

SEMA:TH
SOIL DEPOSIT, REMOVAL
AND TRANSPORT LAW,
(Amended 2020)

PREAMBLE

WHEREAS Sema:th (Sumas First Nation) has inherent aboriginal rights and title to our traditional territory that has sustained and defined our culture, traditions, spirituality, social, and economic way of life since time immemorial;

AND WHEREAS the teachings of the Sema:th ancestors speak of the obligation of the people to look after the land all resources as they rightfully use them in a sustainable manner according to Sema:th laws;

AND WHEREAS Sema:th's pursuit of economic development will be sensitive to the cultural and environmental needs of the people for future generations;

AND WHEREAS Sema:th has taken control of Reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the *Sema:th Land Code* effective the 11th day of November, 2011;

AND WHEREAS the Council of Sema:th has authority under the Land Code to pass laws in various areas including the regulation of occupation of and access to Reserve lands, and prevention of public and private Nuisance;

AND WHEREAS the Council of Sema:th passed the initial Sema:th *Soil Deposit, Removal and Transport Law* on May 20, 2015;

AND WHEREAS the Council of Sumas First Nation considers it necessary for the benefit, comfort, and health of Members living on the Reserve and for the protection of the environment to amend the 2015 law to better regulate the removal and deposit of Soil;

NOW THEREFORE, THIS SEMA:TH SOIL DEPOSIT, REMOVAL AND TRANSPORT LAW, 2015 IS HEREBY AMENDED AS A LAW OF SEMA:TH.

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PART 1

1. Title

1.1 The title of this Law is the *Sema:th Soil Deposit, Removal and Transport Law, 2020*.

2. Interpretation

2.1 For the purposes of this Law, terms have the same definitions as in the *Sema:th Land Code*, except as set out below.

2.2 The following definitions apply in this Law:

“Buffer Zone” means a natural strip of land at least thirty (30) metres in width, kept free from Soil removal or deposit to protect streams and watercourses, to screen a Permit Area from view from a Sema:th road or from a parcel other than that in respect of which a Permit is issued, and to provide setbacks between adjacent parcels of land and roads and highways;

“Clean Fill” means Soil that:

- a) Contains only mineral top Soil or does not contain woodwaste, construction waste, refuse, or other material that may adversely affect the geotechnical quality of the fill; and
- b) Is free of any substance which could cause or contribute to contamination, hazard, or injury when in place;

“**Contaminant**” means any substance which when in the air, in the soil or any groundwater lying beneath it, or in water or the underlying sediment, results in quantities or concentrations that exceed risk based or numerical criteria, standards or conditions for the definition of a Contaminated Site prescribed by the provincial government or by Sema:th.

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

“Lands Manager” means the Lands Manager appointed by Council or a person designated to act in his or her place;

“Originating Site” means the site from which any Soil is taken that is subsequently deposited on Sema:th Lands;

“Permit” means a written permit issued by the Lands Department in a form prescribed by the Council for the purposes of this Law;

“Permit Area” means an area within Sema:th Lands in respect of which a Permit is required, applied for, or has been issued pursuant to this Law;

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

“Soil” unless otherwise expressly specified in a provision, includes;

- a) Unconsolidated mineral or organic material;
- b) Rock;
- c) Clean Fill; and
- d) Sediment deposited on land,

but does not include the following, which are applied to land for beneficial purposes in compliance with Sema:th Law, the BC Organic Matter Recycling Regulation or an authorization given by Sema:th or another entity delegated or authorized in writing by Sema:th:

- e) Sewage Sludge;
- f) Composted Organic Materials;
- g) Products derived from the materials described in paragraphs (e) and (f);

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

“Watercourse” means any natural or manmade depression with well-defined banks and a bed of 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.

3. General Prohibitions and Requirements

3.1 A person must not:

- a) transport Soil to, on, or over Sema:th Lands,
- b) deposit Soil on or within Sema:th Lands,
- c) remove Soil from any area in or within Sema:th Lands, or
- d) cause or allow any such transport, deposit, or removal

except under a Permit issued under this Law or in compliance with the exemptions and requirements set out in this Law.

3.2 In addition to any Permit requirements or terms and conditions, 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 Sema:th Laws, the Sema:th Land Use Plan, Sema:th Environmental Management Plan;
- b) will not result in a deposit of soil that fails to comply with the standards set out in 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, water, or fowl, 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 Sema:th, 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, lands, 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.
- 3.3 Whether or not a Permit is required or issued,
- a) every Person must maintain records for at least three years of any deposit, removal or transport of Soil on Sema:th Lands and must make these records available to the Lands Manager upon request; and
 - b) any depositor or Permit-holder for a deposit of Soil that causes contamination or create a potential hazard, or health or environmental risk, shall be jointly and severally liable and responsible for:
 - (i) the cost of remedial work and restoration,
 - (ii) any related expenses, and
 - (iii) administrative and professional fees and coststhat may be incurred by Sema:th or others in remediating the site.
- 3.4 Despite any other provision in this Law or under a Permit, if Soil removal or deposit activity could potentially result in alteration or diversion of a natural Watercourse, or cause 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 where applicable.

