

**Shxw'ōwhámél First Nation
Traditional Holdings Recognition Policy, 2018**

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WHEREAS:

- A. We, the Shxw'ōwhámél First Nation (“**Shxw'ōwhámél**”), being a member of the Tiyt Tribe, have and maintain Indigenous Title, Rights and interests to our lands and resources within S'olh T'émèxw, our Stó:lō Territory;
- B. Our Indigenous Title, Rights and interests are expressed in our Halq'eméylem language as: “*S'ólh T'émèxw te ikw'el'ó. Xólhmet te mékw'stám it kwelát*”, meaning “This is our land. We have to take care of everything that belongs to us”;
- C. *Tómiyeqw* – meaning, at all times we have a responsibility to our past seven generations and seven generations into the future;
- D. We have a unique relationship with our *Sxexó:mes*, including our lands and resources, which is expressed in our *Sxwōxwiyá:m*, *Sqwélqwel* and *Shxwelí*, which together help define our Indigenous Title, Rights and interests;
- E. We have 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*;
- F. We have taken back our unextinguished right to control and manage our Shxw'ōwhámél Lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and have enacted the *Shxw'ōwhámél First Nation Land Code*, verified on October 23, 2014 (the “**Land Code**”);
- G. In accordance with the allocation of ownership-type rights to Shxw'ōwhámél families, which allocation was carried out in accordance with Shxw'ōwhámél laws, customs and protocols, and in response to the federal government's historic imposition of agricultural activities on Indian reserve lands, Shxw'ōwhámél families moved out of their traditional longhouses, onto specific plots of land, and worked and cleared these traditional land holdings;
- H. Subsequently, Shxw'ōwhámél unanimously voted to incorporate these lands into the broader Shxw'ōwhámél community in recognition of the value thereof to the whole;
- I. Pursuant to section 34 of the Land Code, our Si:yá:m Council is authorized to pass laws and policies for respecting and taking into account these Traditional Holdings in the development of our Community Lands; and
- J. Si:yá:m Council wishes to enact a policy for the respect and recognition of Traditional Holdings on Shxw'ōwhámél Lands,

NOW THEREFORE BE IT RESOLVED THAT this *Shxw'ōwhámél First Nation Traditional Holdings Recognition Policy, 2018* is hereby adopted by the Si:yá:m Council.

PART 1 – NAME

- 1.1 Short Name. This policy may be cited as the *Shxw'ōwhámél Traditional Holdings Policy* (the "**Policy**").

PART 2 – PURPOSE AND APPLICATION

- 2.1 Purpose. The purpose of this Policy is to provide for the recognition of Traditional Holdings.
- 2.2 Authority. The Shxw'ōwhámél Lands Department is responsible for implementing this Policy and will have all powers necessary to give effect to this Policy.
- 2.3 Application. The provisions of this Policy apply to Community Lands, as defined in the Land Code, which comprise all such Shxw'ōwhámél Lands in which all Members have a common interest and which are not subject to any Allotments or Certificates of Possession.
- 2.4 Non-Derogation. No provision of this Policy, or any communication, negotiations or engagements carried out pursuant to it, does, or may be deemed to, prejudice, limit, abrogate or derogate from any of Shxw'ōwhámél's title, rights or interests.

PART 3 – INTERPRETATION

- 3.1 Land Code. Capitalized words not defined in this Law have the same definitions as in the Land Code.
- 3.2 Definitions. In this Policy, the following terms have the following meanings:

"**Council**" means the appointed Si:yá:m Council of the Shxw'ōwhámél First Nation Leadership Governing Body, as defined in *Shxw'ōwhámél First Nation Governance Policy*, ratified on January 24, 2018;

"**Member**" means a member of Shxw'ōwhámél;

"**Shxw'ōwhámél**" means Shxw'ōwhámél First Nation;

"**Traditional Holder**" means the Member(s) who, or whose immediate family, historically cleared and occupied a Traditional Holding; and

"**Traditional Holdings**" means a portion of Community Lands that:

- (a) was cleared historically and occupied by a Member or family of Members;
- (b) has surveyed, marked or discernable boundaries;
- (c) was or is recognized by other Members, families of Members or Council as a legitimate Traditional Holding; and
- (d) meets the requirements set out in the Land Code and any applicable laws or policies as a Traditional Holding.

