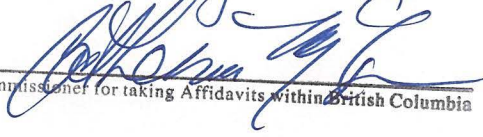


Certified a true copy  
this 18<sup>th</sup> day of June, 2020

  
A Commissioner for taking Affidavits within British Columbia

**Catherine McGowan**  
Barrister & Solicitor  
#8-1638 Pandosy Street  
Kelowna, BC V1Y 1P8  
Tel: (250) 762-2345



*Annex 1*  
This is Exhibit " " referred to in the  
Affidavit of A.J. Gross  
sworn before me at Kelowna, British  
Columbia this 18<sup>th</sup> day of June 2020



**Catherine McGowan**  
Barrister & Solicitor  
#8-1638 Pandosy Street  
Kelowna, BC V1Y 1P8  
Tel: (250) 762-2345

# kʷikʷəłəm Land Code

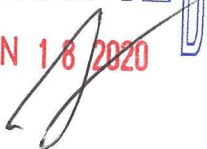
Dated for Reference: March 25, 2020

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kʷikwə́ləm LAND CODE

**Preamble**

**WHEREAS** kʷikwə́ləm recognizes that the Creator and the Transformers founded the kʷikwə́ləm people to be the keepers of its territory;

**AND WHEREAS** kʷikwə́ləm recognizes that the Transformer xé·Ís sent xwə́ltaməyé, the leader of the kʷikwə́ləm people, to forever reside in and rule the waters of the Coquitlam River;

**AND WHEREAS** kʷikwə́ləm honours its profound relationship with the lands, waters, and resources of its traditional territory;

**AND WHEREAS** the kʷikwə́ləm people have lived on, and been sustained by, the lands and waters of the Coquitlam Watershed since before remembered time;

**AND WHEREAS** the kʷikwə́ləm people are proud hə́nqəmińəm speakers. kʷikwə́ləm recognizes that hə́nqəmińəm names carry knowledge of the landscape which has been passed from generation to generation and connects the kʷikwə́ləm people to the land;

**AND WHEREAS** kʷikwə́ləm recognizes its responsibility to preserve, protect, and enhance the kʷikwə́ləm land, waters, resources, heritage, language, and culture;

**AND WHEREAS** kʷikwə́ləm aspires to proceed as an organized, prosperous, and self-reliant nation; and

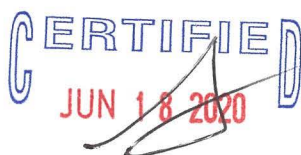
**AND WHEREAS** kʷikwə́ləm no longer desires Canada to manage its reserve lands and resources under the *Indian Act* but instead chooses to manage its reserve lands and resources under this Land Code.

**NOW THEREFORE, THIS LAND CODE IS HEREBY ENACTED AS THE FUNDAMENTAL LAND LAW OF kʷikwə́ləm.**

**PART 1  
PRELIMINARY MATTERS**

**1. Title**

1.1 The title to this enactment is the *kʷikwə́ləm Land Code*.



## 2. Interpretation

### Definitions

2.1 The following definitions apply in this Land Code:

**"Canada"** means Her Majesty the Queen in Right of Canada;

**"Chief"** means the lawfully elected Chief of kʷikwə́ləm;

**"Common-Law Partner"**, in relation to an individual, means a person who is a common-law partner pursuant to a Law described in article 7 or pending the enactment of such a Law, a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one (1) year;

**"Council"** means the lawfully elected governing body of kʷikwə́ləm and includes the Chief;

**"Easement"** means a non-exclusive interest in kʷikwə́ləm Land granted under this Land Code or, prior to the effective date of this Land Code, under the *Indian Act*, giving a Person or Persons the right to use the land of another for an easement or a right of way and is limited only to such interest as is necessary to give effect to the easement granted and despite any common law rule to the contrary, does not require that there be a dominant and a servient tenement;

