



**XWCHÍYÒ:M**

**CHEAM FIRST NATION**

**CHEAM FIRST NATION  
SOIL DEPOSIT, REMOVAL AND  
TRANSPORT LAW**

**May 24, 2022**

**SYUWÁ:LELH - Stó:lō Laws**

***“S’ólh Téméxw te ikw’elo. Xolhmet te mekw’stam it kwelat”***

***This is Our Land, we have to take care of everything that belongs to us.***

***“Xaxastexw te mekw’stam”***

***Respect all Things.***

***“Ewe chexw qelqelit te mekw’stam loy qw’ esli hokwex yexw lamexw ku:t”***

***Don’t waste, ruin or destroy everything, only take what you need.***

***“T’xwelátse”***

***Do things in a good way, respect each other***

**BACKGROUND:**

- A. Cheam First Nation has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- B. Cheam First Nation has taken over control and management of Cheam Reserve Lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the *Cheam Land Code* effective the 1<sup>st</sup> day of September, 2016;
- C. Under the *Cheam Land Code*, Cheam Council is authorized to pass various laws relating to lands including laws relating to regulation and use of Cheam Reserve Lands and laws relating to the prevention of nuisance, the protection of Cheam Reserve Lands and the environment, and the granting of permits under sections 3.1, 3.3, and 9.14 of the *Cheam Land Code*; and
- D. Cheam Council considers it necessary for the benefit, comfort, and health of Members living on Cheam Reserve Lands and for the protection of the environment to regulate the removal and deposit of Soil;

**NOW THEREFORE, THIS CHEAM SOIL DEPOSIT, REMOVAL AND TRANSPORT LAW IS HEREBY ENACTED AS A LAW OF CHEAM.**

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### 1. Titles

1.1 The title of this Law is the *Cheam Soil Deposit, Removal and Transport Law*.

### 2. Interpretation

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

2.2 The following definitions apply in this Law:

“Buffer Zone” means a natural strip of land that, unless varied by approval of the Lands Governance Director, is 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 Cheam 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 environmental or geotechnical quality of the fill; and
- b) Is free of any substance which could cause 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 Cheam.

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

“Enforcement Officer” means an Enforcement Officer as that term is defined in Cheam Law;

“Fill” means any material that is used, or intended for use, to dump or spread on land to fill or raise areas of the land;

“Originating Site” means the site from which any Soil is taken that is subsequently deposited on Cheam Reserve Lands;

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

“Permit Area” means an area within Cheam Reserve 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 in this Law, includes;

- a) Unconsolidated mineral or organic material;
- b) Rock;
- c) Sand;
- d) Gravel
- e) Clean Fill;
- f) Composed organic materials; and
- g) Sediment deposited on land,

but does not include the following:

- h) Sewage Sludge; or
- i) Other items or materials defined by Council by Resolution or regulation;

“Transport” means, in relation to Soil, the transport of one or more vehicle loads or trailer or container 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 deposit or store Fill on Cheam Reserve Lands unless that Fill is Soil that meets the requirements of this Law and is the subject of a valid permit from Cheam.

3.2 A Person must not

- (a) transport Soil to, on, or over Cheam Reserve Lands,
  - (b) deposit Soil on or within Cheam Reserve Lands,
  - (c) remove Soil from any area in or within Cheam Reserve Lands, or
  - (d) cause or allow any such transport, deposit, or removal,
- except under a Permit issued under this Law for that Soil or in compliance with the exemptions and requirements set out in this Law.

3.3 In addition to any Permit requirements or terms and conditions, a person who transports, deposits, or removes any Soil or deposits any Fill must ensure that the transport, removal, or deposit:

- (a) will not result in a deposit of Soil that contravenes Cheam Laws or other applicable laws, a Cheam Land Use Plan, or a Cheam environmental management plan;
- (b) will not result in a deposit of Soil or Fill that fails to comply with the standards set out Environmental *Management Act* (British Columbia) and in particular, the standards of the Contaminated Sites Regulation;
- (c) will not result in or amount to a hazard to persons or domestic animals or a public safety hazard;
- (d) 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;
- (e) 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 Cheam, 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
- (f) is carried out in a manner that is consistent with existing uses of the land.

3.4 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 or Fill on Cheam Reserve Lands and must make these records available to the Lands Governance Director upon request; and
- (b) any depositor or Permit-holder for a deposit of Soil or Fill that causes contamination or create a potential hazard, or health or environmental risk, shall be jointly and severally liable and responsible for the cost of remedial work and restoration, any related expenses, and administrative and professional fees and costs that may be incurred by Cheam or others in remediating the site.

3.5 Despite any other provision in this Law or under a Permit, if Soil or Fill 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 obtain prior authorization in writing from the federal minister responsible for the environment or fisheries where applicable.

