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NOTTAWASEPPI HURON BAND OF POTAWATOMI  
SOIL EROSION AND SEDIMENT CONTROL  
ORDINANCE

ORDINANCE #03-1800-00  
PASSED ON MARCH 18, 2000

**NOTTAWASEPPI HURON BAND OF POTAWATOMI  
SOIL EROSION AND SEDIMENT CONTROL ORDINANCE**

**SECTION I.     INTRODUCTION/PURPOSE**

DURING THE CONSTRUCTION PROCESS, SOIL IS HIGHLY VULNERABLE TO EROSION BY WIND AND WATER. ERODED SOIL ENDANGERS WATER RESOURCES BY IMPAIRING WATER QUALITY AND CAUSING THE SILTATION OF AQUATIC HABITAT FOR FISH AND OTHER DESIRABLE SPECIES. ERODED SOIL ALSO NECESSITATES REPAIR OF SEWERS AND DITCHES AND THE DREDGING OF LAKES. IN ADDITION, CLEARING AND GRADING DURING CONSTRUCTION CAUSE THE LOSS OF NATIVE VEGETATION NECESSARY FOR TERRESTRIAL AND AQUATIC HABITAT.

AS A RESULT, THE PURPOSE OF THIS TRIBAL REGULATION IS TO SAFEGUARD PERSONS, PROTECT PROPERTY, AND PREVENT DAMAGE TO THE ENVIRONMENT WITHIN AREAS OF NOTTAWASEPPI HURON BAND OF POTAWATOMI (NHBP) JURISDICTION. THIS ORDINANCE WILL ALSO PROMOTE THE PUBLIC WELFARE BY GUIDING; REGULATING, AND CONTROLLING THE DESIGN, CONSTRUCTION, USE, AND MAINTENANCE OF ANY DEVELOPMENT OR OTHER ACTIVITY THAT DISTURBS OR BREAKS THE TOPSOIL OR RESULTS IN THE MOVEMENT OF EARTH ON LAND WITHIN AREAS OF NOTTAWASEPPI HURON BAND OF THE POTAWATOMI JURISDICTION.

**SECTION II     DEFINITIONS**

**CERTIFIED CONTRACTOR:** A PERSON WHO HAS RECEIVED TRAINING AND IS LICENSED BY TRIBE AND/OR A FEDERAL AGENCY (US ARMY CORPS, EPA, BIA, ETC.) TO INSPECT AND MAINTAIN EROSION AND SEDIMENT CONTROL PRACTICES.

**CLEARING:** ANY ACTIVITY THAT REMOVES THE VEGETATIVE SURFACE COVER.

**CRITICAL EROSION AREAS:** INCLUDES SITES WITH ONE OR MORE OF THE FOLLOWING CHARACTERISTICS: AREAS WITH SLOPES OF 30% (TEN FEET HORIZONTAL TO THREE FOOT VERTICAL) OR MORE. AREAS WITH HEAVY CLAY SOILS (COMMONLY TERMED HARDPAN CLAY) AND/OR SILT AND/OR SOILS CLASSIFIED IN THE HYDROLOGICAL GROUP D IN THE NRCS OF THE USDA SOIL SURVEY.

**DRAINAGE WAY:** ANY CHANNEL THAT CONVEYS SURFACE RUNOFF THROUGH OR WITHIN THE SITE.

**EARTH CHANGE:** A HUMAN-MADE CHANGE IN THE NATURAL COVER OR TOPOGRAPHY OF THE LAND, INCLUDING CUT AND FILL ACTIVITIES, WHICH MAY RESULT IN OR CONTRIBUTE TO SOIL EROSION OR SEDIMENTATION OF THE WATERS OF TRIBAL LANDS. THE TERM "EARTH CHANGE", AS USED IN THIS ORDINANCE, SHALL NOT APPLY TO THE PRACTICE OF PLOWING AND TILLING SOIL FOR THE PURPOSE OF CROP PRODUCTION.

