

LEQ'Á:MEL FIRST NATION

SOIL TRANSPORT, DEPOSIT AND
REMOVAL LAW
2018

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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

PREAMBLE

WHEREAS Leq’á:mel 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*,

Leq’á:mel First Nation has taken over control and management of Leq’á:mel Reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the *Leq’á:mel Land Code*, and

under the *Leq’á:mel Land Code*, Leq’á:mel Council is authorized to pass various laws relating to lands, environment and natural resources

NOW THEREFORE this *Leq’á:mel Soil Transport, Deposit, and Removal Law* is hereby enacted as a Law of the Leq’á:mel First Nation.

PART 1 – NAME

1.1 This law may be cited as the *Leq'á:mel Soil Transport, Deposit and Removal Law*.

PART 2 – PURPOSE

2.1 The purpose of this law is to promote environmentally sustainable soil management and transportation as well as to protect Leq'á:mel Lands from contamination.

PART 3 - WHERE THIS LAW APPLIES

3.1 The provisions of this law apply to the whole area of the Reserve and Leq'á:mel Lands as defined in the Leq'á:mel Land Code.

PART 4 – DEFINITIONS

4.1 Terms used in this law and the *Leq'á:mel Land Code* have the same meaning as in the *Leq'á:mel Land Code*.

4.2 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 an area of land from view, or to provide setbacks between adjacent parcels of land and roads and highways;

“Clean Fill” means Soil that:

- a) meets provincial residential standards;
- b) contains only mineral topsoil or does not contain wood waste, construction waste, refuse, or other material that may adversely affect the geotechnical quality of the fill; and
- c) is free of any substance which could cause contamination, hazard, or injury when in place;

“Deposit” means to bring, dump, introduce, import, transport to, or temporarily place, store on Leq'á:mel Lands;

“Enforcement Officer” means a person authorized to enforce this law appointed by regulation under this law or the Leq'á:mel Enforcement and Ticketing Law, and includes the Lands Manager;

“Permit” means a written permit issued by the Leq'á:mel Lands Office in a form prescribed by the Council for the purposes of this law;

“Permit Area” means an area within Leq'á:mel Lands in respect of which a Permit is required, applied for, or has been issued pursuant to this law;

“Qualified Environmental Professional” means an:

- a) Individual who is registered and in good standing in British Columbia with an appropriate professional organization, acting under that associations’ code of ethics and subject to disciplinary action by that association;
- b) Individual whose area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal; and
- c) Individual who is acting within that individual’s area of expertise.;

“Soil or Fill” means topsoil, sludge, silt, clay, sand, gravel, rock, peat, compost, wood waste including stumps and bark mulch, or other substance of which natural land is composed and includes materials added to or existing in combination with any of these;

“Stop Work Order” means an order to stop transport, deposit or removal of Soil under this law

“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 months of the year.

PART 5 – GENERAL PROVISIONS

5.1 A reference to a law, regulation, or code is a reference to that law, regulation, or code as amended from time to time.

5.2 The headings in this law have been inserted for convenience and for reference only and in no way define or limit any of its provisions.

5.3 Any reference to a number of days in this law shall be counted as business days during which the Leq’á:mel Lands Office is open.

5.4 In the event that all or any sections of this law are found by a court of competent jurisdiction to be invalid, those sections shall be severable, and the remaining portions or sections shall remain in full force and effect.

PART 6 – GENERAL PROHIBITIONS & REQUIREMENTS REGARDING SOILS

6.1 Except in accordance with this law and, if required, a Permit issued under this law, a person must not:

- a) transport Soil to, on, or over Leq’á:mel Lands;
- b) deposit Soil on or within Leq’á:mel Lands;
- c) remove Soil from any area in or within Leq’á:mel Lands; or
- d) cause, allow or contribute to any such transport, deposit, or removal.

6.2 Whether or not a Permit is required or issued, and in addition to any restrictions, requirements, and conditions of a Permit, any 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 Leq'á:mel laws, the Leq'á:mel Land Use Plan, and Leq'á:mel Environmental Management Plan;
- b) will not result in a deposit of soil that fails to comply with the standards for residential uses set out in *Environmental Management Act (British Columbia)* and the *Contaminated Sites Regulation (British Columbia)*, both, as amended;
- c) will not result in or amount to a hazard to persons, fisheries, fish habitat, wildlife, or domestic animals or create 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 water work, 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 Leq'á:mel First Nation, British Columbia, 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.

6.3 Whether or not a Permit is required or issued, and in addition to any restrictions, requirements, and conditions of a Permit,

- a) every person must maintain records for at least three years of any deposit, removal or transport of Soil relating to Leq'á:mel Lands and must make these records available to Leq'á:mel Lands Office upon request; and
- b) any depositor or Permit-holder for a deposit of Soil that causes contamination or creates 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 Leq'á:mel or others in remediating the site.