- 3.3 General Interpretation.

- (a) Our *Slewóyelh*, our traditional laws, apply to the interpretation of this Policy.
- (b) The headings of parts and section of this Policy have been inserted as a matter of convenience and for reference only, and in no way define or limit any of its provisions.
- (c) A word in the singular form may be read in the plural form if the context allows it and a word in the plural form may be read in the singular form if the context allows it. All genders are included in any gender expressed.
- (d) The words “include”, “includes” and “including” are to be read as if they are followed by the phrase “without limitation”.
- (e) Any reference to a statute means that statute, and any regulations made under it, all as amended or replaced from time to time.
- (f) Where any law or legal requirement may apply to any matter covered by this Policy, compliance with this Policy will not relieve the person from also complying with the provisions of such other applicable law or legal requirement.

3.4 Schedule. The following Schedule forms part of and is integral to this Policy:

- (a) Schedule “A” – Map of Traditional Holdings

PART 4 – RECOGNITION OF TRADITIONAL HOLDINGS

4.1 Method of Recognition. In consultation with the family associated with a particular Traditional Holding, Shxw’ówhámél may recognize such Traditional Holding in one or more of the following manners:

- (a) adoption of place names for community or public facilities, parks, venues, roadways, trails, park benches and/or such other amenities approved by Council from time to time, which place names will be based on the names of Shxw’ówhámél families that have held Traditional Holdings;
- (b) placement of plaques on public locations, including community or public facilities, parks, venues, park benches, and/or such other locations approved by Council from time to time, which plaques will recognize, and may provide details and historical context regarding, the Shxw’ówhámél families that have held Traditional Holdings;
- (c) posting paintings or photographic renditions of Shxw’ówhámél families that have held Traditional Holdings, the Traditional Holdings themselves, and/or the locations of such Traditional Holdings in public locations on Shxw’ówhámél Lands; and/or
- (d) such other means identified by Council from time to time for recognizing the Shxw’ówhámél families that have held Traditional Holdings.

PART 5 – IMMUNITY

- 5.1 No Action. No action for damages lies or may be instituted against present or past Council, or members, employees, representatives or agents of either Shxw'ōwhámél or Council:
- (a) for anything said or done or omitted to be said or done by that Person in the actual or required performance of the Person's duty or exercise of their authority; or
 - (b) for any alleged neglect or default in the actual or required performance of the Person's duty or exercise of their authority.
- 5.2 No Defence. Section 5.1 does not provide a defence if:
- (a) the Person in relation to the conduct that is the subject matter of the action, has been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
 - (b) the cause of action is libel or slander.
- 5.3 No Liability. None of Shxw'ōwhámél, present or past Council, or members, employees, representatives or agents of any of Shxw'ōwhámél or Council are liable for any damages or other loss, including economic loss, sustained by any Person, or to the property of any Person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Policy or any Shxw'ōwhámél law, or from the neglect or failure, for any reason or in any manner, to enforce this Policy or any Shxw'ōwhámél law.
- 5.4 Limitation Period. Subject to sections 5.1 and 5.3, any actions against Shxw'ōwhámél (including Council and its employees) for the unlawful doing of anything that:
- (a) is purported to have been done under the powers conferred by this Policy or any Shxw'ōwhámél law; and
 - (b) might have been lawfully done if acting in the manner established by law,
- must be commenced within six (6) months after the cause of action first arose.
- 5.5 Required Notice. Shxw'ōwhámél is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to Shxw'ōwhámél within two (2) months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the court of appeal, believes:
- (a) there was reasonable excuse; and
 - (b) Shxw'ōwhámél has not been prejudiced in its defence by the failure or insufficiency.

PART 6 – GENERAL PROVISIONS

- 6.1 Amendment. This Policy may be amended, from time to time, by resolution of Council.

6.2 Severability. In the event that all or any part of any section of this Policy are found by a court of competent jurisdiction to be invalid, such section shall be severable, and the remaining portions and sections of this Policy shall remain in full force and effect.

