



**K'ómoks First Nation**

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**ALLOTMENT AND CP LAW, 2017**

**June 26 2017**

K'omoks First Nation  
ALLOTMENT AND CP LAW

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K'ómoks First Nation  
Allotment and CP Law

**Preamble**

- A. K'ómoks First Nation (KFN) 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. K'ómoks First Nation has taken over control and management of K'ómoks First Nation reserve lands and resources pursuant to the Framework Agreement on First Nation Land Management and has enacted the K'ómoks First Nation Land Code effective the 30<sup>th</sup> day of November, 2016.
- C. Under the K'ómoks First Nation Land Code, K'ómoks Council is authorized to pass various laws relating to lands including laws relating to regulation and use of the KFN Lands and laws relating to allotments and creation of interests under sections 12, 32 and 33 of the KFN Land Code.

**NOW THEREFORE** this K'ómoks First Nation Allotment and CP Law is hereby enacted at a duly convened meeting as a Law of K'ómoks First Nation.

**Part I – Purposes and interpretation**

**Section 1. Name**

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- 1.1 This Law may be cited as the *K'ómoks First Nation (KFN) Allotment and CP Law, 2017*.

**Section 2. Purpose**

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- 2.1 The purpose of this Law is to provide a fair and transparent process for the granting of Allotments and CPs in KFN Lands.

**Section 3. Where this Law Applies**

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- 3.1 The provisions of this Law apply to all KFN Lands as defined in the K'ómoks First Nation Land Code (the "Land Code").
- 3.2 For certainty, the Land Code applies this Law and on all KFN Land. In the event of an inconsistency between this Law and the Land Code, the Land Code prevails.
- 3.3 Council may, by Band Council Resolution, grant an Allotment of Community Lands or Certificate of Possession ("CP") in accordance with this Law and the Land Code.

**Section 4. Definitions**

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- 4.1 For the purposes of this Law, capitalized terms have the same definitions as in the Land Code.

## Part II - Limits on Allotments and CPs

### Section 5. Natural Resources

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- 5.1 Neither an Allotment nor CP includes Natural Resources on or under that land to the extent they are under KFN jurisdiction, unless expressly stated in the relevant Written Instrument approved by the Lands Manager and Council. Unless the Allotment or CP expressly provides otherwise, the Natural Resources will be reserved for the benefit of KFN.
- 5.2 For certainty, nothing in this Law affects a resident's obligation to keep their property in repair or affects resident's liability for such care.

### Section 6. Criteria for granting CPs and Allotments

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- 6.1 A new CP or Allotment of Community Lands:
- (a) may only be granted to a Member who
    - (i) is 19 years old, or older;
    - (ii) does not have debts/arrears owing to KFN; and
  - (b) must have road access which may include a right-of-way granted by Council by BCR in accordance with the K'omoks Interest and License Law, and must not result in the land locking or blocking of access to another Allotment or CP.

## Part III - Certificates of Possession

### Section 7. Process for conferring CPs

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- 7.1 In addition to the relevant criteria in section 6.1, a new CP may only be granted to a Member that has entered an agreement with KFN whereby KFN commits to granting a CP to the Member pending the Member fulfilling certain conditions or obligations (a "Conditional CP Agreement"), in substantially the same for as Appendix 'A', which conditions or obligations may include but will not be limited to:
- (i) Evidencing to Council that a mortgage over a house on the CP land or the CP itself has been paid out,  
after the Member has
    - (ii) complied with all relevant KFN Laws and has paid any relevant fees including servicing or administration fees; and
    - (iii) if requested by council, the Member releases and indemnifies KFN from any liability or payments for any past mortgages, securities or debts relating to any structure on the CP land, or the CP land itself.

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**Section 8. Process for Sub-dividing CPs**

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- 8.1 Any sub-divisions of land subject to a CP will be subject to application to Council in the form substantially similar to the attached at Appendix B and subject to all KFN Laws and the Land Code.

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**Section 9. Process for re-conferring CPs after Mortgage Default**

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- 9.1 Where KFN guarantees a Member's mortgage or their house or structure on CP land, or the CP land itself, or has a first right of refusal in respect of a CP being used as security for a Member's mortgage,
- (a) if that mortgage is defaulted on; and
  - (b) KFN assumes responsibility for the default or exercises its right of first refusal over the CP interest, Council may, by Resolution:
    - (i) sell the CP to another Member for a price at least equal to the amount owing under the defaulted mortgage in addition to associated costs; and
    - (ii) grant the CP to that purchasing Member once all requirements in this Law and the Land Code are complied with.