**"Eligible Voter"** means, for the purpose of voting under this Land Code, a Member who has attained eighteen (18) years of age on or before the day of the vote;

**"Financial Administration Law"** means *kʷikwə́ləm First Nation Financial Administration Law, 2019*, as amended and replaced from time to time;

**"First Nations Land Management Act"** means the *First Nations Land Management Act*, S.C. 1999, c.24 as amended from time to time;

**"First Nation Lands Register"** means the register established pursuant to clause 51 of the Framework Agreement and regulated by the *First Nations Land Registry Regulations* or any successor or replacement register;

**"Framework Agreement"** means the Framework Agreement on First Nation Land Management entered into between Canada and the signatory First Nations on February 12, 1996, as amended from time to time;

**"Immediate Family"**, in respect of an individual, means the individual's parent, sister, brother, child, Spouse or Common-Law Partner;

"**Indian Act**" means the *Indian Act*, R.S.C. 1985, c. I-5 as amended from time to time;

"**Individual Agreement**" means the individual agreement made between kʷikwəłəm and Canada in accordance with clause 6.1 of the Framework Agreement;

"**Interest**" means an interest in kʷikwəłəm Land and includes a Leasehold and an Easement but does not include title to that land;

"**kʷikwəłəm**" means kʷikwəłəm First Nation, a "band" as defined under the *Indian Act* and a "First Nation" as defined under the *First Nations Land Management Act*;

"**kʷikwəłəm Land**" means any reserve land of kʷikwəłəm that is subject to this Land Code;

"**Land Code**" means the *kʷikwəłəm Land Code*, as may be amended or replaced from time to time;

"**Law**" means a law enacted pursuant to Part 2 of this Land Code;

"**Leasehold**" means an Interest in kʷikwəłəm Land granted under this Land Code or, prior to the effective date of this Land Code, under the *Indian Act*, giving a Person or Persons the exclusive right of use and possession of a parcel or parcels of land upon agreed conditions, for a specified period of time, and includes a leasehold granted by a lessee of kʷikwəłəm Land to a sublessee;

"**Licence**" means a licence, permit or other permission granted under this Land Code, or a licence or permit granted pursuant to the *Indian Act* prior to the effective date of this Land Code, to use, develop, or extract specified Natural Resources from, or otherwise have non-exclusive use of, kʷikwəłəm Land but which does not grant an Interest in, or possession to, kʷikwəłəm Land;

"**Member**" means an individual whose name appears on the kʷikwəłəm Band Membership List;

"**Meeting of Members**" means a meeting of the Members held pursuant to article 13;

"**Minister**" means the Minister of Crown-Indigenous Relations, or his successor or replacement;

"**Natural Resources**" means any materials or substances on, under, or in kʷikwəłəm Land which, when removed, have economic or other value;

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"**Person**" means an individual, corporation, body corporate, partnership, joint venture, association, trust or unincorporated organization of any trustee, executor, administrator or other legal representative;

"**Resolution**" means a resolution of Council consented to by a majority of the members of Council at a duly convened meeting of Council that is made pursuant to this Land Code; and

"**Spouse**" includes either of two individuals who have entered in good faith into a marriage that is voidable or void.

**Fair Interpretation**

2.2. This Land Code shall be interpreted in a fair, large and liberal manner.

**Interpretation**

2.3. In this Land Code:

- (a) the word "shall" signifies an obligation that, unless this Land Code provides to the contrary, must be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation;
- (b) unless it is otherwise clear from the context, the use of the word "including" means "including, but not limited to", and the use of the word "includes" means "includes, but is not limited to";
- (c) titles and headings have been inserted for convenience of reference only, and are not interpretive aids;
- (d) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine;
- (e) unless it is otherwise clear from the context, whenever the singular is used, it will include the plural, and the use of the plural includes the singular;
- (f) all references to a time period of days means consecutive days and not business days;
- (g) where the time limited for the doing of an act expires or falls on a Saturday, Sunday or a First Nation holiday or a provincial or federal statutory holiday, the act may be done on the next day that is not a Saturday, Sunday, a First Nation holiday or a provincial or federal statutory holiday;

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- (h) where the time limited for the doing of an act by kʷikwəłəm falls on a day when the kʷikwəłəm administration office is not open, the act may be done on the next day that the office is open; and
- (i) where there is a reference to a number of days before or after an event or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded.

