

MODEL FIRST NATION LAND CODE
TRANSPORT AND DEPOSIT OF SOILS LAW

May, 2007

Introduction and Notes

This model law is concerned with the regulation of the deposit of soil on First Nation land. The law also deals with the subject of removing soils. With some minor exceptions, the deposit or removal of soil is not permitted unless a permit has been issued.

This law is not intended for use to regulate sand and gravel or quarry operations on First Nation land.

If the First Nation is concerned only with dumping soil or fill than references to the removal of soil from First Nation lands can be deleted.

The model law is based on the Tsawwassen First Nation law.

First Nations should review this model law and make appropriate changes or additions to suit their needs. Some matters to consider

- Who will approve permits: Council, the Lands Manager or some other entity
- What are the standards to be applied to fill to make sure that it will not cause any impact on the environment or health
- First Nations may wish to review standards in other provincial or municipal laws concerning with dumping of soil as this model is based on standards in British Columbia. A consulting engineer could provide the First Nation with relevant information on standards to assess if fill is clean
- Will a First Nation employee be trained to administer the law in relation to inspections or will an engineering consultant be retained to make sure there is compliance with the terms and conditions of the permit.

The First Nation should obtain legal advice to make sure that any law is properly drafted, can be enforced and meets the needs of the particular First Nation community.

**FIRST NATION LAND CODE
TRANSPORT AND DEPOSIT OF SOILS LAW**

A Law to adopt the _____ First Nation Transport and Deposit of Soils Law
No.: _____;

WHEREAS the Chief and Council of the _____ First Nation desires to make
a Law under section _____ of the _____ First Nation Land Code to control
the transport and deposition of soils on First Nation Land and with respect to any matter
necessary or ancillary to the making of the Law, and for the imposition of a penalty for a
violation thereof;

AND WHEREAS it is considered to be expedient and necessary for the benefit, health
and safety of the inhabitants of First Nation Land to control development of First Nation
Land;

AND WHEREAS the preliminary steps to make a First Nation land law required under
section ____ of the Land Code have been satisfied;

NOW THEREFORE the Chief and Council of the _____ First Nation, in
open meeting assembled, hereby enacts as follows:

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SECTION 1 – DEFINITIONS

1. DEFINITIONS

- 1.1 **COUNCIL** means the Council of the First Nation.
- 1.2 **DEPOSIT** means the act of moving Soil and placing it within a parcel of First Nation or upon any other First Nation land on which such Soil did not previously exist or stand.
- 1.3 **CLEAN FILL** means Soil free from refuse, wood, wood products, wood by-products or wood waste, undecomposed organic matter, petroleum products or by-products, concrete products or by-products or anything of substance or liquid likely to cause contamination hazard or injury when in place.
- 1.4 **LANDS DEPARTMENT** or **LAND MANAGER** means any person or persons appointed by the Council from time to time to administer First Nation lands.
- 1.5 **FIRST NATION** means the _____ First Nation.
- 1.6 **FIRST NATION LAND** means any part of a First Nation reserve that is subject to the Land Code, and for greater certainty, includes any interest in First Nation land held by a member of the First Nation.
- 1.7 **PERMIT** means the written authority, approved by resolution of the Council and issued by the Lands Department (or Land Manager) for the removal of Soil or the Deposit of Clean Fill upon land within First Nation Land.
- NOTE: A permit must be approved by Council AND is issued by the Lands Manager or Lands Department. Some First Nations have a Lands Committee which could also play a role in the permitting process, although this is not necessary.*
- 1.8 **PERSON** means an individual, a body corporate, a firm, partnership, association, or any other legal entity or an employee or agent thereof.
- 1.9 **PROFESSIONAL ENGINEER** means a person registered as a Professional Engineer with the Association of Professional Engineers of the Province of _____.
- 1.10 **PROVINCE** means the Province of _____.
- 1.11 **SOIL** means topsoil, silt, clay, sand, gravel, rock, peat or other substance of which natural land is composed.