**EROSION CONTROL:** A MEASURE THAT PREVENTS AND/OR REDUCES EROSION.

**EROSION AND SEDIMENT CONTROL PLAN:**

A PLAN PREPARED BY OR UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER INDICATING THE SPECIFIC MEASURES AND SEQUENCING TO BE USED TO CONTROL SEDIMENT AND EROSION ON A DEVELOPMENT SITE DURING AND AFTER CONSTRUCTION.

**GRADING:** EXCAVATION OR TILL OF MATERIAL, INCLUDING THE RESULTING CONDITIONS THERE OF.

**PERIMETER CONTROL:** A BARRIER THAT PREVENTS SEDIMENT FROM LEAVING A SITE BY FILTERING SEDIMENT-LADEN RUNOFF OR DIVERTING IT TO A SEDIMENT TRAP OR BASIN.

**PHASING:** CLEARING A PARCEL OF LAND IN DISTINCT PHASES, WITH THE STABILIZATION OF EACH PHASE COMPLETED BEFORE THE CLEARING OF THE NEXT.

**SEDIMENT CONTROL:** MEASURES THAT PREVENT OR REDUCE ERODED SEDIMENT FROM LEAVING THE SITE.

**SITE:** A PARCEL OF LAND OR A CONTIGUOUS COMBINATION THERE OF, WHERE GRADING WORK IS PERFORMED AS A SINGLE UNIFIED OPERATION.

**SITE DEVELOPMENT PERMIT:**

A PERMIT ISSUED BY THE MUNICIPALITY FOR THE CONSTRUCTION OR ALTERATION OF GROUND IMPROVEMENTS AND STRUCTURES FOR THE CONTROL OF EROSION, RUNOFF, AND GRADING.

**STABILIZATION:** THE USE OF PRACTICES THAT PREVENT EXPOSED SOIL FROM ERODING.

**START OF CONSTRUCTION:** THE FIRST LAND-DISTURBING ACTIVITY ASSOCIATED WITH A DEVELOPMENT, INCLUDING LAND PREPARATION SUCH AS CLEARING, GRADING, AND FILLING; INSTALLATION OF STREETS AND WALKWAYS; EXCAVATION FOR BASEMENTS, FOOTINGS, PIERS, OR FOUNDATIONS; ERECTION OF TEMPORARY FORMS; AND INSTALLATION OF ACCESSORY BUILDINGS SUCH AS GARAGES.

**STREAM:** A RIVER, STREAM OR CREEK, WHICH HAS DEFINITE BANKS, A BED, AND VISIBLE EVIDENCE OF A CONTINUED FLOW OR CONTINUED OCCURRENCE OF WATER.

**VEGETATIVE COVER:** GRASSES, SHRUBS, TREES, AND OTHER VEGETATION WHICH HOLD AND STABILIZE SOILS.

**WATERCOURSE:** ANY BODY OF WATER, INCLUDING, BUT NOT LIMITED TO LAKES, PONDS, WETLAND, RIVERS, STREAMS, AND BODIES OF WATER DELINEATED BY NOTTAWASEPPI HURON BAND OF THE POTAWATOMI.

**WATERWAY:** A CHANNEL THAT DIRECTS SURFACE RUNOFF TO A WATERCOURSE OR TO THE PUBLIC STORM DRAIN.

**WETLAND:** LAND CHARACTERIZED BY THE PRESENCE OF WATER AT A FREQUENCY AND DURATION SUFFICIENT TO SUPPORT, AND THAT UNDER NORMAL CIRCUMSTANCES, DOES SUPPORT WETLAND VEGETATION OR AQUATIC LIFE, AND IS COMMONLY REFERRED TO AS A BOG, SWAMP, OR MARSH. A WETLAND WILL CONTAIN A PREDOMINANCE, NOT JUST AN OCCURRENCE, OF WETLAND VEGETATION, HYDROLOGY, OR HYDRIC SOIL.

