

***XWEL MEXW QEL SLEWÓYELH***

**Shxw'ōwhámél First Nation**

**Cultural Law, 2018**

**(a law to provide for the respect, recognition, conservation and protection of  
Shxw'ōwhámél culture and heritage)**

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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. *Tómiyeq̓w* – 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 *Sx̓ex̓ó:mes*, including our lands and resources, which is expressed in our *Sx̓wōx̓wiyá:m*, *Sq̓wélq̓wel* and *Shx̓welí*, 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. Pursuant to the Land Code, our Si:yá:m Council is authorized to pass various laws relating to activities within Shxw'ōwhámél Lands;
- H. Si:yá:m Council has a sacred obligation to conserve and protect Shxw'ōwhámél culture and heritage, and Si:yá:m Council asserts that existing laws of other governments, including the *Heritage Conservation Act* (British Columbia), do not offer sufficient protection thereto;
- I. Pursuant to its inherent jurisdiction over our Territory, the Si:yá:m Council has the authority and power to ensure the protection and proper management of culture and heritage across Shxw'ōwhámél Territory, including Shxw'ōwhámél Lands; and
- J. Si:yá:m Council requires that all Shxw'ōwhámél cultural and heritage sites and objects are granted the proper respect in accordance with our *Slewóyelh*, which are our traditional laws, which is required to maintain their integrity and the spiritual health of our community,

**NOW THEREFORE BE IT RESOLVED THAT** this [*Xwel Mexw Qel Slewóyelh*], the *Shxw'ōwhámél First Nation Cultural Law, 2018* (the “**Law**”) is hereby enacted as a law of the Shxw'ōwhámél First Nation.

## PART 1 – NAME

1.1 Short Title. This Law may be cited as the *Shxw'ōwhámél Cultural Law*.

## PART 2 – PURPOSE AND APPLICATION

- 2.1 Purpose. The purpose of this Law is to facilitate the conservation, protection and management of identified and unidentified Cultural Heritage Resources within Shxw'ōwhámél Lands.
- 2.2 Application.
- (a) The provisions of this Law apply to all Shxw'ōwhámél Lands, as defined in the Land Code.
  - (b) Shxw'ōwhámél may also rely on the processes outlined in this Law to conserve, protect and manage identified and unidentified Cultural Heritage Resources across Shxw'ōwhámél Territory.
- 2.3 Authority. The Lands Department is responsible for implementing this Law and will have all powers necessary to give effect to this Law. The Lands Department may, from time to time, refer to Council for guidance and advice on the implementation of this Law, including on how to respect, value and manage any particular Cultural Heritage Resource. The Lands Department may also delegate any part of its authority under this Law to other Persons, including the Stó:lō Research and Resource Management Centre.
- 2.4 Consultation and Accommodation. The consent of Shxw'ōwhámél to carry out Heritage Work pursuant to this Law does not constitute consultation on or participation in any project for which such work is undertaken. For greater certainty, unless otherwise agreed to in advance by Shxw'ōwhámél, Heritage Work is separate and apart from the consultation and accommodation processes associated with any development proposed on Shxw'ōwhámél Lands, and in no way contributes to or in any way relieves the proponent or the Crown of any of its consultation and accommodation duties owing to Shxw'ōwhámél.
- 2.5 Non-Derogation. No provision of this Law, 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 Definitions. Capitalized words not defined in this Law have the same definitions as in the Land Code.
- 3.2 Definitions. For the purpose of this Law, the following definitions apply:
- “**Applicant**” means a Person proposing to undertake Heritage Work;
- “**Application**” means an application for a Cultural Permit submitted in accordance with section 5.1;
- “**Archaeology Branch**” means the archaeology branch of the British Columbia Ministry of Forests, Lands and Natural Resource Operations;

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

“**Cultural Heritage Resources**” includes:

- (a) expression of Shxw’ówhámél culture (songs, dances, art, stories and *Sxwóxwiyá:m*);
- (b) *Sqwelqwel* and *Shxwelí*, including:
  - (i) places of Shxw’ówhámél cultural practice (traditional use areas);
  - (ii) locales of Shxw’ówhámél spiritual and ceremonial significance (including prominent landscape features);
  - (iii) places on the landscape where Shxw’ówhámél people have lived and were buried (including pit homes);
- (c) Heritage Objects, Heritage Sites and Traditional Knowledge; and
- (d) Shxw’ówhámél sites, objects, activities and knowledge recognized under the Stó:lō Heritage Policy Manual.

