



# Sumas First Nation

2788 Sumas Mtn. Rd.  
Abbotsford, BC V3G 2J2

## BAND COUNCIL RESOLUTION

Chronological no.

File reference no.

2018-10-13

NOTE: The words "from our band funds" "capital" or "revenue" whichever is the case, must appear in all resolutions requesting expenditures from band funds.

The council of the	Sumas First Nation	Cash free balance	
		Capital account	\$ _____
Date of duly convened meeting	13 / 08 / 2018	Province	
		BC	
		Revenue account	\$ _____

### Adoption of Semá:th Flood Protection Law

**Whereas:**

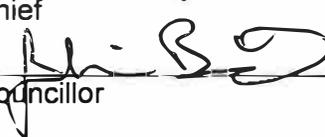
- A. Semá:th (Sumas First Nation, or Sumas) has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by the *Semá:th Declaration of 2017*;
- B. Semá:th has taken control of Reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the *Semá:th Land Code* effective the 11<sup>th</sup> day of November, 2011;
- C. Under section 6 of the *Semá:th Land Code*, Semá:th Council has broad authority to pass laws relating to the regulation, development and protection of Sema:th Lands;
- D. Semá:th desires to facilitate development of Sema:th lands in a manner that takes measures to protect against loss of life and to minimize property damage, injury, and trauma associated with flooding events;
- E. It is considered to be necessary for the benefit, comfort and safety of the inhabitants of the Semá:th Reserve to set out measures for flood protection requirements for any future building and development;
- F. The Flood Protection Law was posted for community comment for a period of 21 days as required under the *Semá:th Land Code*; and
- G. No comments were received by community members.

**Now therefore be it resolved that Semá:th hereby adopts and enacts the Flood Protection Law, attached to this BCR.**

Quorum:   3  

  
Councillor

  
Chief

  
Councillor

  
Councillor

**FOR DEPARTMENTAL USE ONLY**

Expenditure	Authority (Indian Act section)	Source of Funds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue - Revenue	Expenditure	Authority (Indian Act section)	Source of Funds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue - Revenue
Recommending officer			Recommending officer		
_____ Signature		_____ Date	_____ Signature		_____ Date
Approving Officer			Approving Officer		
_____ Signature		_____ Date	_____ Signature		_____ Date



**SEMA:TH**

***Flood Protection Law***

**July 2018**

## **PREAMBLE**

**WHEREAS** Sema:th (Sumas First Nation) has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by the *Sema:th Declaration* and by section 35 of the *Constitution Act, 1982*;

**AND WHEREAS** the Sema:th (Sumas First Nation) has taken control of Reserve lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and has enacted the *Sema:th Land Code* effective the 11<sup>th</sup> day of November, 2011;

**AND WHEREAS** the Council of Sumas First Nation desires to facilitate development of Sema:th lands in a manner that takes measures to protect against loss of life and to minimize property damage, injury, and trauma associated with flooding events;

**AND WHEREAS** it is considered to be necessary for the benefit, comfort and safety of the inhabitants of the Sumas Reserve to set out measures for flood protection requirements for any future building and development;

**NOW THEREFORE, THIS SEMA:TH FLOOD PROTECTION LAW IS HEREBY ENACTED A LAW OF SEMA:TH.**

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## **1. TITLE**

1.1 The title of this Law is the *Sema:th Flood Protection Law*.

## **2. DEFINITIONS**

2.1 For the purposes of this Law, terms have the same definitions as in the Sema:th Land Code, except as set out below.

2.2 The following definitions apply in this Law:

“Floodproofing” means the alteration of land or structures either physically or in use to reduce or eliminate flood damage and includes the use of elevation and/or building setbacks from water bodies to maintain a floodway and to allow for potential erosion;

“GSC” means the height above sea level established by Geodetic Survey of Canada chart datum; and

“Habitable Area” means any room or space within a building or structure which is used, or is intended, for dwelling use or human occupancy, any electrical panels or heating units or other facilities required to support the habitation or occupancy, and any area prescribed by Council by regulation as Habitable Area.

## **3. FLOOD PLAIN DESIGNATION**

3.1 Pursuant to Section 6.1 of the Sema:th Land Code, areas of the Upper Sumas I.R. #6 designated as flood plain are as follows as shown in the map attached as “Attachment ‘A’”:

(a) The Sumas Prairie floodplain, including Marshall-Lonzo Creek and Sumas River in the vicinity of Sumas First Nation as shown on the map attached as Appendix A; and

(b) Any other areas of Sumas I.R. #6 designated by Council by regulation under this Law.