6.4 Whether or not a Permit is required or issued, and in addition to any restrictions, requirements, and conditions of a Permit, any person who transports, deposits, or removes any Soil must ensure that the transport, removal, or deposit complies with the Leq'á:mel Land Code, Leq'á:mel laws and regulations, and applicable federal and provincial laws.

PART 7 – REQUIREMENT FOR PERMIT

7.1 Except in strict compliance with an exemption under this law, or after applying for and receiving a valid and subsisting Permit, a person must not:

- a) transport Soil to, on, or over Leq'á:mel Lands;

- b) remove Soil from Leq'á:mel Lands;
- c) deposit Soil on Leq'á:mel Lands; or
- d) cause or allow Soil to be transport, removed, or deposited in relation to Leq'á:mel Lands.

7.2 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.

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

PART 8 – EXEMPTIONS & TEMPORARY PERMITS

8.1 Despite any other provision of this law, a Permit is not required:

- a) for the deposit of a total of less than 10m³ of Soil per year by a Leq'á:mel Member provided that the Soil is Clean Fill and meets other requirements of this law;
- 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; or
- (c) during the initial response to a natural disaster or emergency,

but the other requirements of this law apply to the transport and deposit of Soil and the initial response to the natural disaster or emergency.

8.2 Despite any other provision of this law, the Leq'á:mel Lands Office may issue a temporary Permit for the transport, removal or deposit of Soil in order to respond to a natural disaster or emergency and may waive any requirements that ordinarily apply to Permits to the extent required to address the natural disaster or emergency.

PART 9 – PERMIT APPLICATION

9.1 Every person who applies for a Permit must submit an application in writing to the Leq'á:mel Lands Office, in the form prescribed by Council for the purposes of this law.

9.2 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.

PART 10 - INFORMATION, PLANS, & SPECIFICATIONS

10.1 Unless the Leq'á:mel Lands Office or Council varies or waives any of the following requirements in writing, each application for a Permit will include:

- 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 Qualified Environmental Professional may determine in accordance with reasonable engineering or professional 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) for transport of Soil, proposed routes over Leq'á:mel roads to and from the Permit Area and a proposed traffic management plan consistent with any Leq'á:mel 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.

PART 11 - STANDARD PERMIT CONDITIONS

11.1 In addition to the requirements of Leq'á:mel law and any provincial or federal standards or conditions applicable to transport, removal or deposit of Soil on Leq'á:mel Lands, the following conditions apply to each Permit unless otherwise specified in the Permit:

- a) 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 the Leq'á:mel Lands Office has received written consent of the Certificate of Possession or interest holder to waive a Buffer Zone on their lands; or
 - iii) where a variance has been granted in writing by Council based on any recommendations provided by the Leq'á:mel Lands Office;
- b) 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 Leq'á:mel 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 during the term of the Permit to prevent any hazards or unauthorized dumping.

PART 12 – SPECIAL PERMIT CONDITIONS

12.1 For all work to be carried out in relation to Soil removal or deposit of more than 40 m³ of Soil on or from Leq'á:mel Lands in any one year, or for any other Soil removal or deposit designated by Council, the Leq'á:mel Lands Office may require that the Permit applicant retain a Qualified Environmental Professional, chosen by Leq'á:mel at the Permit holder's expense, to act as the prime consultant for the work carried out under the Permit.

12.2 Where a Permit holder is required to retain a Qualified Environmental Professional, the Permit holder must provide to the Leq'á:mel Lands Office:

- a) confirmation that the Soil meets the standards set out in this law and any other applicable regulations;
- b) interim and permanent drainage plans showing how potential impacts of the proposed activity on adjacent lands may be avoided or mitigated;
- c) other plans, specifications, and reports required under this law, a regulation or as part of the Permit; and
- d) certification that the proposed works have been designed in compliance with the requirements of this law and good engineering practices.

12.3 Where a Permit holder is required to retain a Qualified Environmental Professional, the Permit holder must also, if required by the Permit or the Leq'á:mel Lands Office:

- a) retain their Qualified Environmental Professional throughout the period of the Permit and the period for required restoration to advise the applicant on compliance with this law, any applicable regulations, and the Permit requirements; and
- b) upon completion of the Soil deposit, removal or transport, deliver to the Leq'á:mel Lands Office a certificate from the Qualified Environmental Professional confirming that all works, deposits, or removals have complied with this law, any applicable regulations, and the Permit requirements.

PART 13 – TRANSPORTATION & SOIL TRANSFER CHECKPOINTS

13.1 If required by the Leq'á:mel Lands Office or a Permit, every operator of a vehicle used to bring Soil to, on or, over Leq'á:mel Lands from outside of Leq'á:mel Lands, and every operator of a vehicle taking Soil away from Leq'á:mel 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 or sign designated by the Leq'á:mel Lands Office as a "Soil Transport Checkpoint", report to the Leq'á:mel Lands Office and present the documentation required under this section.

13.2 The Leq'á:mel Lands Office may refuse entry or departure of a vehicle used for transporting Soil from within or outside Leq'á:mel Lands if it appears that any of the requirements of this law have not been met.