“**Cultural Permit**” means a permit issued by Shxw’ówhámél pursuant to section 4.2 to carry out specified Work in designated areas;

“**Enforcement Officer**” has the meaning provided to that term in the *Shxw’ówhámél Enforcement Law*;

“**Heritage Object**” means any feature, artifact or object that has past and ongoing importance to Shxw’ówhámél cultural and spiritual practices, including:

- (a) artifacts and objects removed from Heritage Sites;
- (b) cultural and intellectual property including songs, stories, photographic material, movie image material, and culturally important images and designs;
- (c) plants or plant parts that are important for traditional medicine and/or foods; and
- (d) any other feature, artifact or object, whether previously identified or not, that has heritage value to Shxw’ówhámél, as determined by Shxw’ówhámél from time to time;

“**Heritage Officer**” means a person appointed or engaged by the Lands Department, from time to time, to administer and enforce the provisions of this Law, and includes any Enforcement Officer, officers of the Royal Canadian Mounted Police, or any other peace officer with jurisdiction to enforce laws on Shxw’ówhámél Lands;

“**Heritage Site**” means a site of archaeological, historical or cultural significance to Shxw’ówhámél, including:

- (a) place name locations;

- (b) trails and trail markers;
- (c) culturally modified plants and/or trees;
- (d) village and camping sites;
- (e) traps and weirs;
- (f) burial and/or funeral sites;
- (g) sacred and/or spiritual sites;
- (h) origination, transformer and/or legend sites;
- (i) food and/or medicine gathering and preparation sites;
- (j) archaeological sites (including pictographs, petroglyphs, markers and cultural depressions);
- (k) traditional activities sites (including resource gathering areas, hunting and trapping sites, and habitation sites); and
- (l) any other site, whether previously identified or not, that has heritage, cultural, and/or traditional value to Shxw'ōwhámél, as determined by Shxw'ōwhámél from time to time;

**“Holding Institution”** means museums, universities, colleges or other institutions with the capability and authority to curate heritage objects and artifacts, including the Stó:lō Research and Resource Management Centre repository;

**“Lands Department”** means the Lands Department of Shxw'ōwhámél;

**“Member”** means a member of Shxw'ōwhámél;

**“Person”** includes an individual, society, corporation, partnership, government body or entity, or party, whether acting by themselves or by an agent or employee, and the successors, permitted assigns and personal or other legal representatives of such person to whom the context legally applies;

**“Preferred List”** means the list of authorized anthropologists, archaeologists, ethnographers, ethno-historians, historians, Elders and knowledge keepers maintained by the Lands Department;

**“Project”** means any project, work, development, natural resource management or natural resource extraction or development, including of water, that may impact a Cultural Heritage Resource on or around Shxw'ōwhámél Lands;

**“Public Place”** includes, but is not limited to, any highway, boulevard, park or other real property owned, held or administered by Shxw'ōwhámél;

**“Qwi:qwelstóm”**, the Halq'eméylem word to describe “justice”, is an underlying principle of Stó:lō forms of mediation and dispute resolution whose goal is “to make things right”;

“**Research**” means any cultural or heritage related research or photography where access to or under Shxw’ōwhámél Lands is required;

“**Shxw’ōwhámél**” means Shxw’ōwhámél First Nation;

“**Spoleqwíth’a**”, or human remains, means skeletal or otherwise physical remains of a deceased person or persons;

“**Traditional Knowledge**” includes, but is not limited to, tradition-based oral, literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. Categories of Traditional Knowledge could include: agricultural knowledge; legal knowledge; scientific knowledge; technical knowledge; ecological knowledge; medicinal knowledge, including related medicines and remedies; biodiversity-related knowledge; *Sxwōxwiyá:m*, *Sqwelqwel* and/or *Shxwelí* in the form of music, dance, song, handicrafts, designs, stories and artwork; elements of languages, such as names, geographical indications and symbols; and movable cultural properties; and

“**Work**” means a Project or Research.