3.2 Any proposed development or construction within the designated flood plain area must meet the floodproofing and elevation requirements set out in section 4 if applicable.

## **4. ELEVATION REQUIREMENTS**

4.1 For greater certainty, this section applies regardless of whether or not a home, unit, modular home or structure is within the designated flood plain area.

4.2 No building, home, manufactured home or unit, modular home or structure or any part thereof shall be: constructed; reconstructed or substantially renovated to the extent that over 66% of the floor area would be replaced; renovated to add new Habitable Area; moved; extended or located;

with the underside of a wooden floor system or top of a concrete slab or pad of any Habitable Area or new Habitable Area:

- (a) less than 1.2 metres above the average ground level on the lot or less than 0.3 metres above the crown of the nearest road, or
- (b) between 8.5 metres and 11.0 metres GSC,

unless the interest-holder signs a waiver and indemnity and accepts all liability and registers a covenant in favour of Sema:th against the title to the lot; or

- (c) below 8.5 metres GSC unless the interest-holder:
  - (i) signs a waiver and indemnity and accepts all liability and registers a covenant in favour of Sema:th against the title to the lot, and
  - (ii) provides a certification from a registered professional engineer licensed to practice in the province of BC in the format required by Sema:th, specifying any required Floodproofing or flood protection mitigation measures and certifying that the mitigation measures relating to structures and the Habitable Area will significantly reduce risks to human health and safety and the structures.

4.3 No building, manufactured home or unit, modular home or structure or any part thereof shall be constructed, reconstructed, moved, extended or located:

- (a) less than 1.2 metres above the average ground level on the lot or less than 0.3 metres above the crown of the nearest road, or
- (b) below 8.5 metres GSC.

4.4 No commercial or light industrial development or use shall take place within the designated flood plain area unless:

- (a) the development or use is on structurally sound fill; and
- (b) meets any requirements for elevation or flood protection set out in a law, regulation or permit.

4.5 No hazardous materials, fuel tanks over 500 litres, or materials designated by regulation shall be kept or stored in structures, tanks or containers below 8.5 meters GSC.

4.6 All storage of hazardous materials, fuels and other designated materials within the floodplain shall be stored safely and shall meet the requirements of all laws and regulations.

- 4.7 The required elevation may be achieved by structural elevation or by appropriate and adequately compacted fill, or by a combination of both structural elevation and fill, provided that all fill meets the requirements of Sema:th laws.
- 4.8 Where fill is used to achieve the required elevation set out in this section, the face of the fill slope shall be adequately protected against erosion from flood flows, wave action, ice or other debris.
- 4.9 Where requested by Sema:th in writing or required by an engineer's report, foundations for construction in flood plain areas shall be designed to ensure that:
- (a) structures are anchored to minimize the impact of flood, sediment and erosion damage,
  - (b) footings are extended below scour depth, or
  - (c) fill materials are armoured where elevation is achieved by fill,
- to protect against scour, erosion and flood flows.

## **5. EXEMPTIONS**

- 5.1 The elevation requirements in section 4 shall not apply to:
- (a) A renovation of an existing building or structure that does not involve an addition thereto; or an addition to a building or structure that would increase the size of the building or structure by less than 25% of the floor area existing at the time of adoption of this Law;
  - (b) that portion of a building or structure within a Residential zone to be used as a non-residential storage area, carport or garage;
  - (c) temporary structures; or
  - (d) other structures or uses designated by Council by regulation.

## **6. REGULATIONS**

- 6.1 Council may make any regulations it considers necessary or advisable for purposes under this Law.
- 6.2 For certainty, the powers of Council under subsection 6.1 include the power to make regulations:
- (a) for any purpose in relation to which regulations are provided for in this Law;
  - (b) prescribing or designating any matter or thing referred to in this Law as prescribed or designated or to be prescribed or designated;
  - (c) respecting the form, content, procedures and review criteria for applications, notices, and other documents that are required or permitted under this Law;
  - (d) setting fees;

- (e) defining words and expressions that are used but not defined in this Law; and
- (f) generally for the purpose of giving effect to this Law.