- 1.12 **WATERCOURSE** means any natural or man made depression with well defined banks and a bed 0.6 m or more below the surrounding land serving to give direction to a current of water at least six (6) months of the year or having a drainage area of two (2) km² or more upstream of the point of consideration.

2. ADMINISTRATION

Application

- 2.1 This Law applies to all lands, the surface of water [and water lots] included within First Nation Land and for greater certainty includes any First Nation Land in the possession or occupation of a member of the First Nation.

Prohibition

- 2.2 No person shall deposit, cause or permit to be deposited to be removed any Soil on any First Nation Land , remove, cause or permit to be removed any Soil without holding a valid and existing permit for such deposit or removal issued in accordance with this Law.

Inspection

- 2.3 The Land Department (or Land Manager), and any officer or agent of the First Nation appointed by the Council for that purpose, is hereby authorized to enter, at all reasonable times, any day of the week, on any property in the First Nation Land to ascertain whether the provisions of this Law are being contravened.

OR 2.4 – 2.6

- 2.3 The Land Department (or Land Manager), and any officer or agent of the First Nation appointed by the Council for that purpose, is hereby authorized to enter, at all reasonable times, upon any First Nation Land to ascertain whether the provisions of this Law are being observed.

- 2.4 The Land Department (or Land Manager) may give notice to any person of a breach of any provision of this Law, or a permit issued under this law, and such person shall forthwith cease and desist from depositing or removing any further Soil until the breach is remedied.

- 2.5 Where the Land Department (or Land Manager) determines that a person has contravened the terms and conditions of a Permit or is depositing or removing Soil without a Permit, the Land Department (or Land Manager) may:

- i) Suspend the Permit until satisfied that the contravention has ceased;
- ii) Cancel the Permit if satisfied that the person has, by reason of the contravention, made it unlikely that the terms and conditions of the Permit will be observed;

- iii) Order the person to stop the contravention;
- iv) Order the person who caused Soil to be placed on the Land without a Permit or in contravention of the terms or conditions of the Permit, to remove the Soil;
- v) Order the person who caused Soil to be removed from the Land without a Permit or in contravention of the terms or conditions of the Permit, to deposit up to a like amount of removed Soil.

2.6 No person shall prevent, obstruct, or attempt to prevent or obstruct the entry of the Land Department (or Land Manager) as authorized by this Law.

Violation

2.4 Every person who:

- (a) violates any of the provision of this Law;
- (b) causes or permits any act or thing to be done in contravention or violation of any of the provisions of this Law;
- (c) neglects or omits to do anything required under this Law;
- (d) carries out, causes or permits any development to be carried out in a manner prohibited by or contrary to any of the provisions of this Law;
- (e) fails to comply with an order, direction or notice given under this Law;
- (f) prevents or obstructs, or attempts to prevent or obstruct, the entry of the Land Department or any officer or agent onto property under Section 2.3;
or
- (g) fails to carry out any work in accordance with the terms and conditions of this Law or any plans and reports filed with the Lands Department or any conditions contained in a Permit,

commits an offence under this Law.

2.5 Unless some other procedure is provided for by law, the summary conviction procedures of Part XXVII of the Criminal Code, as amended from time to time, apply to offences under this Law.

Penalty

2.6 Any person who commits an offence as described in Section 2.4 is punishable upon summary conviction and shall be liable to a fine not exceeding one thousand dollars (\$1,000) per day plus any costs incurred by the First Nation to remove illegally dumped Soil or replace illegally removed Soil.

- 2.7 Every person who commits an offence of a continuing nature against this Law is liable to the penalty or penalties authorized under Section 2.6 for each day such an offence is continued.
- 2.8 The penalties imposed under this section shall be in addition to and not in substitution for any other penalty or remedy imposed by a First Nation bylaw, Law or any applicable federal or provincial law.

Metric Measurement

- 2.9 All regulation measurements shall be made in metric. The imperial equivalents are provided for convenience only and have no force or effect.