3.6 A person who has been issued a Permit for Soil or Fill transport, removal, or deposit must comply with any restrictions, requirements, and conditions of the Permit.

3.7 Any Permit must be construed as authorizing only the deposit of Clean Fill.

#### **4. Exemptions**

4.1 Despite subsection 3.1, a Permit is not required:

- (a) for the deposit of less than 10m<sup>3</sup> of Soil per year by a Member provided that the Soil is Clean Fill and meets the other requirements of this Law;
- (b) from a local facility that is verified by Cheam and authorized by the Cheam Lands Governance Office in writing as selling Clean Fill; or
- (c) 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 or from a local facility that is verified by Cheam and authorized by the Cheam Lands Governance Office in writing as selling Clean Fill.

#### **5. Permit Application**

5.1 Every person who applies for a Permit under this Law must submit an application in writing to the Lands Governance Director, 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 Professional Engineers or other professionals; and
- (b) for prescribed projects, any bond required, in the form and amount prescribed by Council.

## **6. Information, Plans, and Specifications**

6.1 For any 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 this Law or 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 Cheam roads to and from the Permit Area and a proposed traffic management plan consistent with any Cheam 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.

## **7. Standard Permit Conditions**

7.1 In addition to the requirements of any Cheam Law and any applicable Provincial or Federal standards or conditions applicable to Soil removal or deposit work on Cheam Reserve Lands, the following conditions apply to each Permit unless otherwise specified in the Permit:

- (a) The term for which the Permit is valid;
- (b) Soil to be deposited must meet Low Density residential Land Use standards as set out provincial law and adopted by Cheam;
- (c) 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 based on sampling conducted at a local reference site as per BC Ministry of Environment Protocol 4.
- (d) 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 Governance Director 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 Council or the Lands Governance Director and included in the Permit;
- (e) 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;



- (f) The operation by which the Soil is removed or deposited must not encroach upon, undermine, or physically damage any area outside of the Permit Area but if any damage occurs, the permittee will repair, at the permittee's own cost, any damage, including any damages caused by flooding, to neighbouring properties or to Cheam works, roads, pavements, curbs, sidewalks, trees, aquatic or drainage works as a result of any work covered by the Permit;
- (g) 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;
- (h) Soil may not be transported, deposited, or removed outside the hours between 7:00 a.m. and 7:00 p.m. on weekdays;
- (i) Care must be taken to prevent Soil, including dust, rocks, and clay, from accumulating on Cheam 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;
- (j) The permittee agrees to carry out the project as planned and will not make any alternations to the plan without first notifying Cheam in writing and, if requested by Cheam, seeking further approval for such alterations;
- (k) The permittee agrees to carry out the project and all related works as necessary under the Permit in accordance with the *Canadian Environmental Assessment Act* ("CEAA") 2012, the Canadian Council of the Ministers of Environment ("CCME") soil quality guidelines, the British Columbia Contaminated Site Regulation and Riparian Areas Regulation, and other relevant laws and standards including federal, provincial, and Cheam Laws;
- (l) 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
- (m) Access to a Permit Area must be controlled at all times to prevent any hazards or unauthorized dumping.

## **8. Insurance**

- 8.1 As a condition of issuing a Permit, the Lands Governance Director may require a permittee to acquire and maintain general liability insurance and provide proof of this insurance to Cheam.

## **9. Required Consultants, Verifications and Certifications**

9.1 Unless a variance or approval has been granted in writing by Cheam, for all work to be carried out in relation to Soil removal or deposit of more than 60 m<sup>3</sup> of Soil on or from Cheam Reserve Lands in any one year, or for any other Soil removal or deposit designated by Council, the Permit applicant must retain a Professional Engineer, chosen by Cheam 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 Governance Director:

- (a) confirmation that the Soil from the Originating Site meets the standards established in any applicable Cheam Land Use Plan, Cheam 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.

9.2 If required by the Permit or the Lands Governance Director:

- (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; and
- (b) upon completion of the Soil deposit, removal, and Transport works or the deposit or removal, the Permit holder must deliver to the Lands Governance Director 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.

9.3 Every person who transports more than 10m<sup>3</sup> of Soil per year per parcel of land to, on, or over Cheam Reserve Lands from outside Cheam Reserve 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 Cheam Land Use Plan, the Cheam Environmental Management Plan and all Cheam Laws.