4. Requirement for Permit

- 4.1 A person must not:
- a) transport Soil to, on, or over Sema:th Lands;
 - b) remove Soil from Sema:th Lands;
 - c) deposit Soil on Sema:th Lands; or
 - d) cause or allow Soil to be transport, 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.
- 4.2 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.
- 4.3 Any Permit must be construed as authorizing only the deposit of Clean Fill.

Exemptions

- 4.4 Despite subsection 4.1, a Permit is not required:
- a) for the deposit of less than 10m³ of Soil per year by a Sema:th member provided that the Soil is Clean Fill and meets the other requirements of this Law; or
 - b) for the transport or deposit of Soil that is completely contained in sealed bags with a commercial UPC symbol and product label and purchased from a commercial store or distributor.

5. Permit Application

- 5.1 Every person who applies for a Permit must submit an application in writing to the Lands Manager, in the form prescribed by Council for the purposes of this Law.
- 5.2 Every applicant for a Permit shall provide:
- a) any fees required, in the amount prescribed by Council, which may include application fees as well as fees to cover application reviews by engineers or other professionals; and
 - b) for prescribed projects, any bond required, in the form and amount prescribed by Council.

Information, Plans, and Specifications

- 5.3 For all proposed deposit, removal or transport of Soil, every applicant for a Permit must provide the following information unless their proposed deposit, removal or transport is of a volume or of a type that is exempted by Council by Resolution or Regulation:
- a) detailed plans, data, and specifications for the proposed site, to a scale of 1:1000 or larger, showing the contour of the ground at 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, sorting, washing, crushing, and any other proposed processing activities; and
- k) proposed routes over Sema:th roads to and from the Permit Area and a proposed traffic management plan consistent with any Sema:th Laws for traffic and nuisance, specifying entry and exit routes, signing and traffic control measures, dust control, cleaning activities, frequency of haul routes, days of the week and times of the day.

6. Standard Permit Conditions

- 6.1 In addition to the requirements of Sema:th Law and any Provincial or Federal standards or conditions applicable to Soil removal or deposit work on Sema:th Lands, the following conditions apply to each Permit unless otherwise specified in the Permit:
- a) Soil to be deposited must meet Low Density Residential Land Use standards as set out provincial law and adopted by Sema:th;
 - b) Soil that meets all of the other standards and requirements under this Law except for the Low Density Residential Land Use soil standards under provincial law, may be imported to a receiving site if:
 - i) the Soil does not include more than 30% fine material that will pass through a 2 mm sieve and does likely not contain bioavailable contaminants;
 - ii) the Soil can be demonstrated to meet site specific standards at the receiving site in accordance with BC Ministry of Environment Protocol 2 ;
 - iii) the Soil contains only natural background levels of potential contaminants that do not exceed Regional Estimates for Background

Concentrations in Soil for Inorganic substances as presented in Table 1 of BC Ministry of Environment Protocol 4. or

- iv) the Soil contains only natural background levels of potential contaminants that do not exceed local background soil concentrations, based on sampling conducted at a local reference site as per BC Ministry of Environment Protocol 4.
- b) 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;
 - ii) where two Permit Areas are adjacent to each other and, in the case of two or more parcels, the Lands Manager has received written consent by the CP or interest holder of any adjacent Permit Area to waive the Buffer Zone; or
 - iii) where a variance has been granted in writing by the Lands Manager in accordance with the most recent Sema:th policies including requirements for habitat restoration;
- 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 in height;
- 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 outside the hours between 7:00 a.m. and 7:00 p.m. on weekdays;
- g) Care must be taken to prevent Soil, including dust, rocks and clay, from accumulating on Sema:th 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; and

- i) Access to a Permit Area must be controlled at all times to prevent any hazards or unauthorized dumping.

7. Required Consultants, Verifications and Certifications

- 7.1 Unless a variance or approval has been granted in writing by Council or the Lands Manager, for all work to be carried out in relation to Soil removal or deposit of more than 60 m³ of Soil on or from Sema:th Lands in any one year, or for any other Soil removal or deposit designated by Council or otherwise determined by the Lands Manager, the Permit applicant must retain a Professional Engineer, chosen by Sema:th at the Permit holder's expense, to act as the prime consultant for the work carried out under the Permit and to coordinate, prepare, and present to the Lands Manager:
 - a) confirmation that the Soil from the Originating Site meets the standards established in the Sema:th Land Use Plan, Sema:th Environmental Management Plan, and the Contaminated Sites Regulation for the land use designation 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; and
 - c) other plans, specifications, and reports required under this Law or as part of the Permit, and to certify that the proposed works have been designed in compliance with the requirements of this Law and good engineering practices.
- 7.2 If required by the Permit or the Lands Manager:
 - a) 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 Law and the Permit requirements;
 - b) upon completion of the Soil Deposit, Removal and Transport works or the deposit or removal, the Permit holder must deliver to the Lands Manager a certificate from the Professional Engineer under this Section confirming that all works or deposits or removals have complied with this Law and the Permit requirements.
- 7.3 Every person who transports more than 10 m³ of Soil in any one year to, on, or over Sema:th Lands from outside Sema:th 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, as well as the Sema:th Land Use Plan, the Sema:th Environmental Management Plan and all Sema:th Laws.