## **7. OFFENCES, PENALTIES AND ENFORCEMENT**

- 7.1 A person who contravenes this Law or an order made by a Court pursuant to this Law is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.
- 7.2 A fine payable under subsection 7.1 shall be remitted to the Sumas First Nation by the Court, after reasonable Court costs have been deducted.
- 7.3 Despite subsection 7.1, Sumas may also authorize the Lands Manager, a designated official or an Enforcement Officer to issue a ticket or violation notice to impose a sanction or fine for contraventions of this Law.
- 7.4 In addition to any other applicable fine, penalty or remedy, Council, the Lands Manager, or a designated official or Enforcement Officer may:
  - (a) issue a Stop Work Order to order any Person, who has not received full and proper authorization under this Law, to cease carrying out any activity, occupation, use or construction listed under this Law, or any related activity, occupation, use or construction; or
  - (b) order any structures, works or installations carried out in violation of this Law to be removed within 30 days, failing which Council may order them to be removed at the expense of the CP-holder or the Person who constructed or installed the structures, works or installations without proper authorization.
- 7.5 A Stop Work Order imposed under subsection 7.4 may be registered in court and enforced as a court order; and
  - (a) continues in force until the condition that led to it is remedied or until the activity that is the subject of the Stop Work Order receives a permit or authorization under this Law.

## **8. GENERAL PROVISIONS**

- 8.1 The headings of parts and sections in 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.

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

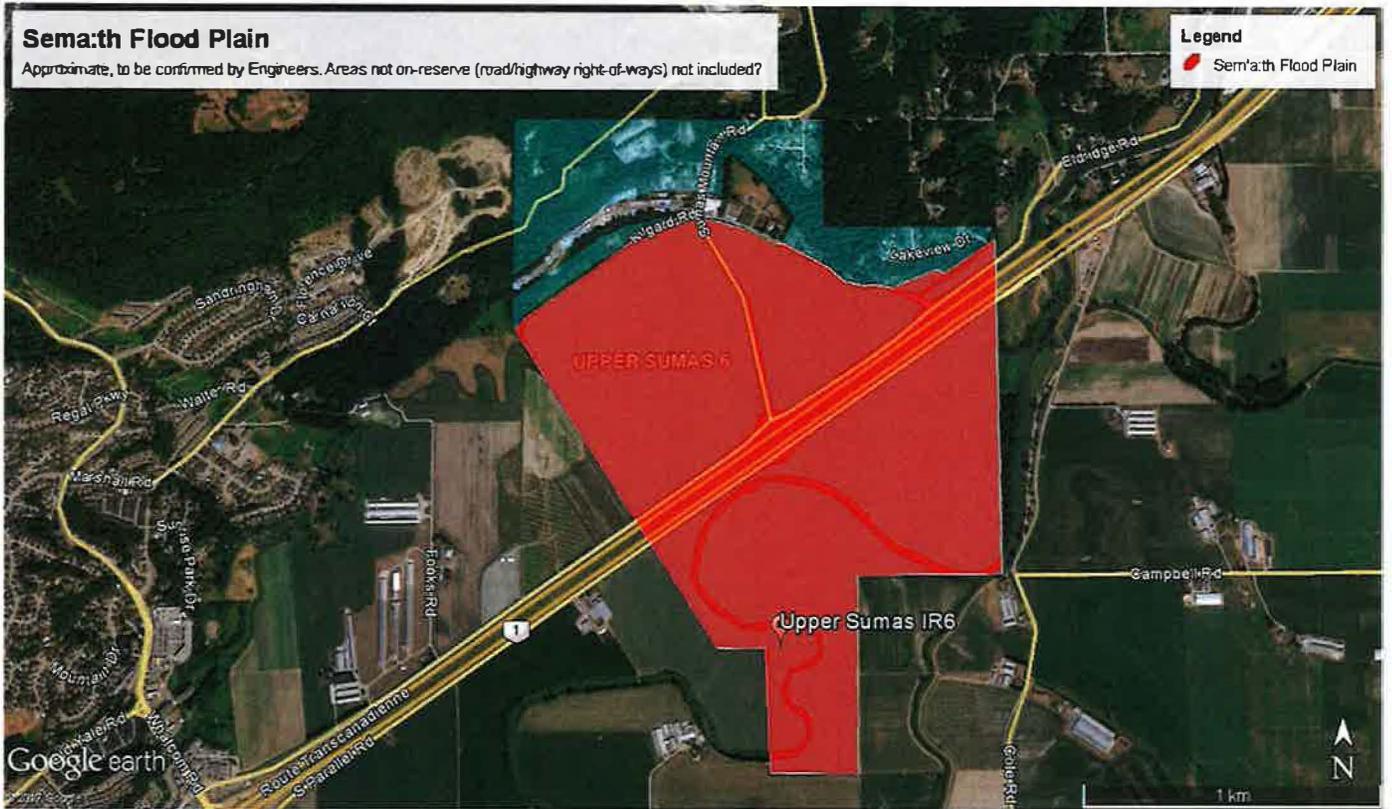
8.3 Nothing in this Law waives or removes requirements for any Person to comply with all other Semateh laws including laws requiring soil removal or deposit permits and development permits.