### 3.3 General Interpretation.

- (a) Our *Slewóyelh*, our traditional laws, apply to the interpretation of this Law.
- (b) Unless otherwise expressly provided, the structures, organizations, bodies, principles and procedures established or used in this Law will be guided, interpreted and carried out in accordance with the culture, traditions and customs of Shxw’ōwhámél, including *Qwi:qwelstóm*.
- (c) The headings of parts and section of this Law have been inserted as a matter of convenience and for reference only, and in no way define or limit any of its provisions.
- (d) 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.
- (e) The words “include”, “includes” and “including” are to be read as if they are followed by the phrase “without limitation”.
- (f) Any reference to a statute means that statute, and any regulations made under it, all as amended or replaced from time to time.

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

- (a) Schedule “A” – Rate Sheet.

## **PART 4 – SHXW’ŌWHÁMÉL DATABASE AND SIGNS**

- 4.1 Database. Shxw’ōwhámél will create, maintain and regularly update a database of known Heritage Objects and Heritage Sites, which database will be available to Members to access during regular business hours. Shxw’ōwhámél may work with others in creating and maintaining this database, including the Stó:lō Research and Resource Management Centre.
- 4.2 Signs. The Lands Department may, from time to time, erect signs regarding the application, implementation and/or enforcement of this Law in appropriate locations.

## **PART 5 – CULTURAL PERMITS**

### **5.1 Applications.**

- (a) Any Person wishing or intending to conduct any Work must submit an Application to the Lands Department prior to commencing any such Work.
- (b) The Application must include the following:
- (i) detailed maps (at a scale of 1:10,000) and shape files depicting the area of influence or disturbance of the proposed activities;
  - (ii) detailed description of the proposed activities;
  - (iii) names, contact information (including email and cell number) and experience of the point person, staff/personnel and proposed archaeologist to conduct the Work;
  - (iv) available information, including archaeological reports and studies, on the area to be disturbed;
  - (v) information about the environmental and/or archaeological permits anticipated or required from other governments;
  - (vi) detailed plan for avoidance, mitigation and/or compensation for impacts on Cultural Heritage Resources;
  - (vii) timeframe for the proposed activities;
  - (viii) the prescribed application fee; and
  - (ix) any additional information deemed relevant by the Lands Department.

### **5.2 Cultural Permits.**

- (a) The Lands Department will work with the Lands Advisory Committee in reviewing the Application, and will consider the following matters as they apply to the proposed activities:
- (i) known or potential Heritage Sites and Heritage Objects, including spiritual and archaeological values;

- (ii) Traditional Knowledge;
  - (iii) balancing of interests of the Shxw'ōwhámél community, families and Members;
  - (iv) economic implications associated with the activities, if any;
  - (v) possibility of impacting Shxw'ōwhámél's ability to utilize the site for cultural, spiritual and/or traditional purposes;
  - (vi) likelihood of significance at the site (i.e., archaeological potential) and level of possible impact; and
  - (vii) applicable management measures and options outlined in the Stó:lō Heritage Policy Manual, and any Stó:lō Heritage Investigation Permit issued thereunder.
- (b) As part of its review of an Application, the Lands Department may:
- (i) require modifications to the scope or methodology of the proposed Work;
  - (ii) consider terms and conditions of any existing and applicable Stó:lō Heritage Investigation Permit;
  - (iii) put forward an individual from the Preferred List; and
  - (iv) bring any other concern to the attention of the Applicant for discussion and revision.
- (c) If the Lands Department considers that:
- (i) the Application is complete; and
  - (ii) the proposed activities are acceptable taking into account the matters outlined in subsection 5.2(a),

it may grant the Applicant a Cultural Permit subject to specified terms and conditions, including any of the following:

- (iii) specific assessment requirements, taking into account the assessment procedures outlined in the Stó:lō Heritage Policy Manual, and which assessment must be completed by a registered archeologist and include a review of any literature or previous studies pertaining to the applicable site;
- (iv) the permitted type, duration and location of Work;
- (v) access rights and responsibilities;
- (vi) requirements to involve Members, including Elders and Traditional Knowledge keepers in study designs and implementations;
- (vii) data collection and reporting requirements;



- (viii) rights, if any, to move, modify, alter or disturb specific Cultural Heritage Resources;
- (ix) requirements (including compensation) for Shxw'ōwhámél field crew and heritage monitors;
- (x) general requirements to abide to this Law and other Shxw'ōwhámél laws; and
- (xi) such other terms and conditions that the Lands Department deems applicable and warranted to ensure the protection of Cultural Heritage Resources from the proposed activities.

## **PART 6 – FIELD WORK**

- 6.1 Schedule. At least fourteen (14) days before any field activities associated with Work commence, Applicants must provide a schedule of such works to Shxw'ōwhámél, which schedules must include the days, times, and location of the field activities.
- 6.2 Shxw'ōwhámél Participation. Where required under the applicable Cultural Permit, Shxw'ōwhámél field crews and/or heritage monitors will accompany the Applicant into the field to participate in the field activities.
- 6.3 Consent Required. Shxw'ōwhámél consent is required before any Cultural Heritage Resource is moved, modified, altered or disturbed, which consent may be provided by way of a specific term or condition attached to a Cultural Permit in accordance with subsection 5.2(c)(viii).
- 6.4 Post-Field Work. Once the field activities are complete, the Applicant and the Lands Department will:
- (a) share information;
  - (b) meet to discuss any deficiencies in the field activities and steps to address such deficiencies; and
  - (c) work collaboratively on developing appropriate management and/or mitigation measures.
- 6.5 Applicant Requirements. The Applicant must:
- (a) share draft versions of any reports required under this Law or any other law, including the *Heritage Protection Act*, (a “**Report**”) with the Lands Department;
  - (b) seek to address any concerns that the Lands Department identifies with such Report (including the conclusions and recommendations therein) before submitting it to the applicable Person; and
  - (c) provide a copy of all Reports to the Lands Department when such Reports are submitted to the applicable Person.

## **PART 7 – MISCONDUCT**

7.1 Notice of Misconduct. If there is any evidence that a Person conducting Work:

- (a) is not abiding to this Law or any terms and conditions of a Cultural Permit;
- (b) fails to properly identify and record a Cultural Heritage Resource that is clearly present; or
- (c) exhibits disrespectful behavior towards Shxw'ōwhámél, a Member or any Cultural Heritage Resources,

then, in addition to the rights and powers under Part 15 (Enforcement and Offences), Shxw'ōwhámél may provide written notice of the misconduct to such Person and the Cultural Permit holder, and if the misconduct continues, Shxw'ōwhámél may order the Person and/or Cultural Permit Holder to stop all work and leave Shxw'ōwhámél Lands.

7.2 Other Agencies. To the extent it deems necessary, the Lands Department will keep the Stó:lō Research and Resource Management Centre, other governments and any other relevant parties apprised of any situation that falls within the scope of section 7.1.

## **PART 8 – UNEXPECTED FINDS**

8.1 Process. Unless otherwise provided in the applicable Cultural Permit, if any unrecorded Cultural Heritage Resources are unexpectedly found during an activity carried out on Shxw'ōwhámél Lands, the following steps must be taken:

- (a) all work must immediate stop;
- (b) any Cultural Heritage Resources discovered must be left in place;
- (c) the Person carrying out the activity must promptly notify the Lands Department; and
- (d) no work may recommence within the area defined by the Lands Department until the Lands Department has determined a culturally appropriate response and, if deemed necessary, contacted a Person from the Preferred List to carry out any necessary investigations, including documenting, mapping and registering the Cultural Heritage Resources.