## **10. Soil Transfer Checkpoint**

- 10.1 If required by the Lands Governance Director or the Permit, every operator of a vehicle used to bring a load of Soil to, on or, over Cheam Reserve Lands from outside of Cheam Reserve 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 location designated by the Lands Governance Director as a "Soil Transport Checkpoint", report to the Lands Office and present the document described in paragraph (a).
- 10.2 The Lands Governance Director may refuse entry by vehicles used for transporting Soil from outside Cheam Reserve Lands if it appears that any of the requirements of this Law have not been met.
- 10.3 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 Cheam Reserve Lands.

## **11. Decision to Issue or Reject Permit**

- 11.1 Upon receiving a completed application package with all required information, documents and fees, the Lands Governance Director or Council may:
- (a) grant a Permit for a specified time, with or without additional terms and conditions to those set out in this Law; or
  - (b) in their sole discretion, decline to issue a Permit.
- 11.2 If Cheam declines to issue a Permit under paragraph 11.1(b),
- (a) The Lands Governance Director shall provide to the applicant written reasons as to why the Permit was rejected and will note any additional information or measures that could be helpful on a re-application.

## **12. Offences, Penalties and Enforcement**

- 12.1 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.
- 12.2 Upon summary conviction for an offence under this Law, a person shall be liable to a fine not exceeding \$10,000.

- 12.3 Despite subsection 11.2, 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.
- 12.4 Despite subsections 11.2 and 11.3, an Enforcement Officer has the authority to issue tickets or fines under this Law, Cheam enforcement law or any other relevant law or arrangement to any Person who has contravened this Law and any such ticket or fine is separate from and in addition to any other fees or penalties set out in this Law.
- 12.5 Without limiting other remedies under this section, if at any stage of Soil removal or deposit, the Lands Governance Director or Enforcement Officer considers that continuing or further work authorized by the Permit is likely to endanger any utilities, bridges, drainage, or irrigation systems, property, Cheam roads, lanes, easements, or rights of way, or is likely to endanger the safety or health of persons or property, the Lands Governance Director or Enforcement Officer may issue an order to 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.
- 12.6 In addition to any other applicable fine, penalty or remedy, Council, the Lands Governance Director, 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, Fill or materials transported, removed or deposited in violation of this Law to be ceased, returned or removed, and any necessary decontamination or remediation carried out within 30 days from the date of a written order, failing which Council may have carried out or order any necessary remedial or restorative work to be carried out at the sole expense of the CP holder, Permittee, occupant or person responsible, plus an administration fee in the amount of 10% of the cost of all work.
- 12.7 An invoice issued to a Person under 12.6(b) is a debt owing to Cheam and is payable within fifteen (15) days of it being sent or delivered by Cheam to the Person, failing which, Cheam may resort to all available legal measures to collect the debt.

12.8 A Stop-Work Order imposed under this section or an invoice or notice of debt issued 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.

12.9 The Lands Governance Director 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 Cheam Lands, traffic control and utilization of highways and road allowances on Cheam Reserve Lands; and to prevent injury, harm, nuisance, or damage to persons, property, or the environment.

12.10 If a Permit holder fails to comply with this Law or any requirement or condition of the Permit, the Lands Governance Director may, by written notice to the Permit holder, immediately revoke the Permit.

12.11 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.

### **13. Incorporation of Provincial Standards**

13.1 Without in any way defining, suspending, limiting, abrogating or derogating from Cheam's aboriginal rights and title, and subject to any clarifying regulations passed by Council, 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.

### **14. General**

14.1 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.

14.2 The Permittee's obligations (including without limitation all agreements, terms and conditions) survive the ending of the Permit.

## **15. Regulations, Policies, Forms, Fines and Fees**

15.1 Council may make any regulations it considers necessary or advisable for purposes under this Law.

15.2 For certainty, the powers of Council under subsection 15.1 include the power to make regulations, policies or decisions:

- (a) for any purpose in relation to which regulations are provided for in this Law;
- (b) prescribing any matter or thing referred to in this Law as prescribed or to be prescribed;
- (c) respecting the form, content, procedures and review criteria for applications, notices, and other documents that are required or permitted under this Law;
- (d) setting fees;
- (e) setting fines and penalties;
- (f) defining words and expressions that are used but not defined in this Law; and
- (g) generally, for the purpose of giving effect to this Law.

## **16. Effective Date**

16.1 This Law shall come into force and effect on the date it is passed by Council Resolution after complying with the requirements under Section 3 of the *Cheam Land Code*.

**BE IT KNOWN that this Law entitled *Cheam Soil Deposit, Removal and Transport Law, 2022* is hereby enacted by a quorum of Council at a duly convened Council of the Cheam First Nation held on May 24, 2022.**

The quorum of the Council is 4 members.:

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Chief Andrew Victor

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Councilor Stephanie Fredette

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Councilor Ray Douglas

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Councilor Annie Silver

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Councilor Melvin Wilson

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Councilor Luke Pike