## **SECTION III      PERMITS**

A) A PERMIT SHALL BE REQUIRED FOR ANY EARTH CHANGE ACTIVITIES THAT DISTURB AND/OR UNCOVER 25,000 OR *MORE SQUARE FEET* OR DISTURB AND/OR UNCOVER ANY CRITICAL EROSION AREAS OR ARE WITHIN 500 FEET OF A WATERCOURSE

B) NO SITE DEVELOPMENT PERMIT IS REQUIRED FOR THE FOLLOWING ACTIVITIES:

- 1) ANY EMERGENCY ACTIVITY THAT IS IMMEDIATELY NECESSARY FOR THE PROTECTION OF LIFE, PROPERTY, OR NATURAL RESOURCES.
- 2) EXISTING NURSERY AND AGRICULTURAL OPERATIONS CONDUCTED AS A PERMITTED MAIN OR ACCESSORY USE.
- 3) ANY EARTH CHANGE THAT DISTURBS AND/OR UNCOVERS LESS THAN 25,000 SQUARE FEET.

\*ACTIVITIES NOT REQUIRING PERMITS ARE STILL REQUIRED TO IMPLEMENT SOIL EROSION AND SEDIMENT CONTROL MEASURES.

C) APPLICATION SUBMITTAL

- 1) ALL PERMIT APPLICATIONS SHALL BE SUBMITTED TO THE NHBP ENVIRONMENTAL DEPARTMENT.
- 2) EACH APPLICATION SHALL BEAR THE NAME(S) AND ADDRESS(ES) OF THE OWNER AND DEVELOPER OF THE SITE, AND OF ANY CONSULTING FIRM RETAINED BY THE APPLICANT TOGETHER WITH THE NAME OF THE APPLICANT'S PRINCIPAL CONTACT AT SUCH FIRM, LOCATION AND SIZE OF THE EARTH CHANGE, DESCRIPTION OF THE EARTH CHANGE, PROJECT STARTING AND ENDING DATES AND *SHALL BE ACCOMPANIED BY APPROPRIATE FILING FEE (SEE # 3 OF THIS SECTION)*. ADDITIONALLY THE APPLICATION MUST BE ACCOMPANIED BY A SOIL EROSION AND SEDIMENTATION CONTROL PLAN AND THAT A CERTIFIED CONTRACTOR SHALL BE ON SITE ON ALL DAYS WHEN CONSTRUCTION OR GRADING ACTIVITY TAKES PLACE.
- 3) APPLICATION FEES. PERMITS FOR EARTH CHANGES DISTURBING AND/OR UNCOVERING LESS THAN 50,000 SQUARE FEET SHALL BE ACCOMPANIED BY A \$50.00 APPLICATION FEE. PERMITS FOR EARTH CHANGES DISTURBING AND/OR UNCOVERING 50,000 SQUARE FEET TO 100,000 SQUARE FEET SHALL BE ACCOMPANIED BY A \$100.00 APPLICATION

FEE. PERMITS FOR EARTH CHANGES DISTURBING AND/OR UNCOVERING MORE THAN 100,000 SQUARE FEET SHALL BE ACCOMPANIED BY A \$250.00 APPLICATION FEE.

4) APPLICATION FOR A PERMIT SHALL BE MADE 45 DAYS PRIOR TO THE START OF ANY EARTH CHANGE. NO EARTH CHANGE, CLEARING, GRADING OR CONSTRUCTION OF ACCESS ROADS AND/OR DRIVEWAYS MAY COMMENCE PRIOR TO THE ISSUANCE OF A PERMIT. PERMIT APPROVAL SHALL BE GIVEN PRIOR TO THE INITIATION OF ANY WORK ACTIVITY. ANY UNAUTHORIZED WORK SHALL BE CONSIDERED A VIOLATION OF THESE PROCEDURES REGARDLESS OF ANY LATER ACTIONS TOWARD COMPLIANCE. SOIL TEST BORINGS, VEGETATIVE CUTTING FOR LAND SURVEYS, PERCOLATION TESTS AND NORMAL MAINTENANCE SHALL NOT BE CONSIDERED A START OF WORK UNDER THESE REGULATIONS.