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**Section 10. Where a Court Orders Issuance or Transference of a CP**

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- 10.1 Where, a court of competent jurisdiction orders a CP to be issued or transferred, Council shall by Resolution grant the CP after complying with any relevant requirements under this Law and the Land Code.

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**Section 11. CP Expropriation and Exchange of Lands**

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- 11.1 Council may, subject to section 34 of the KFN Land Code, by Resolution, exchange a grant of a CP for one or more CPs held by a Member, where it is in the best interests of KFN, provided the conditions set out in the Land Code are met.

## **Part IV - Allotments**

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**Section 12. Process for Allotting Community Lands**

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- 12.1 In addition to the criteria in section 6.1, a new Allotment of Community Lands may only be granted for:
- (a) Residential Use;
  - (b) a lot size not exceeding one half acre; and
  - (c) Community Lands for which Council has received a Proposal for Allotment in Community Lands, pursuant to sections 12.2 and 12.3.
- 12.2 The Lands Department shall prepare or have prepared a Proposal for Allotment in Community Lands, in substantially the same form as that attached as Appendix C:

- (a) where land is available; and
- (b) Council determines it is in the best interests of K'ómoks to grant one or more new Allotments in Community Lands for the purposes of housing.

12.3 The Proposal for Allotment in Community Lands shall set out:

- (a) the location and description of the Community Lands available for Allotment;
- (b) any terms, conditions and exceptions in the Allotment to be granted;
- (c) the permitted uses under the Land Use Plan or Zoning and Land Use Law for the Community Lands to be allotted, subject to the condition of Residential Use under section 12.1;
- (d) an assessment of whether hook-up, servicing, or other fees are required to cover or offset expenses incurred by KFN in acquiring or developing the lot;
- (e) the access to the land with a notification to Council regarding any access issues;
- (f) any existing encumbrances or third-party interests;
- (g) the proposed selection or sale process; and
- (h) such other information as Council deems necessary.

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**Section 13. Process for Sub-dividing Allotments**

13.1 Any subdivision of land subject to an Allotment will be subject to application to Council in the form substantially similar to the attached at Appendix B, and subject to all KFN Laws and the Land Code.

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**Section 14. Process for re-conferring Allotments after Mortgage Default and by Court Order**

14.1 Where KFN guarantees a Member's mortgage of their house on land allotted to them for residential purposes, or has a first right of refusal in respect of an Allotment being used as security for a Member's mortgage of a house on land allotted to them for residential purposes,

- (a) if that mortgage is defaulted on; and
- (b) KFN assumes responsibility for the default or exercises its right of first refusal over the Allotment interest, Council may, by Resolution:
  - (i) sell the Allotment to another Member for a price at least equal to the amount owing under the defaulted mortgage in addition to associated costs; and
  - (ii) grant the Allotment to that purchasing Member referred to in 14.1(b)(i), above, once all requirements in this Law and the Land Code are complied with.

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**Section 15. Where a Court orders Issuance or Transference of an Allotment**

15.1 Where, a court of competent jurisdiction orders an Allotment to be issued or transferred, Council shall by Resolution grant the Allotment after complying with any relevant requirements under this Law and the Land Code.

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**Section 16. Other Allotments**

16.1 Council may grant any other Allotments in accordance with this Law, the Land Code, Housing Policy or a Regulation passed by Council under this Law.

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**Section 17. Conditional Allotments**

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- 17.1 Council may attach reasonable conditions to any Allotment being considered which may include, without limiting the generality of the conditions, a requirement to complete construction of a new home on any residential Allotment by Fiscal year end the year following the year in which the Allotment was made.
- 17.2 The conditions for any conditional grant shall be in writing, substantially in the form of Schedule 'A' attached, and shall specify if the Allotment will be automatically cancelled if one or more conditions are not met.
- 17.3 If a Member fails to comply with the specific conditions that lead to automatic cancellation, the Allotment shall be cancelled and Council may re-issue it to another Member in accordance with this Law.

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**Section 18. Allotment Expropriation and Exchange of Lands**

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- 18.1 Council may, subject to section 34 of the KFN Land Code, by Resolution, exchange a grant of an Allotment in Community Lands for one or more Allotments held by a Member, where it is in the best interests of KFN, provided the conditions set out in the Land Code are met.