**Culture and Traditions**

2.4. The structures, organizations and procedures established by or under this Land Code shall be interpreted in accordance with the culture, traditions and customs of kʷikwəłəm.

**Language**

2.5. The traditional language of kʷikwəłəm may be used to clarify the meaning of any provision in this Land Code.

**Consistency with Framework Agreement**

2.6. If there is an inconsistency or conflict between this Land Code and the Framework Agreement, the Framework Agreement will prevail to the extent of the inconsistency or conflict.

**Paramountcy**

2.7. If there is an inconsistency or conflict between this Land Code and any other enactment of the kʷikwəłəm, including a by-law enacted under section 81 of the *Indian Act*, this Land Code will prevail to the extent of the inconsistency or conflict.

**Rights Not Affected**

- 2.8. This Land Code does not change:
- (a) any aboriginal, treaty, inherent rights or other rights or freedoms that pertain now or in the future to kʷikwəłəm or its Members;
  - (b) the fiduciary relationship between Canada and kʷikwəłəm and its Members; or
  - (c) the by-law powers of Council pursuant to the *Indian Act*.

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**Lands and Interests Affected**

- 2.9. A reference to "land " in this Land Code includes all the rights and resources in and of that land, and includes:
- (a) the water, beds underlying water, riparian rights, air rights, minerals and subsurface resources and all renewable and non-renewable Natural Resources in and of that land to the extent these are under the jurisdiction of Canada and are part of that land;
  - (b) all the Interests and Licences granted by Canada listed in the Individual Agreement; and
  - (c) all the Interests and Licences granted by kʷikwə́ləm after this Land Code comes into effect.

**Eligible Reserve Land**

- 2.10. Only land that is reserve land of the kʷikwə́ləm is eligible to be governed by kʷikwə́ləm as kʷikwə́ləm Land under this Land Code.

**3. Authority to Govern**

**Origin of Authority**

- 3.1. The authority of kʷikwə́ləm to govern its land and resources flows from its aboriginal title and inherent right of self-government.

**Governance of kʷikwə́ləm Land**

- 3.2. By enacting this Land Code, kʷikwə́ləm is affirming its responsibility to care for and respect kʷikwə́ləm Land.

**4. Purpose**

- 4.1. The purpose of this Land Code is to set out the principles, rules and administrative structures that apply to kʷikwə́ləm Land and by which kʷikwə́ləm will exercise authority over that land.

**5. Description of kʷikwə́ləm Land**

**kʷikwə́ləm Land**

- 5.1. The kʷikwə́ləm Land that is subject to this Land Code consists of:
- (a) Coquitlam IR #1; and

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- (b) Coquitlam IR #2

as those lands are described in Appendix “G” of the Individual Agreement.

**Additions to kʷikwə́ləm Land**

5.2. Additional lands may be made subject to this Land Code if:

- (a) such lands become reserve lands of kʷikwə́ləm and Council, by Resolution, declares the land to be subject to this Land Code; or
- (b) in accordance with a request made by Council, the Minister, by order, sets apart lands, the title to which is vested in Canada, as reserve lands of kʷikwə́ləm and provides in the order that the lands are kʷikwə́ləm Land.

**Land Exchange**

5.3. For greater certainty, section 5.2 applies to land acquired by land exchange in accordance with article 16.

**Inclusion of Land by Resolution**

5.4. Before Council, by Resolution, declares reserve lands of kʷikwə́ləm to be subject to this Land Code pursuant to subsection 5.2(a), Council shall call a Meeting of Members to notify Members of the proposed addition to kʷikwə́ləm Land.