## **PART 9 – SPOLEQWÍTH'A**

9.1 Presumed Ancestry. Any Spoleqwith'a found on or within the Shxw'ōwhámél Territory will be presumed to be of Tiyt Tribe ancestry, unless and until proven otherwise.

9.2 Process. If Spoleqwith'a are discovered, or believed to be discovered:

- (a) the steps outlined in section 8.1 must be followed;
- (b) either at the time of recovery or as soon as possible following recovery, the Spoleqwith'a should be placed in a wooden (western red-cedar) box and wrapped in red, cotton cloth. These procedures should be performed by or under

the instruction of a *shxwłá:m*. The wrapped and packaged remains may be temporarily housed in the Stó:lō Material Culture Repository, or other appropriate facility, while analyses, if any, are carried out and reburial plans made;

- (c) the Lands Department may work with the Stó:lō Research and Resource Management Centre, Archaeology Branch, the Cultural Permit holder and/or the RCMP (including the coroner's office) to determine the antiquity of the remains;
- (d) Shxw'ōwhámél may conduct an appropriate analyses (physical / spiritual) to determine, with as much certainty as possible, the ancestry, sex, age, and any other pertinent information about the individual(s); and
- (e) Shxw'ōwhámél will determine the appropriate treatment measures for the Spoleqwíth'a. In making this determination, Shxw'ōwhámél may conduct a field visit, obtain guidance from Elders, hold community meetings, and/or enter into discussions regarding the plan for, protection of, and/or disposition of the Spoleqwíth'a. If after analyses, the Spoleqwíth'a are determined to be in all likelihood of Shxw'ōwhámél ancestry, then Shxw'ōwhámél will work to ensure such Spoleqwíth'a are returned to Shxw'ōwhámél.

## PART 10 – LIMITS ON USE OF INFORMATION

10.1 Sensitive Information. In implementing this Law, Shxw'ōwhámél may share Traditional Knowledge or other sensitive information regarding Cultural Heritage Resources (collectively, "**Sensitive Information**") with an Applicant, Cultural Permit holder, Stó:lō Research and Resource Management Centre, Archaeology Branch or other Persons (the "**Recipient**").

10.2 Rights and Use. All Recipients must agree to, and agree to be bound by, the following:

- (a) Shxw'ōwhámél retains exclusive ownership to all Sensitive Information, regardless of its form, which may include but not be limited to, all collected information and reports, audio and video recordings, electronic records, photographic media, cartographic materials, published materials and unpublished materials (research notes, transcripts);
- (b) Shxw'ōwhámél has the right to maintain, control, protect and develop the Sensitive Information as it deems fit;
- (c) any use of Sensitive Information by a Recipient is be contingent on Shxw'ōwhámél consent, and any terms or conditions attached thereto;
- (d) no Sensitive Information may be shared with any third party or published or placed (directly or indirectly) into the public domain without the free, prior and informed consent of Shxw'ōwhámél;
- (e) Shxw'ōwhámél may limit the right of disclosure of any Sensitive Information in any manner that it deems necessary in the circumstances;
- (f) any permitted use of Sensitive Information must be properly acknowledged and credited in accordance with any instructions provided by Shxw'ōwhámél (such as when it may be used, quoted or referred to);

- (g) Shxw'ōwhámél will have a reasonable opportunity to review and comment on any interpretations or conclusions drawn by a Recipient prior to such Recipient releasing any interpretations or conclusions that would expose Sensitive Information and if deemed necessary by Shxw'ōwhámél, the Recipient will revise the material to Shxw'ōwhámél's satisfaction, to limit the disclosure of any confidential Sensitive Information; and
- (h) the Recipient will ensure that its employees, agents and contractors (including archaeologists) comply with the confidentiality requirements of this Law and applicable Cultural Permit(s).

10.3 Confidentiality Agreement. Shxw'ōwhámél may require any Person to enter into a confidentiality agreement with Shxw'ōwhámél prior to commencing any Work.