8. Soil Transfer Checkpoint

- 8.1 If required by the Lands Manager or the Permit, every operator of a vehicle used to bring a load of Soil to, on or, over Sema:th Lands from outside of Sema:th Lands must:
- a) carry in his or her possession documented proof that the Soil complies with this Law; and
 - b) stop the vehicle at a gate, sign or designated by the Lands Manager as a “Soil Transport Checkpoint”, report to the Lands Office and present the document described in paragraph (a).
- 8.2 The Lands Manager may refuse entry by vehicles used for transporting Soil from outside Sema:th Lands if it appears that any of the requirements of this Law have not been met.
- a) 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 Sema:th Lands.

9. Offences, Penalties and Enforcement

- 9.1 Every person who contravenes or violates any provision of this Law or a Permit, or who allows any act in contravention or violation of this Law or a Permit, or who fails or neglects to do anything required to be done under this Law 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.
- 9.2 Upon summary conviction for an offence under this Law, a person shall be liable to a fine not exceeding \$10,000.
- 9.3 Despite subsection 9.2, a person who contravenes any provisions of this Law relating to the protection of the environment, commits an offence and is liable on conviction to a fine not exceeding \$200,000 or imprisonment for not more than 6 months, or both.
- 9.4 Despite subsections 9.2 and 9.3, an Enforcement Officer has the authority to issue tickets under the Sema:th Enforcement and Ticketing Law or any other relevant law or arrangement to any person who has contravened this Law and any such ticket is separate from and in addition to any other fees or penalties set out in this Law.
- 9.5 Without limiting other remedies under this section, if at any stage of Soil removal or deposit, the Lands Manager or Enforcement Officer considers that further work

authorized by the Permit is likely to endanger any utilities, bridges, drainage, or irrigation systems, property, Sema:th roads, lanes, easements, or rights of way, or is likely to endanger the safety or health of persons or property, the Lands Manager or Enforcement Officer 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.

9.6 In addition to any other applicable fine, penalty or remedy, Council, the Lands Manager, or an Enforcement Officer may:

- a) issue a Stop Work Order to any Person who has not received full and proper authorization under this Law, to order that Person to cease carrying out any unauthorized activity; and
- b) order any Soil or materials transported, removed or deposited in violation of this Law to be ceased, returned or removed within 30 days, failing which Council may have carried out or order any necessary remedial or restorative work to be carried out at the expense of the CP-holder, occupant or Person responsible, plus an administrative fee of 10% of the cost of all of the work.

9.7 A Stop Work Order imposed under this section:

- (a) may be registered in Court and enforced as a court order; and
- (b) continues in force until the condition that led to it is remedied or until the activity that is the subject of the Stop Work Order receives a permit or authorization under this Law.

9.8 The Lands Manager or an Enforcement Officer 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 Law and a Permit issued under it;
- b) inspect records maintained by the Permit holder in respect of the Soil removal or deposit activities; and
- c) direct or require that the Permit applicant or holder take certain measures or meet certain conditions to ensure compliance with this Law including, without limitation, terms and conditions for transporting Soil into or out of Sema:th Lands, traffic control and utilization of highways and road allowances on Sema:th Lands; and to prevent injury, harm, nuisance, or damage to persons, property, or the environment.

- 9.9 If a Permit holder fails to comply with this Law or any requirement or condition of the Permit, the Lands Manager may, by written notice to the Permit holder, immediately revoke the Permit.
- 9.10 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 one (1) business day.
- 10. Incorporation of Provincial Standards**
- 10.1 This Law adopts and incorporates the environmental standards set out in the *Environmental Management Act* (British Columbia), including the standards set out in the Contaminated Sites Regulation.
- 11. General**
- 11.1 If any section, subsection, paragraph, or part of this Law 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 valid portion.
- 12. Effective Date**
- 12.1 The amendments to this Law shall come into force and effect on the date it is passed by Council Resolution after complying with the requirements under Part 2 of the *Sema:th Land Code*.

BE IT KNOWN that this Law entitled *Sema:th Soil Transport, Deposit, and Removal Law, 2015* is hereby amended by a quorum of Council at a duly convened Council of the Sumas First Nation held on March 9, 2020, 2020.



Chief Dalton Silver



Councillor Murray Ned Councillor Christopher Silver



Councillor Clint Tuttle

A quorum consists of 3 Council Members