**Application of Land Code**

5.5. Before lands become kʷikwə́ləm Land, Council may, in accordance with this Land Code:

- (a) grant Interests or Licences in relation to such lands; or
- (b) enact zoning or other Laws in relation to such lands,

with the proviso that such grants of Interests or Licences, or such Laws will not have effect until the lands become kʷikwə́ləm Land.

**Amendment to the Description of kʷikwə́ləm Land when Land is Added**

5.6. As of the date of a Resolution or an order of the Minister adding land to kʷikwə́ləm Land as provided for in section 5.2, the description of the kʷikwə́ləm Land in this Land Code will be deemed to be amended to include the description of the kʷikwə́ləm Land set out in the Resolution or order.

## PART 2 FIRST NATION LEGISLATION

### 6. Law-Making Powers

#### Council May Make Laws

6.1. Council may, in accordance with this Land Code, make laws in relation to kʷikwə́ləm Land.

#### Examples of Laws

6.2. For greater certainty and without limiting the generality of section 6.1, Council may make laws relating to:

- (a) the development conservation, protection, management, use and possession of kʷikwə́ləm Land;
- (b) Interests and Licences;
- (c) family homes situated on kʷikwə́ləm Land and matrimonial interests in and to structures on kʷikwə́ləm Land and in kʷikwə́ləm Land, as more particularly described in article 7;
- (d) the grant of possessory and/or occupation rights in kʷikwə́ləm Land to Members only;
- (e) zoning;
- (f) land use planning;
- (g) regulation, control, authorization and prohibition of residency, access, occupation, use and development of kʷikwə́ləm Land;
- (h) environmental assessment and protection;
- (i) archaeological and cultural heritage assessment, protection and management;
- (j) provision of local services in relation to kʷikwə́ləm Land and the imposition of equitable user charges;
- (k) enforcement of Laws;
- (l) provision of services for the resolution, outside the courts, of disputes in relation to kʷikwə́ləm Land;



- (m) any matter necessary to give effect to this Land Code; and
- (n) any matter necessary or ancillary to Laws.

#### **Regulatory Instruments**

6.3. For greater certainty, in addition to Laws, Council may make other regulatory instruments, including rules, regulations, standards, codes and policies.

### **7. Family Homes and Matrimonial Interests Law**

#### **Power to Enact Family Homes and Matrimonial Interests Law**

- 7.1. Council may, in accordance with this Land Code, enact Laws that apply during a conjugal relationship, when that relationship breaks down or on the death of a Spouse or Common-Law Partner, respecting:
- (a) the use, occupancy and possession of family homes situated on kʷikwə́ləm Land; and
  - (b) the division of the value of any interests or rights held by Spouses or Common-Law Partners in or to structures on kʷikwə́ləm Land and in kʷikwə́ləm Land.

#### **Development of Rules and Procedures**

7.2. The rules and procedures contained in family homes and matrimonial interests Laws shall be developed by Council in consultation with Members.

#### **Additional Provisions**

- 7.3. Family homes and matrimonial interests Laws must include procedures for amending and repealing them and may include:
- (a) provisions for administrating those Laws; and
  - (b) despite subsection 89(1) of the *Indian Act*, provisions for enforcing, on kʷikwə́ləm Land, an order of a court or a decision made, or an agreement reached, under those Laws.

#### **Notice of Laws to Attorney General**

7.4. Council will provide, to the Attorney General of British Columbia, notice of its intent to make family homes and matrimonial Interests Laws and, upon enactment, provide a copy of those Laws to the Attorney General.

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## 8. Law-Making Procedure

### Proposing Laws

- 8.1. A proposal for a Law may be introduced at a duly convened meeting of Council by:
- (a) a member of Council; or
  - (b) a representative of such body or authority composed of Members that may be authorized by Council to do so.

### Written Proposal

- 8.2. A proposal for a Law made pursuant to section 8.1 shall be in writing and shall contain:
- (a) a proposed title;
  - (b) a brief description of the subject matter to be addressed;
  - (c) a reason why the proposed Law is necessary; and
  - (d) a draft outline of the Law.