## **PART 11 – COSTS**

11.1 General. All costs (including fees and expenses set out in the rate sheet attached as Schedule "A") incurred by Shxw'ōwhámél in implementing this Law will be borne by the Applicant and/or Cultural Permit holder, and are due in full to Shxw'ōwhámél within thirty (30) days of the date of the invoice setting out such costs. No permit or authorization will be granted or issued by Shxw'ōwhámél until all such costs are paid in full.

## **PART 12 – CURATION OF HERITAGE OBJECTS**

- 12.1 Ownership. Subject to Part 13, and unless and until proven otherwise, any and all Heritage Objects taken or recovered historically, currently or in the future from or within Shxw'ōwhámél Territory are the rightful property of Shxw'ōwhámél and, as such, Shxw'ōwhámél has and maintains the right to direct and participate in the processing and curation thereof.
- 12.2 Process. Any Heritage Object removed from a Heritage Site must be handled and curated in accordance with Shxw'ōwhámél's instructions and at a location agreed to by Shxw'ōwhámél.
- 12.3 Curation. All curation carried out pursuant to this Law will be on an 'in-trust' basis for Shxw'ōwhámél until such time as Shxw'ōwhámél is prepared to take over care of the Heritage Object, or in accordance with an agreement between Shxw'ōwhámél and a Holding Institution.
- 12.4 Inventory. Shxw'ōwhámél will maintain a written inventory of all Heritage Objects located in Holding Institutions. The terms and timing of the Heritage Object repatriation will be negotiated between Shxw'ōwhámél and the applicable Holding Institution.
- 12.5 Prohibitions. Subject to Part 13, Shxw'ōwhámél prohibits the theft, sale, collection and/or unconditioned trade of all Heritage Objects, both historic and contemporary, excluding commonly marketable items such as fish and game meat and items crafted, designed or created by Shxw'ōwhámél and/or Members.

## **PART 13 – OTHER FIRST NATIONS**

- 13.1 Other First Nations. Shxw'ōwhámél may work cooperatively with neighbouring First Nations with respect to the protection, conservation and management of Cultural Heritage Resources.
- 13.2 Shared Jurisdictions. In the event that another First Nation asserts Indigenous rights or other interests to an area within Shxw'ōwhámél Territory to which an Applicant seeks to conduct Work or to a Heritage Site or Heritage Object, the terms of this Law remain applicable, unless otherwise notified by Shxw'ōwhámél. Any issues of jurisdiction or participation of other First Nations will be discussed and resolved between the applicable First Nations, and the Applicant will be duly notified.

## **PART 14 – OTHER ARRANGEMENTS**

- 14.1 Stó:lō Heritage Policy Manual. Shxw'ōwhámél may, in its sole discretion, take into account such procedures and processes outlined in the Stó:lō Heritage Policy Manual in issuing instructions, reviewing applications or otherwise exercising any of its rights or responsibilities pursuant to this Law.
- 14.2 Protocol Agreements. Shxw'ōwhámél may, in an effort to manage and protect Cultural Heritage Resources, develop heritage related protocol agreements with other governments, agencies and institutions, including the Stó:lō Research and Resource Management Centre, universities or post-secondary institutions, museums, archives and/or other resource management agencies. Such arrangements may include protocols regarding access and use of Sensitive Information.

## **PART 15 – ENFORCEMENT AND OFFENCES**

- 15.1 General. No Person shall obstruct, interfere with or hinder Council, a Heritage Officer, or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law.
- 15.2 Right to Enter. For the purpose of this Law, a Heritage Officer may enter any lands on Shxw'ōwhámél Lands during reasonable hours if the Heritage Officer has reasonable grounds to believe that:
- (a) a Cultural Heritage Resources may be or is being disturbed;
  - (b) a term or condition of this Law or a Cultural Permit is not being abided to; or
  - (c) there is a risk to a Cultural Heritage Resource.
- 15.3 Effect of Breach. Failure to adhere to this Law may result in a stop work order and/or expulsion from conducting Work for any period of time, as determined by the Lands Department.
- 15.4 Offence. Every person who:
- (a) violates or causes or allows any of the provisions of this Law to be violated;