#### **SECTION IV EROSION AND SEDIMENT CONTROL PLAN**

A) THE EROSION AND SEDIMENT CONTROL PLAN SHALL INCLUDE THE FOLLOWING:

1) A NATURAL RESOURCES MAP IDENTIFYING SOILS, LAND USE COVER, ELEVATION CONTOURS, SLOPE, DRAINAGE PATTERNS, AND RESOURCES PROTECTED UNDER OTHER CHAPTERS OF THIS CODE. THE MAP, AT A MINIMUM SHALL HAVE SLOPES OF THE SITE GROUPED INTO RANGES OF STEEPNESS AND MARKED ON THE MAP. THE MAP SHOULD HAVE A SCALE NO SMALLER THAN 1"=100'.

2) A SEQUENCE OF CONSTRUCTION OF THE DEVELOPMENT SITE, INCLUDING STRIPPING AND CLEARING; ROUGH GRADING; CONSTRUCTION OF UTILITIES, INFRASTRUCTURE, AND BUILDINGS; AND FINAL GRADING, STABILIZATION AND LANDSCAPING. SEQUENCING SHALL IDENTIFY THE EXPECTED DATE ON WHICH CLEARING WILL BEGIN, THE ESTIMATED DURATION OF EXPOSURE OF CLEARED AREAS, AREAS OF CLEARING, INSTALLATION OF TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES, AND ESTABLISHMENT OF PERMANENT VEGETATION.

3) ALL EROSION AND SEDIMENT CONTROL MEASURES NECESSARY TO MEET THE OBJECTIVES OF THE LOCAL REGULATION THROUGHOUT ALL PHASES OF CONSTRUCTION AND AFTER COMPLETION OF DEVELOPMENT OF THE SITE. DEPENDING UPON THE COMPLEXITY OF THE PROJECT, THE DRAFTING OF INTERMEDIATE PLANS MAY BE REQUIRED AT THE CLOSE OF EACH SEASON.

4) A DISTINCTION BETWEEN TEMPORARY CONTROL MEASURES AND PERMANENT CONTROL MEASURES.

5) SEEDING MIXTURES AND RATES, TYPES OF SOD, METHOD OF SEEDBED PREPARATION, EXPECTED SEEDING DATES, TYPE AND RATE OF LIME AND FERTILIZER APPLICATION, AND KIND AND QUANTITY OF MULCHING FOR BOTH TEMPORARY AND PERMANENT VEGETATIVE CONTROL MEASURES.

6) PROVISIONS FOR MAINTENANCE OF CONTROL FACILITIES, INCLUDING EASEMENTS AND ESTIMATES OF THE COST OF MAINTENANCE.

B) MODIFICATIONS TO THE PLAN SHALL BE PROCESSED AND APPROVED OR DISAPPROVED IN THE SAME MANNER AS SECTION V OF THIS REGULATION, MAY BE AUTHORIZED BY NHBP ENVIRONMENTAL DEPARTMENT BY WRITTEN AUTHORIZATION TO THE PERMITTEE, AND SHALL INCLUDE:

1) MAJOR AMENDMENTS OF THE EROSION AND SEDIMENT CONTROL PLAN SUBMITTED TO NHBP ENVIRONMENTAL DEPARTMENT.

2) FIELD MODIFICATIONS OF A MINOR NATURE.

## **SECTION V REVIEW AND APPROVAL**

A) NHBP ENVIRONMENTAL DEPARTMENT WILL REVIEW EACH APPLICATION FOR A SITE DEVELOPMENT PERMIT TO DETERMINE ITS CONFORMANCE WITH THE PROVISIONS OF THIS REGULATION. WITHIN 30 DAYS AFTER RECEIVING A COMPLETE APPLICATION, NIIBP ENVIRONMENTAL DEPARTMENT SHALL, IN WRITING:

- 1) APPROVE THE PERMIT APPLICATION; OR
- 2) APPROVE THE PERMIT APPLICATION SUBJECT TO SUCH REASONABLE CONDITIONS AS MAY BE NECESSARY TO SECURE SUBSTANTIALLY THE OBJECTIVES OF THIS REGULATION, AND ISSUE THE PERMIT SUBJECT TO THESE CONDITIONS; OR
- 3) DISAPPROVE THE PERMIT APPLICATION, INDICATING THE REASON(S) AND PROCEDURE FOR SUBMITTING A REVISED APPLICATION AND/OR SUBMISSION.