### Procedure Upon Receipt of Proposal for a Law

- 8.3. Upon receipt of a proposal for a Law in accordance with section 8.2, Council may:
- (a) table the proposal for further review;
  - (b) request that the Person who made the proposal provide further information or attend at a meeting of Council to speak to the proposal;
  - (c) undertake or direct the preparation of a draft Law concerning matters raised in the proposal, for consideration by Council; or
  - (d) reject the proposal and provide the Person who made the proposal a written notice of its decision, together with a brief explanation for its decision.

### Tabling and Posting of Proposed Laws

- 8.4. A proposed Law shall be:

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- (a) tabled at a meeting of Council at least thirty (30) days before the proposed Law is voted upon by Council;
- (b) posted in public places and published on the kʷikwə́ləm website at least thirty (30) days before the proposed Law is voted upon by Council; and
- (c) put forward for consideration at a Meeting of Members, if required under article 13.

**Community Input to be Considered**

8.5. Council shall consider any input received from Members in respect of a proposed Law, and may, in its sole discretion, incorporate such input before enacting the Law.

**Urgent Matters**

8.6. Council may enact a Law without the preliminary steps provided for in section 8.4 or otherwise prescribed by policies if Council is of the opinion that the Law is needed urgently for public health and safety or to protect kʷikwə́ləm Land or Members.

8.7. A Law enacted pursuant to section 8.6 expires one hundred and twenty (120) days after its enactment unless it is re-enacted in accordance with section 8.4.

**Enactment of Law**

8.8. Subject to this Land Code, a Law is enacted if it is approved by a quorum of Council at a duly convened meeting of Council open to Members.

**Certification of Laws**

8.9. The original copy of any Law or Resolution concerning kʷikwə́ləm Land shall be signed by the members of Council present at the meeting at which it was enacted or adopted.

**Effective Date of Laws**

8.10. A Law takes effect on the date of its enactment or such later date as specified in the Law.

**Amendments to Laws**

8.11. A Law may be repealed or amended following the procedure for making Laws set out in this article 8, unless the Law to be repealed or amended sets out a different procedure, in which case the procedure set out in the Law applies.

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## 9. Publication of Land Code and Laws

### Publication

- 9.1. All Laws shall be published in the minutes of the Council meeting at which they were enacted.
- 9.2. As soon as practicable after this Land Code, a Law or an amendment to this Land Code or Law, is enacted, Council shall post a copy of it:
  - (a) in a location within the administrative offices of kʷikwəłəm accessible to all Members;
  - (b) on the kʷikwəłəm website; and
  - (c) at such other places as Council may consider appropriate.

### Register of Laws

- 9.3. Council shall cause to be kept, at the administrative offices of the kʷikwəłəm, a register containing this Land Code, all Laws and Resolutions and any amendments to this Land Code, Laws and Resolutions, including any Land Code, Laws and Resolutions that have been repealed or are no longer in force.

### Copies for Any Person

- 9.4. Any Person may, during regular business hours at the kʷikwəłəm administration office, have reasonable access to the register of Laws maintained pursuant to section 9.3 and obtain a copy of this Land Code, a Law or Resolution.

## 10. Enforcement of Laws

### Enforcement

- 10.1. To enforce this Land Code and Laws, Council shall have the power to:
  - (a) establish offences that are punishable on summary conviction;
  - (b) provide for fines, imprisonment, restitution, community services, and alternate means for achieving compliance;
  - (c) establish comprehensive enforcement procedures consistent with federal and provincial law, including inspections, searches, seizures and compulsory sampling, testing and the production of information; and

- (d) provide for the collection of non-tax debts, fees or charges owed to kʷikwəłəm using taxation collection remedies that are available under kʷikwəłəm property taxation laws.

**Application of the *Criminal Code***

- 10.2. Unless a different procedure is provided for by a Law, the summary conviction procedures of Part XXVII of the *Criminal Code*, as amended from time to time, apply to offences under this Land Code or a Law.