Fees and Deposits

- 2.10 The Lands Department is hereby authorized to demand refundable or non-refundable fees and deposits for any and all applications or permits governed by this Law. All fees and deposit amounts are to be set from time to time by the Lands Department and approved by resolution of Council. The Land Department shall establish annually the terms and conditions for returning refundable fees and deposits and make them known to the applicants in writing prior to accepting fees and deposits.

Sample Fee Clause,(if desired)

- 2.11 The fee for each permit shall be the sum of \$300.00 for the first 1,000 cubic meters plus \$150.00 for each 1000 cubic meters (or part thereof) thereafter, but in no case shall exceed \$4,000.00.

SECTION 3 – GENERAL REGULATIONS

3. GENERAL REGULATIONS

- 3.1 No person shall remove any Soil from or Deposit any Soil on any First Nation Land except under the authority of a Permit issued in accordance with this Law and in the manner specified in the Permit.
- 3.2 No person shall be granted a Permit to Deposit or permit the Deposit of Soil other than Soil that comes within the definition of Clean Fill in Section 1 and the authority to Deposit any Soil contained in any Permit shall be limited to Clean Fill only.
- 3.3 Notwithstanding paragraphs 3.1 and 3.2, and subject to the conditions of other Laws under the Land Code or By-Laws enacted under the *Indian Act*, a resident on the First Nation Land holding a valid lease or certificate of possession to land on First Nation Land may deposit or permit to be deposited up to 36 cubic meters of Clean Fill on their lands without a Permit or payment of any fees where such material is for the construction or landscaping of their home.

NOTE: Section 3.3 allows an exception which gives members or residents the privilege of depositing up to 36 cubic meters of Clean Fill for construction or landscaping of their own home without a permit and without payment. First Nations may wish to review the scope of the exemption.

- 3.4 An application for a Permit for the Deposit of Clean Fill on First Nation Land must be accompanied by the following documentation:
- (a) a report certified by a suitably qualified professional confirming that the supplied material meets the appropriate Federal and Provincial standards for the proposed land use. A minimum of one soil analysis per 100 m³ of Soil shall be completed for both ICP Metals and Hydrocarbons or greater if required by the Province or Canada or the Land Department. All site profiles and testing must conform to the then current Contaminated Sites Regulations of the Province. The application is to include the full and complete civic addresses of both the site of origin of the Soil, whether it be on or off First Nation Land, and the site where the Soil is to be deposited on First Nation Land and the route of transport between the two sites.

NOTE: First Nations should review appropriate standards and Regulations within their own Province or have a qualified professional review the appropriateness of this standard.

- (b) a traffic management plan consistent with relevant First Nation By-laws specifying: the time and days of the week of Deposit; the proposed entry and exit routes of trucks; signing and traffic control measures that will be employed; and cleaning activities along with frequency for the proposed haul routes.
 - (c) a lot grading plan to show: the proposed final lot elevations in geodetic datum; arrows indicating the direction of lot grading; location of proposed discharge point of storm water for the property and proper ditching works. Where a drainage plan, policy, Law, or By-law applies the site grading and drainage must conform to the plan, policy, Law or By-law.
- 3.5 All Permits for removal of Soil or placing of Clean Fill pursuant to this bylaw shall be issued by the Lands Department.
- 3.6 Subject to Subsection 3.7 of this Section, no person shall remove any Soil from First Nation Land or Deposit any Soil on any First Nation Land if:
 - (a) such removal or Deposit would in any way endanger utilities, surrounding or neighbouring land or the support thereof or would constitute or result in any hazard or contamination;
 - (b) such removal or Deposit would foul, obstruct or impede the flow or maintenance access of any stream, creek, waterway, Watercourse, waterworks, ditches, drain or sewer; or
 - (c) such removal or Deposit would make impracticable the future subdivision or development of the land or surrounding or neighbouring land.
- 3.7 Notwithstanding Subsection 3.6 of this Section, a Permit may be issued if, in the view of the Lands Department, precautions can be taken which will prevent the results referred to in clauses (a), (b), and (c) of Subsection 3.6 as a result of the removal or Deposit of the Soil which is the subject of the application and if the Permittee agrees in writing to take such precautions.
- 3.8 Where a Permit is obtained it is the sole responsibility of the Permittee to ensure that the Deposit of Clean Fill and the removal of Soil is done in such a manner that is appropriate for the existing and future uses of the land.
- 3.9 The Permittee must maintain records of all Soil leaving or entering the site including the location and elevation of where each load is placed and provide them on request to the Lands Department. The recording is to comply with instructions set out by the Band.