B) FAILURE OF THE NHBP ENVIRONMENTAL DEPARTMENT TO ACT ON AN ORIGINAL OR REVISED APPLICATION WITHIN 30 DAYS OF RECEIPT SHALL AUTHORIZE THE APPLICANT TO PROCEED IN ACCORDANCE WITH THE PLANS AS FILED UNLESS SUCH TIME IS EXTENDED BY AGREEMENT BETWEEN THE APPLICANT AND NHBP ENVIRONMENTAL DEPARTMENT. PENDING PREPARATION AND APPROVAL OF A REVISED PLAN, DEVELOPMENT ACTIVITIES SHALL BE ALLOWED TO PROCEED IN ACCORDANCE WITH CONDITIONS ESTABLISHED BY NHBP ENVIRONMENTAL DEPARTMENT.

## **SECTION VII INSPECTION**

A) NHBP ENVIRONMENTAL DEPARTMENT DESIGNATED AGENT SHALL MAKE INSPECTIONS AS HEREINAFTER REQUIRED AND EITHER SHALL APPROVE THAT PORTION OF THE WORK COMPLETED OR SHALL NOTIFY THE PERMITTEE WHEREIN THE WORK FAILS TO COMPLY WITH THE EROSION AND SEDIMENT CONTROL PLAN AS APPROVED. PLANS FOR GRADING, STRIPPING, EXCAVATING, AND FILLING WORK BEARING THE STAMP OF APPROVAL OF THE NHBP ENVIRONMENTAL DEPARTMENT SHALL BE MAINTAINED AT THE SITE DURING THE PROGRESS OF THE WORK. TO OBTAIN INSPECTIONS, THE PERMITTEE SHALL NOTIFY NHBP ENVIRONMENTAL DEPARTMENT AT LEAST TWO WORKING DAYS BEFORE THE FOLLOWING:

- 1) START OF CONSTRUCTION
- 2) INSTALLATION OF SEDIMENT AND EROSION MEASURES
- 3) COMPLETION OF SITE CLEARING
- 4) COMPLETION OF ROUGH GRADING
- 5) COMPLETION OF FINAL GRADING
- 6) CLOSE OF THE CONSTRUCTION SEASON
- 7) COMPLETION OF FINAL LANDSCAPING

B) THE PERMITTEE OR HIS/HER AGENT SHALL MAKE REGULAR INSPECTIONS OF ALL CONTROL MEASURES IN ACCORDANCE WITH THE INSPECTION SCHEDULE OUTLINED IN THE APPROVED EROSION AND SEDIMENT CONTROL PLAN(S). THE PURPOSE OF SUCH INSPECTIONS WILL BE TO DETERMINE THE OVERALL EFFECTIVENESS OF THE CONTROL PLAN AND THE NEED FOR ADDITIONAL CONTROL MEASURES. ALL INSPECTIONS SHALL BE DOCUMENTED IN WRITTEN FORM AND SUBMITTED TO NHBP ENVIRONMENTAL DEPARTMENT AT THE TIME INTERVAL SPECIFIED IN THE APPROVED PERMIT.

C) NHBP ENVIRONMENTAL DEPARTMENT OR ITS DESIGNATED AGENT SHALL ENTER THE PROPERTY OF THE APPLICANT AS DEEMED NECESSARY TO MAKE REGULAR INSPECTIONS TO ENSURE THE VALIDITY OF THE REPORTS FILED UNDER SECTION B.

## **SECTION VIII ENFORCEMENT**

### **A) STOP-WORK ORDER; REVOCATION OF PERMIT**

IN THE EVENT THAT ANY PERSON HOLDING A SHE DEVELOPMENT PERMIT PURSUANT TO THIS ORDINANCE VIOLATES THE TERMS OF THE PERMIT OR IMPLEMENTS SITE DEVELOPMENT IN SUCH A MANNER AS TO MATERIALLY ADVERSELY AFFECT THE HEALTH, WELFARE, OR SAFETY OF PERSONS RESIDING OR WORKING IN THE NEIGHBORHOOD OR DEVELOPMENT SITE SO AS TO BE MATERIALLY DETRIMENTAL TO THE PUBLIC WELFARE OR INJURIOUS TO PROPERTY OR IMPROVEMENTS IN THE NEIGHBORHOOD, NHBP ENVIRONMENTAL DEPARTMENT MAY SUSPEND OR REVOKE THE SITE DEVELOPMENT PERMIT.