**Fines and Imprisonment**

- 10.3. Unless a different procedure is provided for by a Law, any Person who commits an offence under this Land Code or a Law is liable to a fine not to exceed five thousand (\$5,000) and to a term of imprisonment not to exceed six months or to both fine and imprisonment, provided however, that offences related to a Law pertaining to environmental protection may carry penalties consistent with similar environmental protection laws in force in Canada.

**Agreement for Recovery of Fines**

- 10.4. kʷikwəłəm may enter into agreements with other governments or government agencies to collect any fines, debts, fees or other penalties imposed by this Land Code or a Law.

**Prosecuting Offences**

- 10.5. For the purpose of prosecuting offences, kʷikwəłəm may:
  - (a) retain its own prosecutor;
  - (b) enter into an agreement with the Province of British Columbia to arrange for a provincial prosecutor; and
  - (c) make laws with respect to the appointment and authority of justices of the peace.

**PART 3  
COMMUNITY MEETINGS AND APPROVALS**

**11. Participation of Members**

**Attendance by Members**

- 11.1. Every Member is entitled to attend at a Meeting of Members.

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## 12. Participation of Eligible Voters

### Participation of Eligible Voters

12.1. Every Eligible Voter is entitled to cast a vote or otherwise participate in a decision in respect of a matter for which community approval is required under this Land Code.

## 13. Meetings of Members

### Meetings of Members Required

13.1. Subject to section 8.6, Council shall call a Meeting of Members for the purposes of sharing information and soliciting input prior to:

- (a) enacting a Law respecting a community plan or subdivision plan;
- (b) making a decision concerning any development affecting a heritage site or an environmentally sensitive property;
- (c) enacting a Law respecting environmental assessment and protection;
- (d) enacting a Law respecting the transfer and assignment of Licences and Interests;
- (e) enacting a Law, as described in subsection 6.2(d), respecting the grant of possessory and/or occupation rights in kʷikwəłəm Land to Members only;
- (f) enacting a Law, as described in article 7, respecting family homes and matrimonial interests on kʷikwəłəm Land;
- (g) enacting a Law respecting the criteria for the determination of fees or rent payable pursuant to Licences or Interests;
- (h) enacting a Law, as described in subsection 15.3(a), respecting the rights and procedures on expropriation of an Interest or Licence; and
- (i) respecting any other matter, Law or class of Law that Council, by Resolution, declares to be subject to this section.

### Council may Convene Meetings of Members

13.2. At any time and from time to time, Council may convene a Meeting of Members to share information and solicit input on matters or issues arising under this Land Code.

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13.3. Council may schedule one or more Meetings of Members for the purposes of sharing information and soliciting input to ensure that Members are well informed.

**Notice of Meeting of Members**

13.4. At least thirty (30) days prior to a Meeting of Members, Council shall give written notice of the meeting that includes:

- (a) the date, time and place of the meeting;
- (b) an agenda;
- (c) a brief description of any matter for which community approval pursuant to article 14 will be sought at the meeting;
- (d) any relevant materials that disclose in an unbiased and easy to understand fashion the information needed to facilitate understanding of the agenda items and to elicit informed feedback; and
- (e) any other information or material that Council considers appropriate.

**Manner of Notice**

13.5. The notice referred to in section 13.4 shall be given by:

- (a) posting the notice in public places;
- (b) mailing or delivering the notice to Members who reside on kʷikwə́ləm Land;
- (c) mailing the notice to Members who reside off kʷikwə́ləm Land for whom Council has current addresses or taking other reasonable steps to inform such Members;
- (d) posting the notice on the kʷikwə́ləm website; and
- (e) such other methods as Council considers appropriate.