- (b) fails to comply with any of the provisions of this Law, or any other applicable law; or
- (c) neglects or refrains from doing anything required under the provisions of this Law,

shall be deemed to have committed an offence under this Law and shall be liable to a fine or imprisonment, or to both a fine of imprisonment, not exceeding the maximum allowed under the *Shxw'ōwhámél Enforcement Law*, and each day such violation is caused or allowed to continue constitutes a separate offence.

#### 15.5 Tickets.

- (a) An Enforcement Officer may issue a ticket for any offence under this Law.
- (b) Any person issued a ticket under this Law will be required to pay the amount set from time to time for that ticket by regulation adopted by Council.
- (c) A person wishing to appeal a ticket issued under this Law may apply in writing to the Lands Department.
- (d) The Lands Department may, after considering a person's application to appeal a ticket and acting reasonably, waive the ticket, reduce the fine, or enforce the ticket.
- (e) After consideration of an application to appeal the ticket, the Lands Department will notify the applicant in writing of its decision, which decision will be final and binding.

15.6 Qwi:qwelstóm. Notwithstanding sections 15.4 and 15.5, Shxw'ōwhámél may, as directed from time to time by Council, refer the offence to Qwi:qwelstóm to determine an appropriate enforcement mechanism for a Person that commits an offence under this Law and who is willing to participate in the Qwi:qwelstóm alternative dispute process.

### **PART 16 – IMMUNITY**

16.1 No Damages. No action for damages lies or may be instituted against present or past Council, a Heritage Officer, 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.

16.2 No Defence. Section 16.1 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.
- 16.3 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 Law or any other Shxw'ōwhámél law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Shxw'ōwhámél law.
- 16.4 Limitation Period. Subject to sections 16.1 and 16.3, 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 Law 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.
- 16.5 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 17 – AMENDMENT**

- 17.1 General. Subject to section 17.3, this Law may only be amended in the manner provided in the Land Code.
- 17.2 Regular Reviews. Shxw'ōwhámél will review and, if appropriate, amend this Law in accordance with section 17.1 every five (5) years, or whenever Council determines, in its sole discretion, that this Law should be reviewed and, if appropriate, amended.
- 17.3 Minor Amendments. Council may, from time to time, pass a resolution authorizing minor amendments to this Law for any of the following purposes:
- (a) to correct typographical or grammatical errors;
- (b) to reference relevant, new or amended Shxw'ōwhámél law(s);
- (c) to change the applicable entity(ies) having authority over the implementation of this Law;
- (d) to align with an order by a court;

- (e) to incorporate applicable Shxw'ōwhámél cultural practices, traditions, protocols or laws identified from time to time by an Elder or Traditional Knowledge holder; and
- (f) to clarify this Law where there is no reasonable dispute about the intention underlying the original provision.

**PART 18 – GENERAL PROVISIONS**

- 18.1 Compliance with other Laws. Where any other law or legal requirement 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 such other applicable law or legal requirement.
- 18.2 Severability. In the event that all or any part of any section of this Law are found by a court of competent jurisdiction to be invalid, such section shall be severable, and the remaining portions and sections of this Law shall remain in full force and effect.
- 18.3 Orders. An order made pursuant to this Law will have immediate effect.
- 18.4 Coming into Force. This Law will come into force and effect on the date that it is duly passed by Shxw'ōwhámél in accordance with the process outlined in the Land Code.

**BE IT KNOWN that this Law is entitled the *Shxw'ōwhámél First Nation Heritage Conservation and Protection Law, 2018* is hereby enacted by a quorum of Council of the Shxw'ōwhámél First Nation held on December 10, 2018.**

Chris Colman

Yvesvan Gony

Naomi Sturges

ESand

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**Quorum consists of \_\_ Council members.**



**Schedule "A" – Rate Sheet**