## **Part V - Registration**

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**Section 19. Registration of Allotments and CPs**

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- 19.1 For each Allotment and CP granted under this Law, Council shall direct the Lands Manager to:
- (a) ensure that all Laws and policies have been complied with; and
  - (b) after ensuring such compliance, to register the Allotment or CP in the First Nations Lands Registry and provide an certificate to the holder of the Allocation or the CP, evidencing their interest in the Land.
- 19.2 For greater certainty, section 33.5 of the KFN Land Code applies and a CP holder may transfer or assign their CP to another Member but such assignment must be registered in the KFN lands office and the First Nations Land Registry to be effective.

## **Part VI – Conflicts and Confidentiality**

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**Section 20. Conflict of Interest**

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- 20.1 The conflict provisions in Article 38 of the Land Code apply to this Law, and will prevail in the event of an inconsistency with the conflict provisions contained herein.
- 20.2 A conflict of interest arises in any situation referenced in sections 38.2 or 38.3 of the Land Code, in respect of the issuance of an Allotment or CP, that is, where a Council member or a staff member or their immediate family,

- (a) have personal interests that supersede or compete with their dedication to the best interests of KFN;
- (b) have an opportunity to receive a Financial Benefit or advantage; or
- (c) a reasonably informed person could reasonably perceive the process of allotment or granting the CP was affected by his/her own private interest.

20.3 In the case of a situation referenced in section 20.1, the procedure set out in section 38.8 of the Land Code must be followed, that is, where an individual referenced in section 20.1 who attends a meeting in respect of the issuance of an Allotment or CP, and has reasonable grounds to believe that they have an actual or perceived conflict of interest in the issuance being considered, will disclose the general nature of the actual or perceived conflict of interest and will:

- (a) not participate in any discussion or decision of or vote on any question in respect of the Allotment or CP;
- (b) immediately leave the meeting or the part of the meeting during which the Allotment or CP is under consideration;
- (c) not sign a Resolution or letter in respect of the Allotment or CP; and
- (d) not attempt in any way, whether before, during or after the meeting, to influence the opinion or vote of the Council or board or committee on any question in respect of the Allotment or CP.

#### **Section 21. Confidentiality and Privacy**

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21.1 Neither Council nor staff will release or make public any information about a Member's interest in Allotments or CPs except as required by Law or for the carrying out of an Allotment or CP process under this Law.

### **Part VII – General and coming into force**

#### **Section 22. General**

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- 22.1 This Law is without prejudice and will not abrogate, derogate from, diminish or suspend any of KFN's aboriginal rights or title.
- 22.2 Where any federal Act or regulation or provincial Act or regulation or any other KFN Law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation or Law.
- 22.3 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be read down, or severed if necessary, and will not affect the remainder of this Law.
- 22.4 The headings given to the sections and paragraphs in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.
- 22.5 Council may make regulations or pass Council Resolutions as follows:
  - (a) Setting out the details and process for other types of Allotments, pursuant to section 16.1;



- (b) Providing for or updating any forms or applications for provided for in this Law; and
- (c) Setting in place any other matter required to implement this Law.

**Section 23. Coming into Force**


23.1 This Law shall come into force and effect on the date it is passed by Council Resolution, as evidenced below.

**BE IT KNOWN** that this Law entitled the K'omoks First Nation Allotment and CP Law, 2017 is hereby enacted by resolution by a quorum of Council at a duly convened meeting of Council of the K'omoks First Nation held on June 26, 2017.

  
\_\_\_\_\_  
Chief

  
\_\_\_\_\_  
Councillor

  
\_\_\_\_\_  
Councillor

  
\_\_\_\_\_  
Councillor

A quorum consists of three (3)  
Council Members

**Appendix A**

**Conditional CP or Allotment Agreement**

The K'omoks First Nation (the "Nation") commits to granting \_\_\_\_\_  
(the "Applicant") one (please check one only):

- CP
- Allotment

as detailed in the attached survey, upon the fulfillment of the following conditions (the "Agreement"):