### **B) VIOLATION AND PENALTIES;**

NO PERSON SHALL CONSTRUCT, ENLARGE, ALTER, REPAIR, OR MAINTAIN ANY GRADING, EXCAVATION, OR FILL, OR CAUSE THE SAME TO BE DONE, CONTRARY TO OR IN VIOLATION OF ANY TERMS OF THIS ORDINANCE. ANY PERSON VIOLATING ANY OF THE PROVISIONS OF THIS ORDINANCE SHALL BE DEEMED GUILTY OF A MISDEMEANOR AND EACH DAY DURING WHICH ANY VIOLATION OF ANY OF THE PROVISIONS OF THIS ORDINANCE IS COMMITTED, CONTINUED, OR PERMITTED, SHALL CONSTITUTE A SEPARATE OFFENSE. UPON CONVICTION OF ANY SUCH VIOLATION, SUCH PERSON, PARTNERSHIP, OR CORPORATION SHALL BE PUNISHED BY A FINE DEEMED APPROPRIATE BY THE TRIBAL COUNCIL AND OR TRIBAL COURT AND NOT EXCEED MORE THAN \$1,000.00. IN ADDITION TO ANY OTHER PENALTY AUTHORIZED BY THIS SECTION, ANY PERSON, PARTNERSHIP, OR CORPORATION CONVICTED OF VIOLATING ANY OF THE PROVISIONS OF THIS ORDINANCE SHALL BE REQUIRED TO BEAR THE EXPENSE OF SUCH RESTORATION.

### **C) EMERGENCY ACTION**

IF NECESSARY TO PROTECT PUBLIC SAFETY OR A WATERCOURSE, THE NHBP ENVIRONMENTAL DEPARTMENT EMPOWERED BY THE TRIBAL COUNCIL TO ACT MAY INITIATE EMERGENCY ACTION TO ABATE IMMINENT AND SUBSTANTIAL DANGER AND RISK. THE LAND HOLDER/PROPERTY OWNER WILL BE HELD RESPONSIBLE FOR REIMBURSING THE NOTTAWASEPPI BYRON BAND OF THE POTAWATOMI FOR ALL COST INCURRED AS A RESULT OF THE EMERGENCY ACTION TAKEN, PROVIDED THAT A FINDING IS MADE THAT THE LAND HOLDER/PROPERTY OWNER VIOLATED PROVISIONS OF THIS ORDINANCE.

## **SECTION IX SEPARABILITY**

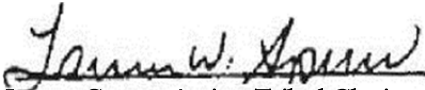
THE PROVISIONS AND SECTIONS OF THIS ORDINANCE SHALL BE DEEMED TO BE SEPARABLE, AND THE INVALIDITY OF ANY PORTION OF THIS ORDINANCE SHALL NOT AFFECT THE VALIDITY OF THE REMAINDER.

## **SECTION X EFFECTIVE DATE**

THE ORDINANCE SHALL TAKE EFFECT WHEN APPROVED BY THE TRIBAL COUNCIL.

CERTIFICATION

WE DO HEREBY CERTIFY THAT THE FOREGOING ORDINANCE #03-1800-00 WAS DULY PRESENTED AND ADOPTED ON THE 18<sup>TH</sup> DAY OF MARCH, 2000, BY A VOTE OF 3 FOR, 0 AGAINST, AND 0 ABSTAINING WITH A QUORUM OF 3 BEING PRESENT AT A DULY SCHEDULED TRIBAL COUNCIL MEETING.

  
\_\_\_\_\_  
Laura Spurr, Acting Tribal Chairperson

Date 3-18-00

\_\_\_\_\_  
Date 3-18-00

Mary Medawis, Tribal Secretary