**Permission of Council**

13.6. In addition to Members, any Person authorized by Council may attend a Meeting of Members.

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**No Quorum**

13.7. Subject to section 14.6, no quorum or minimum level of attendance is required at a Meeting of Members.

**14. Community Approval**

**Community Approval**

14.1. Community approval must be obtained prior to the following:

- (a) the adoption of a land use plan;
- (b) the grant of a Licence by Council to remove or extract Natural Resources from kʷikwə́ləm Land exceeding a term of five (5) years, calculated by including any renewal or extension period;
- (c) except as otherwise provided for in a Law referred to in subsection 6.2(d), the grant or disposition of an Interest or Licence by Council that has a term exceeding forty-nine (49) years, calculated by including any renewal or extension period;
- (d) the delisting of a site as a heritage site;
- (e) the voluntary exchange of kʷikwə́ləm Land pursuant to article 16 ;
- (f) an amendment of this Land Code, except as provided for in section 14.3; and
- (g) any other matter, Law or class of Law that Council, by Resolution, declares to be subject to this section.

**Utility Permits**

14.2. Notwithstanding section 14.1, community approval is not required for the grant by Council of an Easement or Licence for utilities, including telecommunications, water, electricity, natural gas and sewer.

**No Approval Required for Certain Land Code Amendments**

14.3. Community approval is not required for:

- (a) an amendment to this Land Code to change the description of kʷikwə́ləm Land as provided for in section 5.6; or
- (b) minor amendments to this Land Code that do not change its substance, including amendments:

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- (i) to update a reference in this Land Code to a clause in another statute or document to reflect its current numbering;
- (ii) to update a reference in this Land Code to a statute or parts thereof to reflect their current content;
- (iii) that are required to remedy inconsistencies; and
- (iv) to correct grammatical or typographical errors.

**Method of Voting**

14.4. Community approval in respect of the matters described in section 14.1 shall be obtained by one or more of the following methods:

- (a) establishing polling locations;
- (b) show of hands at a Meeting of Members;
- (c) mail-in ballots; or
- (d) such other method as may be provided for in policies established by Council.

**Approval by Simple Majority**

14.5. Subject to section 14.6, a matter that requires community approval pursuant to section 14.1 shall be considered approved if fifty percent plus one (50%+1) of those Eligible Voters who participate in the vote are in favour of the matter.

**Increased Threshold**

14.6. Prior to a Meeting of Members at which community approval for a matter described in section 14.1 is sought or a vote on a matter described in section 14.1, Council may, by Resolution:

- (a) establish a minimum level of attendance by Eligible Voters at such Meeting of Members or a minimum number of votes cast by Eligible Voters in order for the result to be binding; and/or
- (b) require that a percentage greater than fifty percent plus one (50% + 1) of participating Eligible Voters must approve the matter in order to obtain community approval.

## PART 4 PROTECTION OF LAND

### 15. Expropriation

#### Licences and Interests that may be Expropriated

15.1. An Interest or Licence in kʷikwəłəm Land, or in any building or other structure on that land, may only be expropriated by kʷikwəłəm in accordance with the Framework Agreement and this Part 4.

#### Community Purposes

15.2. An expropriation shall only be made for necessary community works or other community purposes, including a fire hall, sewage or water treatment facility, community center, public works, utilities, roads, schools, daycare facility, hospitals, health-care facility, and retirement home.

#### Conditions for Expropriation

15.3. An Interest or Licence in kʷikwəłəm Land or in any building or other structure on such land may be expropriated by kʷikwəłəm provided the following conditions have been met:

- (a) a Law has been enacted setting out:
  - (i) the procedure governing the expropriation process;
  - (ii) the method of determining fair compensation to be paid to the affected Interest or Licence holder; and
  - (iii) the procedure for resolving disputes regarding the amount of compensation to be paid to the affected Interest or Licence holder;
- (b) written notice has been given to the holder of the Interest or Licence considered for expropriation specifying the Interest or Licence that is considered for expropriation;
- (c) Council has attempted in good faith to negotiate an agreement to acquire the Interest or Licence considered for expropriation but has failed to reach such an agreement with the Interest or Licence holder; and
- (d) Council has issued a report to the Members setting out the community works or community purposes for which the proposed expropriation is required and the reason why the proposed expropriation is necessary. If the Interest or Licence being considered for expropriation is held by a

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Member, the affected Member or Members shall receive the report prior to its general release to the community.