**9. COMING INTO FORCE**

9.1 This Law shall come into force and effect on the date it is passed by Council Resolution after complying with the requirements of the Land Code.

ATTACHMENT 'A'

MAP OF DESIGNATED FLOOD PLAIN AREA



Map is for reference only. The wording of the Law prevails.

**ATTACHMENT 'B'**



SEMA:TH  
LANDS DEPARTMENT

**RESTRICTIVE COVENANT RELATING TO FLOOD PROTECTION**

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2017

BETWEEN:

\_\_\_\_\_  
*[Name]*  
\_\_\_\_\_  
*[Address]*  
\_\_\_\_\_

(the "Covenantor")

OF THE FIRST PART

AND:

Sema:th (Sumas First Nation)  
3092 Sumas Mountain Road  
Abbotsford, B.C. V3G 2J2

("Sema:th")

OF THE SECOND PART

**WHEREAS:**

- A. the Covenantor has an Interest in Sema:th lands, in the Province of British Columbia, more particularly known and described as:  
Lot \_\_\_\_\_, Upper Sumas Reserve No. 6 (the "Lands");
- B. The Covenantor has applied to Sema:th for a Development Permit for a building or structure on the Lands and the Lands are within a designated flood plain, pursuant to the Sema:th Land Code and the Sema:th *Flood Protection Law*;
- C. The Sema:th *Flood Protection Law* permits the construction of a building on the Lands at an elevation that does not comply with the elevation requirements set out in section 4, subject to certain conditions including the granting of a covenant in favour of Sema:th;
- D. The Covenantor wishes to grant Sema:th a covenant in order to proceed with the proposed

project; and

- E. Section 219 of the provincial *Land Title Act* does not apply to Sema:th Lands but pursuant to the Sema:th Land Code, Sema:th has the authority to create and register covenants, and this covenant is similar to that created by Section 219 of the *Land Title Act*, including provisions in respect of the use of a building on or to be erected on the Land, and that Land is to be built on in accordance with the covenant, or is not to be built on except in accordance with the covenant;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the sum of Ten Dollars (\$10.00) of lawful money of Canada and other good and valuable consideration exchanged by the parties, the sufficiency and receipt of which is hereby acknowledged, the Covenantor does hereby covenant and agree with Sema:th under the Sema:th *Flood Protection Law*, as follows:

1. For the purposes of this Law, terms have the same definitions as in the Sema:th Land Code and the *Flood Protection Law*, except as set out below.
2. In this Agreement:

"Project" means the construction or project which is authorized on the Lands by the Development Permit; and

"Development Permit" means Sema:th Development Permit No. \_\_\_\_ (\* - insert number).

3. The Covenantor agrees and covenants:
  - (a) To follow the conditions set out in the Development Permit;
  - (b) To implement all mitigation measures set out in the engineering report by \_\_\_\_\_ dated \_\_\_\_\_; and
  - (c) \_\_\_\_\_.
4. IT IS UNDERSTOOD AND DECLARED by the Covenantor that:
  - (a) the Lands and Project are within a designated flood plain area;
  - (b) there is significant potential for flood or erosion damage, injury or loss to the Lands, to buildings, structures and contents, or uses on the Lands, including the Project, and to any persons or animals on or using the Lands or the Project;
  - (c) the proposed Project will situate or retain some structures below the elevations required by the Sema:th *Flood Protection Law* which increases the risk for flood damage, injury or loss; and
  - (d) representatives of Sema:th have not, in any manner, represented to the Covenantor, or any other Person, that the Lands or any portion thereof, any buildings or structures constructed or placed thereon, including the Project, or the contents thereof, nor any

uses, are in any way safe or protected from damage or loss caused by or contributed to by flooding or erosion, whether or not the provisions of this Covenant are complied with.