- 3.10 When a Permit involves the placement of Clean Fill for preloading and grade adjustment for buildings and roadways or in any other case requested by the Lands Department, the Permittee will obtain the services of a Professional Engineer to certify that the Clean Fill has been appropriately placed and compacted for the proposed use.
- 3.11 All Permittees shall ensure that access to any area from which Soil is being removed or on which Clean Fill is being placed is controlled at all times by a gate or other suitable device to prevent unauthorized dumping or excavation and that the area is free of hazard and maintained hazard-free at all times.
- 3.12 If, at any stage of Soil removal or the Deposit of Clean Fill, it appears that further work authorized by the Permit is likely to endanger any utilities, bridges, drains, property, streets, easements or lanes, or is likely to create conditions which would endanger the health or safety of persons or property, the Land Department may revoke the Permit or require the Permittee, as a condition to the continuance of the work, to take adequate precautions to prevent such danger.
- 3.13 It is the responsibility of the Permittee to repair damage to municipal works and to property and to comply with all Band Laws and By-laws.
- 3.14 The Permittee shall ensure that the areas of excavation of Soil or Deposit of Clean Fill shall be covered with not less than 100 mm of topsoil. The Permittee shall also ensure that such areas are graded and sown with grass or protective cover if so ordered by the Lands Department.
- 3.15 This by-law may be cited as “_____First Nation Transport and Deposit of Soil Law #_____”.

Severability

- 3.16 If any section, subsection, sentence, clause or phrase of this Law is for any reason held to be invalid by the decision of any court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder.
- 3.17 This Law takes effect on the date of its enactment.
- 3.18 This Law will be published in the Minutes of Council, posted in the administrative offices of the First Nation within 7 days and entered in the Registry of Laws in accordance with section 8 of the Land Code.

This Law is hereby adopted at a duly convened meeting of the Council of the _____ First Nation open to members this _____ day of _____, 2005.

The following members of Council, constituting not less than 60% of Council Members, voted in favour of and signed this Law:

Chief

Councillor

Councillor

Councillor

Councillor

The quorum of the Council is 3 members.

Number of members of the Council present at the meeting _____

Draft Checklist (Not Part of the Law)

A person applying for a permit pursuant to Section 3 shall provide to the Lands Department (or Land Manager) the following **as required**:

Yes No

- (a) a complete application in the form prescribed by the Lands Manager;
 (b) a description of the fill proposed to be dumped including a description of the source of the fill; and
 (c) if the so requested, a set of accurate plans meeting some, or all, of the requirements set out below.

To indicate proposed changes, before and after Site Alteration Plans are required. Plans for the alteration and grading or for the placing or dumping of fill shall be prepared in accordance with the standard drawings and to the satisfaction of the First Nation and include and/or note the following on the site and surrounding area:

- a title block – including lot and plan number and scale used
- a location map with north arrow,
- property lines and dimensions,
- the current and proposed use of the site,
- dimensions and use of any existing or proposed buildings or structures on or adjacent to the site,
- existing & proposed elevations with contours at 0.5 metre intervals or less,
- spot elevations along property lines at 10 metres beyond the property
- the predominant soils,
- any environmental contamination on the site,
- all wetlands,
- woodlots,
- vegetative cover, drains,
- channels,
- ditches,
- swales,
- watercourses or water bodies,
- fish habitat,
- regulatory floodline and Conservation Authority fill regulation lines,
- utilities,
- roads,
- the proposed stormwater management system and the existing and final elevations of the site with direction of flow arrows

show temporary erosion control measures to be in place during the construction period, e.g. silt fence, sedimentation traps, etc., and permanent erosion control works to be left in place after construction and lot grading is completed, e.g. siltation ponds, etc.