromise the hydrological function or drainage capacity of the parcel, site, or adjoining lands;
- g) result in soil on the parcel, site or adjacent land becoming unstable or susceptible to erosion, slippage, landslide, slumping or settling;
- h) result in costs for the Village, Regional District, or other government entity to provide public utilities, works or services to the parcel, site or adjoining lands;
- i) permit dust, dirt or noise to escape the parcel line or site boundary that may cause a private or public nuisance;
- j) result in the coverage of topsoil; or
- k) allow or suffer the growth, or increased growth of invasive species on the parcel or site that is subject to site alteration.

12.4 All descriptions, plans and specifications submitted by the applicant in support of the permit application and marked 'FINAL' by the Village form part of and are incorporated into the permit and the permit specifically limits site alterations in accordance with the descriptions, plans and specifications accepted by the Village.

12.5 The issuance of a permit does not constitute authority to conduct processing of soil on the parcel or site or any part thereof if not appropriately zoned for such use.

12.6 Every permit issued pursuant to this Bylaw shall expire twelve (12) months following the date of issuance unless an expiry date for a different term is expressly specified in the permit. Every permit shall cease to authorize site alterations upon the expiry date unless the permit has been renewed in accordance with sections 13.1, and 13.2.

12.7 No permit issued pursuant to the terms of this Bylaw may be transferred, assigned or sold.

12.8 The owner is responsible for the removal of any soil, cut trees or other material deposited without a permit, or contrary to the terms of a permit. Failure to remove or the soil, cut trees or other material within the time period so given for the removal may result in the Village or its appointed agents entering onto the parcel or site and carrying out the work required to effect the removal of soil or other material at the expense of the owner.

12.9 If required under the terms of the permit, upon completion of the site alteration authorized by a permit, the permit holder shall deliver to the Manager a certificate from a Registered Professional stating that all site alterations are in substantial compliance with the requirements of the permit and good environmental and engineering practices.

13.0 PERMIT RENEWAL

13.1 A permit for site alterations may be renewed at the request of the applicant for one additional term not to exceed twelve (12) months if the Manager or his designate determines, after inspecting the permit parcel that the applicant is in full compliance with the permit and this Bylaw.

13.2 Application for renewal of a permit or part thereof will be made in the same manner as provided herein for a new permit along with a non-refundable renewal fee as set out in Schedule A. The original application may be re-submitted for renewal, provided all applicable drawings and specifications are updated as necessary to identify any material changes to site conditions and to demonstrate compliance with current bylaws and regulations.

14.0 PERMIT REVOCATION AND REINSTATEMENT

14.1 The Manager may issue a stop work order, with immediate effect, acting reasonably, if site alteration activities have not been undertaken in accordance with the terms and conditions of this Bylaw or the permit.

14.2 The Manager may, by delivery of written notice to a permit holder, revoke or suspend a permit under this Bylaw where:

- a) the Permit Holder has contravened this Bylaw, or another bylaw of the Village;
- b) the Permit Holder has contravened a term or condition of the permit;
- c) the permit was issued on the basis of descriptions, plans and specifications in support of the permit application that were incorrect or misleading; or,
- d) the permit holder failed or refused to comply with a stop work order made pursuant to this Bylaw.

14.3 The Manager may reinstate a permit if the applicant provides a report from a Registered Professional confirming compliance with the Bylaw.

15.0 ENFORCEMENT

15.1 The Manager, Bylaw Enforcement Officer, other Village employees, persons retained by the Village for inspection purposes, and agents of the Village are authorized individually or in combination to enter at all reasonable times on any parcel to ascertain whether the provisions of this Bylaw are being observed.

15.2 A person must not hinder or obstruct a person authorized under section 15.1 from carrying out an inspection or enforcement of this Bylaw.

16.0 RECONSIDERATION OF SITE ALTERATION PERMIT APPLICATION

TREE CUTTING

16.1 An applicant for a site alteration permit to authorize the cutting and removal of trees may, pursuant to s.52 of the *Community Charter*, request reconsideration of the Manager decision within ten (10) days following the date on which the decision is mailed, emailed or faxed to them.