5. The covenants set forth herein shall charge the Lands pursuant to the Sema:th Land Code shall be covenants the burden of which shall run with the Lands. It is further expressly agreed that the benefit of all covenants made by the Covenantor shall accrue solely to Sema:th and that this Covenant may be modified by written agreement of Sema:th and the Covenantor, or discharged by Sema:th, pursuant to the provisions of the Sema:th Land Code.
6. The Covenantor, on behalf of themselves, and their heirs, executors, administrators, successors and assigns, acknowledges that Sema:th has not, does not and will not, in any way represent, warranty, promise or covenant to the Covenantor in any way, or to any other Person, that any building, structure, chattel or part thereof, including the Project, and the contents and any occupants or users of any of them on the Lands or the Project, will be safe or protected against damage, injury, loss or claims in any manner caused by or contributed to by flooding or erosion, whether or not the provisions of this Covenant are complied with.
7. The Covenantor, on behalf of themselves, and their heirs, executors, administrators, successors and assigns, with full knowledge of all of the potential for damage, injuries and losses, in consideration of the approvals given by Sema:th, hereby:
  - (a) agrees to indemnify and to save harmless Sema:th and its employees, officers, directors, Chiefs, Councilors, servants or agents from all loss, damage, costs, actions, suits, debts, accounts, claims and demands which Sema:th or any of its employees, officers, directors, Chiefs, Councilors, servants, contractors or agents, may suffer or incur or be put to:
    - (i) arising out of or in connection with any breach of any covenant or agreement on the part of the Covenantor or their heirs, executors, administrators, successors and assigns contained in this Agreement, or
    - (ii) arising out of or in connection with any personal injury, death, claim, loss or damage relating to any Person, any building, structure, chattel or part thereof, including the Project, or the contents or any occupants or users on the Lands caused by or contributed to by flooding, erosion or any related cause; and
  - (b) does hereby remise, release and forever discharge Sema:th and its employees, officers, directors, Chiefs, Councilors, servants, contractors or agents from all manner of actions, causes of action, suits, debts, accounts, covenants, contracts, claims and demands which the Covenantor or any of their heirs, executors, administrators, successors and assigns may have against Sema:th or any of their employees, officers, directors, Chiefs, Councilors, servants, contractors or agents in relation to any personal injury, death, claim, loss or damage relating to any Person, any building, structure, chattel or part thereof, including the Project, and the contents and any occupants or users on the Lands caused by or

contributed to by flooding, erosion or any related cause.

8. Subject to the provisions of the Sema:th Land Code, the Covenantor's covenants contained in this Agreement shall burden and run with the Lands and shall enure to the benefit of and be binding upon the Covenantor, their heirs, executors, administrators, successors and assigns and Sema:th and their assigns.
9. Nothing in this Agreement shall prejudice or affect the rights, powers and remedies of Sema:th in relation to the Covenantor, including their heirs, executors, administrators, successors and assigns, or the Lands, under any law, bylaw, order or regulation or in equity, all of which rights, powers and remedies may be fully and effectively exercised by Sema:th as if this Agreement had not been made by the parties.
10. The Covenantor will do or cause to be done at their expense all acts reasonably necessary for Sema:th to gain priority for this Agreement over all liens, charges and encumbrances which are or may be registered against the Lands save and except those in favour of Sema:th and those specifically approved in writing by Sema:th.
11. The parties agree that this Agreement shall not be modified or discharged except in writing by the parties and in accordance with the provisions of the Sema:th Land Code and the *Flood Protection Law*.
12. The Covenantor shall do or cause to be done all things and execute or cause to be executed all documents and give such further and other assurance which may be reasonably necessary to give proper effect to the intent of this Agreement.
13. Whenever the singular or masculine or neuter is used herein, the same shall be construed as including the plural, feminine, body corporate or politic unless the context required otherwise.
14. If any section or any part of this Agreement is found to be illegal or unenforceable, then such sections or parts shall be considered to be separate and severable from this Agreement and the remaining sections or parts of this Agreement, as the case may be, shall be unaffected thereby and shall remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable parts or sections had never been included in this Agreement.
15. Where there is a reference to an enactment of Sema:th, that reference shall include a reference to any subsequent enactment of Sema:th of like effect, and unless the context otherwise requires, all statutes referred to herein are enactments of Sema:th.

**IN WITNESS WHEREOF** and as evidence of their agreement to be bound by the terms of this instrument, the parties hereto acknowledge that this Agreement has been duly executed and delivered by the parties by executing the Form C that is attached hereto and forms part of this Agreement.

**CONSENT AND PRIORITY AGREEMENT**

(liens, charges and encumbrances)

**THE BANK OF** \_\_\_\_\_ being the holder of the following registered charge, **HEREBY CONSENTS TO** the granting of the within Restrictive Covenant and agrees that the same shall be binding upon and take priority over its interest on or charge upon the Lands:

Type of Charge \_\_\_\_\_ Registration Number of Charge \_\_\_\_\_

As evidence of its agreement to be bound by the terms of this instrument, the Bank has executed the Form which is attached hereto and forms part of this Agreement.