13.3 The operator of a vehicle that is refused entry or departure must remedy any non-compliant conditions before the vehicle is allowed to enter or depart Leq'á:mel Lands.

13.4 Every person who transports more than 10 m³ of Soil in any one year to, on, or over Leq'á:mel Lands from outside Leq'á:mel Lands must have documentation showing that each vehicle load of Soil is from a site that has been assessed by a Qualified Environmental Professional, applying the *Environmental Management Act (British Columbia)*, confirming that the Soil being transported meets the standards of the *Contaminated Sites Regulation (British Columbia)*, as well as the Leq'á:mel Land Use Plan, the Leq'á:mel Environmental Management Plan and all Leq'á:mel laws and regulations.

PART 14 – REGULATIONS

14.1 Council may make any regulations it considers necessary or advisable to implement this law, including regulations:

- (a) appointing persons as Enforcement Officers under this law;
- (b) prescribing any forms or applications under this law; and
- (c) prescribing any fees or charges under this law

PART 15 - OFFENCES, PENALTIES & ENFORCEMENT

15.1 Every person who:

- (a) contravenes or violates any provision of this law or a Permit;
- (b) allows any act in contravention or violation of this law or a Permit; or
- (c) 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.

15.2 Upon summary conviction for an offence under this:

- (a) 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; and
- (b) a person who contravenes any other provision of this law shall be liable to a fine not exceeding \$10,000.

15.3 An Enforcement Officer has the authority to issue tickets under the Leq'á:mel 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.

15.4 Without limiting other remedies under this section, if at any stage of Soil transport, removal or deposit, the Leq'á:mel Lands Office or Enforcement Officer considers that there is any danger to utilities, bridges, drainage, or irrigation systems, property, Leq'á:mel roads, lanes, easements, or rights of way, or is likely to endanger the safety or health of persons or property, the Leq'á:mel Lands Office or Enforcement Officer may direct the Permit holder to take measures to prevent the danger and any such directive shall be a condition of continuing to work under the Permit.

PART 16 – INSPECTIONS, STOP WORK ORDERS & OTHER REMEDIES

16.1 In addition to any other applicable fine, penalty or remedy under this law, Council, the Leq'á:mel Lands Office, or an Enforcement Officer may at any time:

- a) issue a Stop Work Order to any Person who has not received full and proper authorization under this law, to order that Person cease carrying out any unauthorized activity;
- b) order that a road, an area, parcel of land or site be blocked off, cordoned off or fenced off to prevent unauthorized entry or prevent violations under this law; and
- c) order any Soil or materials transported, removed or deposited in violation of this law be 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 certificate of possession holder, occupant or person responsible for the transport, removal or deposit or for the lands on which the Soil is transported, removed or deposited in violation of this law.

16.2 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.

16.3 The Leq'á:mel Lands Office 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;
- 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 measures or meet conditions to ensure compliance with this law including terms and conditions for transporting Soil into or out of Leq'á:mel Lands, traffic control and use of highways and road allowances on Leq'á:mel Lands; and to prevent injury, harm, nuisance, or damage to persons, property, or the environment.

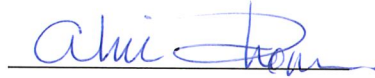
16.4 If a Permit holder fails to comply with this law or any requirement or condition of the Permit, the Leq'á:mel Lands Office may, by written notice to the Permit holder, immediately suspend or revoke the Permit.

16.5 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 business day.

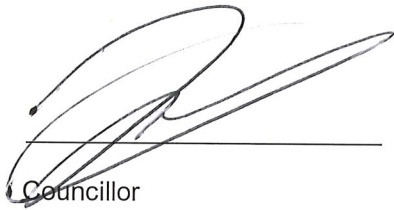
PART 17 - EFFECTIVE DATE

17.1 This law shall come into force and effect on the date specified in the resolution of Council enacting this law.

BE IT KNOWN that this law entitled *Leq'á:mel Soil Transport, Deposit, and Removal Law* is hereby enacted by a quorum of Council at a duly convened Council of the Leq'á:mel First Nation held on 24 September, 2018.



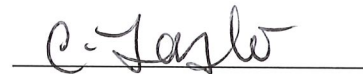
Chief



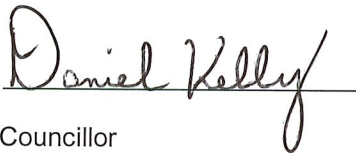
Councillor



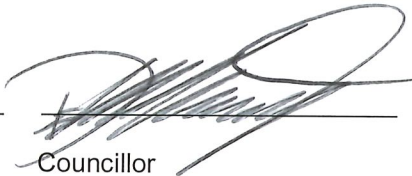
Councillor



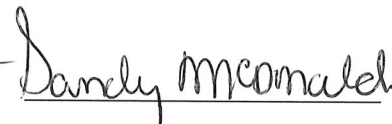
Councillor



Councillor



Councillor



Councillor

A quorum consists of 4 Council
Members