16.2 A request for reconsideration must be delivered in writing to the Manager and must set out the grounds on which the applicant considers the Manager's decision is

inappropriate and what decision the applicant considers the Council ought to substitute.

- 16.3 The Manager of Corporate & Legislative Services for the Village must place each request for reconsideration on the agenda of a meeting of the Council to be held not earlier than two (2) weeks from the date on which the request for reconsideration was received by the Village.
- 16.4 The Manager of Corporate & Legislative Services will notify the applicant and any other person who the Manager reasonably considers may be affected by the reconsideration, of the date of the meeting at which it will occur.
- 16.5 After hearing from the applicant, the Manager, and any other person considered by Council to have provided relevant information by or at the time of hearing, Council may confirm or set aside the decision of the Manager, or substitute its own decision along with any conditions, restrictions or requirements it considers necessary or appropriate.

17.0 OFFENCES AND PENALTIES

- 17.1 Any person commits an offence against this Bylaw who:
 - a) fails to comply with a term or condition of a permit;
 - b) fails to comply with an order or notice under this Bylaw; or
 - c) causes, allows or suffers a violation of this Bylaw, a term or condition of a permit, or an order or notice under this Bylaw,

and each day that a violation is caused or allowed to continue constitutes a separate offence under this Bylaw.

- 17.3 Any person who is found guilty of a violation under this Bylaw shall be liable to pay:
 - a) a fine of up to \$1,000.00 if issued a ticket under the *Village of Pemberton Municipal Ticket Utilization Bylaw*;
 - b) a fine of up to Ten Thousand Dollars (\$10,000), plus the costs of prosecution, and any other order imposed, if proceedings are brought under the *Offence Act*.

18.0 FEES AND COST RECOVERY

- 18.1 Where a person fails to pay the Village's costs as required by this Bylaw or where a person subject to an order under this bylaw fails to take action required by the order and the Village carries out the work or otherwise fulfills the requirement, the Village may recover its costs from the owner, occupier or person responsible for the work or for payment of the costs, as a debt to the Village. Money owed to the Village under this bylaw is payable upon receipt of an invoice from the Village.
- 18.2 If an amount owing under this Bylaw for work done or services provided to land or improvements remains unpaid on December 31st of the year in which the debt was incurred, the amount is deemed to be taxes in arrear and may be collected from the owner of the land or improvements in the same manner and with the same remedies as for property taxes.

READ A FIRST TIME this 12th day of December, 2017.

READ A SECOND TIME this 12th day of December, 2017.

READ A THIRD TIME this 12th day of December, 2017.

ADOPTED this 16th day of January, 2018.

Mike Richman
Mayor

Sheena Fraser
Corporate Officer

**Schedule A:
Site Alteration Permit Fees:**

Permit	Fee	Refundable Deposit*	Unpermitted Work in advance of a Site Alteration Permit, Surcharge in addition to the Site Alteration Permit Application Fee
SECTION 10			
Site Alteration Permit for the deposit or removal of soil or other material less than 50 cubic metres (m ³)	Not Applicable	Not Applicable	Not Applicable
Site Alteration Permit for deposit or removal of more than 50 cubic metres (m ³) and up to 100 cubic metres (m ³), trees or other material in any calendar year	\$100	\$1,000	\$1,000
Site Alteration Permit for deposit or removal of more than 100 cubic metres (m ³) and up to 1,000 cubic metres (m ³), trees or other material in any calendar year	\$250	\$2,500	\$2,500
Site Alteration Permit for the deposit or removal of more than 1,000 cubic metres (m ³), trees or other material in any calendar year.	\$500	\$5,000	\$5,000
SECTION 13			
Permit Renewal	\$ 50		

*The refundable deposit shall be security for the completion of all requirements established in the Site Alteration Permit and may be used at any time by the Village to secure the completion of any requirement or undertake remediation works as required.