1. The Applicant is a Member of the Nation, is at least 19 years old, and does not have any debts or arrears owing to the Nation;
2. The CP/Allotment has road access and does not land-lock or block access to another CP or Allotment
3. If the Agreement is in relation to a CP;
  - (a) the Applicant agrees to either
    - i. supply the Nation's Council evidence that those mortgages have been paid, if the Applicant holds a mortgage over the CP land or any houses on the CP land; or
    - ii. complete or substantially complete a home or structure on the CP land;
  - (b) if requested by the Nation's Council below, release and indemnify the Nation from any liability or payments for any past mortgages, securities or debts relating to any structure on the CP land or the CP itself;
4. If the Agreement is in relation to an Allotment, the Allotment is not greater than half an acre;
5. The Applicant comply with all relevant laws of the Nation;
6. The Applicant pay all relevant fees including servicing or administration fees;
7. The Applicant releases the Nation from liability arising from use of the CP/Allotment;
8. The Nation's Lands Department registers or records the CP/Allotment in the First Nations Land Registry with the Identifier number and on the date specified herein.
9. The following checked conditions apply (optional):
  - Council requests the release and indemnity under section 4(b) of the Agreement
  - Additional conditions are attached as a separate sheet and form part of the Agreement

Signed:

\_\_\_\_\_  
(the Applicant)

\_\_\_\_\_  
(the Lands Manager certifies  
Council's consent is attached as  
separate sheet)

\_\_\_\_\_  
(Date)

For Land Department use only

**First Nations Land Registry**  
Identifier number: \_\_\_\_\_

**Date of registration/  
recording:** \_\_\_\_\_

**Appendix B**

**Application to Sub-divide CP or Allotted Land**

<b>APPLICANT</b>		
Applicant's name:		
Applicant's date of birth:		
Applicant's residential address:		
Applicant's phone number:		
Applicant's email address:		
Debts/arrears owing to the K'omoks First Nation (please check one):	<input type="checkbox"/> No	<input type="checkbox"/> Yes
<b>LAND TO BE SUBDIVIDED</b>		
Check one:	<input type="checkbox"/> Allotment	<input type="checkbox"/> CP
First Nations Land Registry Identifier number of land to be subdivided:		
Address of Allotment (If Allotment is being subdivided):		
Each new CP/Allotment created has road access (please check one and attach the plan for the proposed subdivision to this application):	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If NO, please provide the details of why (please attach separate sheet if necessary):		
At least one CP/Allotment blocks access to or land-locks another CP or Allotment (please check one):	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If YES, please provide the details of which other CP and/or Allotment is being blocked/land-locked (please attach separate sheet if necessary):		

The Applicant agrees that information provided is true, and will liable for false information, and to:

- comply with all relevant laws of the K'omoks First Nation
- pay all relevant fees including servicing or administration fees
- releases the Nation from liability arising from use of each new CP/Allotment created from the subdivision

Signed:

\_\_\_\_\_

\_\_\_\_\_

(the Applicant)

(Date)

**Appendix C  
 Proposal for Allotment of Community Lands**

<b>Submitted by:</b>		<b>Date of Proposal:</b>		
<b>COMMUNITY LAND TO BE ALLOTTED</b>				
Location of Community Lands proposed to be allotted (please check one):	<input type="checkbox"/> Comox IR 1 (K'ómoks) <input type="checkbox"/> Pentledge IR 2 (Puntledge) <input type="checkbox"/> Goose Spit IR 3	<input type="checkbox"/> Salmon River IR 1 <input type="checkbox"/> Other (please specify): _____		
Description of the Community Lands available for allotment (please attach separate sheet if necessary):				
Description of existing access (road or otherwise) for proposed allotment (please attach separate sheet if necessary):				
Existing encumbrances/third party interests on the proposed allotment (please attach separate sheet if necessary):				
<b>PERMITTED USES</b>				
Land Code restrictions: Residential, eligibility is subject to <i>Allotment and CP Law</i>				
Zoning and Land Use Law restrictions (please attach separate sheet if necessary):				
<b>COSTS OF ACQUIRING OR DEVELOPING THE LOT</b> (separate sheet if require)				
Process required to acquire or develop	Cost	Member set-off (Y/N)	If Yes, attach proposed set-off plan	
			Associated Fees (hook-up, servicing, other)	Fee amount
<b>TERMS, CONDITIONS, EXCEPTIONS IN ALLOTMENTS</b>				
Process for Members to acquire Allotments:	<input type="checkbox"/> Sale Price:	<input type="checkbox"/> Selection Application fee:		
Other terms, conditions and exceptions in the allotments (please attach separate sheet if necessary):				