BE IT KNOWN that this Policy is entitled the ***Shxw'ōwhámél First Nation Traditional Holdings Recognition Policy, 2018***, and is hereby enacted by a quorum of Council of the Shxw'ōwhámél First Nation held on December 10, 2018.

Chris Cosim

Genevieve Joy

Naomi Hattaway

Paul

Quorum consists of __ Council members.

Schedule “A” – Map of Traditional Holdings

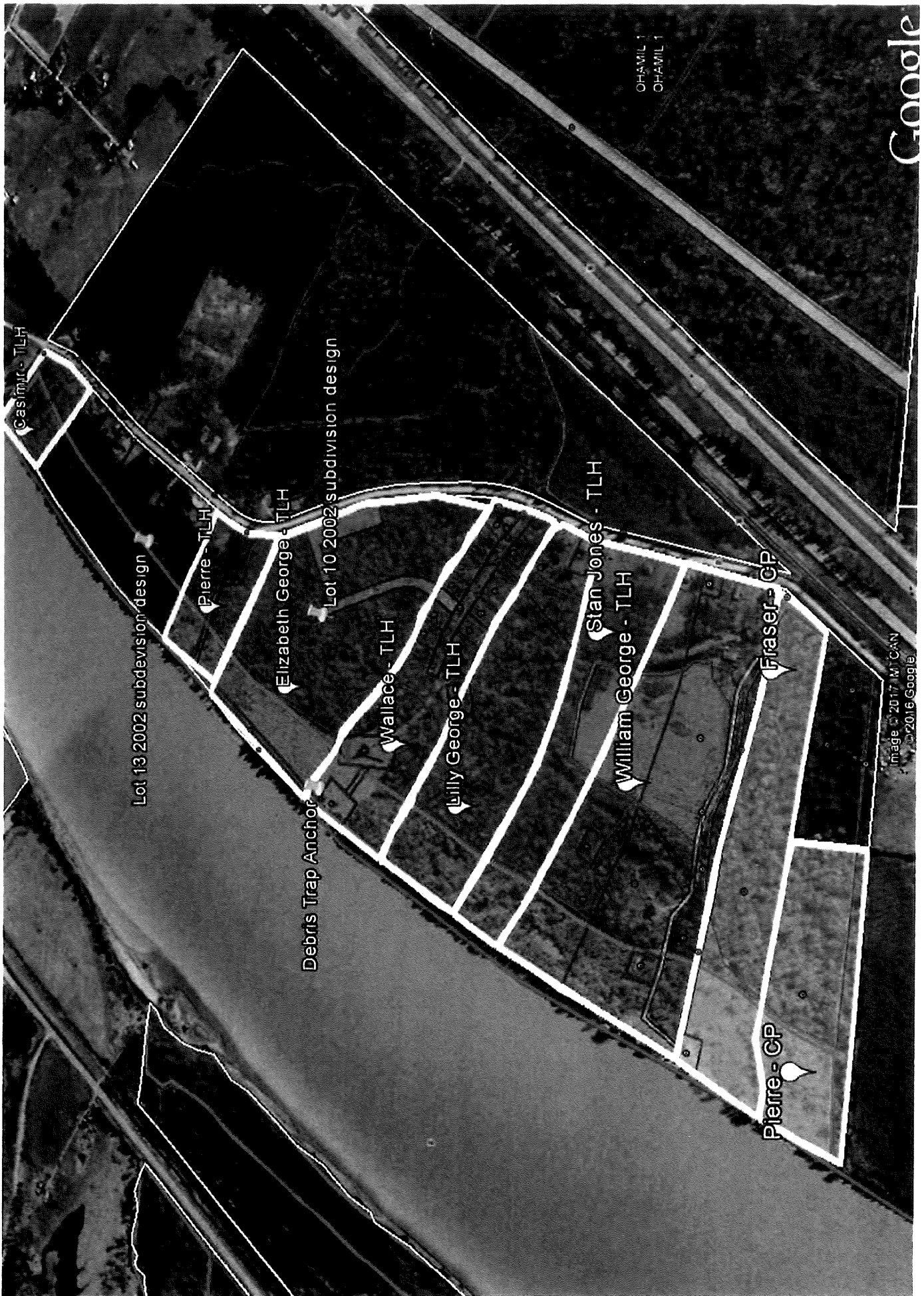


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