**Interests and Licences Not To Be Expropriated**

15.4. The following Interests and Licences may not be expropriated by kʷikwə́ləm:

- (a) an Interest held by Canada;
- (b) an Interest that was obtained pursuant to section 35 of the *Indian Act*; and
- (c) an Interest or Licence held by a utility or public body pursuant to which kʷikwə́ləm has agreed is exempt from expropriation.

**Compensation for Licences and Interests**

15.5. kʷikwə́ləm shall, in accordance with its Laws and the Framework Agreement:

- (a) serve reasonable notice of the expropriation on each affected holder of the Interest or Licence to be expropriated; and
- (b) pay fair and reasonable compensation to the holder of the Interest or Licence being expropriated.

**Compensation Calculations**

15.6. kʷikwə́ləm shall calculate the total value of the compensation payable pursuant to section 15.5 based on the heads of compensation set out in the *Expropriation Act* (Canada), which shall be the Market Value of the expropriated Interest or Licence.

15.7. "Market Value", for the purposes of section 15.6, is the amount that would have been paid for the expropriated Interest or Licence if, at the time of the expropriation, it had been sold in the open market by a willing seller to a willing buyer.

**Neutral Evaluation to Resolve Disputes**

15.8. The resolution of disputes concerning the right of kʷikwə́ləm to expropriate shall be determined by neutral evaluation, in the same manner as provided in Part IX (Dispute Resolution) of the Framework Agreement and the 60-day period referred to in clause 32.6 (Expropriation of First Nation Land by Canada-

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Restrictions) of the Framework Agreement shall be applied, as appropriate in the circumstances, by the neutral evaluator.

**Arbitration to Resolve Disputes**

15.9. The resolution of the following disputes shall be determined by arbitration in the same manner as provided in Part IX (Dispute Resolution) of the Framework Agreement:

- (a) disputes concerning the right of the holder of an expropriated Interest or Licence to compensation; and
- (b) disputes concerning the amount of compensation.

**16. Voluntary Exchange of kʷikwəłəm Land**

**Conditions for a Land Exchange**

16.1. kʷikwəłəm may agree with another party to exchange a parcel of kʷikwəłəm Land for a parcel of land from that other party in accordance with this Land Code and the Framework Agreement.

**No Effect**

16.2. An exchange of kʷikwəłəm Land is of no effect unless it receives community approval in accordance with article 14.

**Land to be Received**

16.3. No exchange of kʷikwəłəm Land may be agreed to unless the land to be received by kʷikwəłəm in the exchange meets the following conditions:

- (a) it shall be of a value comparable to the appraised value of the kʷikwəłəm Land; and
- (b) it shall be eligible to become a reserve and kʷikwəłəm Land subject to this Land Code.

**Negotiators**

16.4. Any Person who negotiates a land exchange agreement on behalf of kʷikwəłəm must be so designated in a Resolution.

**Additional Land**

16.5. kʷikwəłəm may receive compensation, such as money or one or more other parcels of land, in addition to the land referred to in section 16.3, and such other

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land may be held by kʷikwəłəm or in trust for kʷikwəłəm by a nominee on behalf of kʷikwəłəm in fee simple or any other manner, and any such additional land need not meet the requirements set out in section 16.3.

**Federal Consent**

16.6. Before kʷikwəłəm concludes a land exchange agreement, it shall receive a written statement from Canada stating that Canada:

- (a) consents to set apart as a reserve for kʷikwəłəm or as an addition to reserve of kʷikwəłəm, the land to be received in exchange under section 16.3, as of the date of the land exchange or such later date as Council may specify by Resolution; and
- (b) consents to the manner and form of the exchange as set out in the exchange agreement.

**Community Notice**

16.7. At such time as negotiation of a land exchange agreement is concluded, and before community approval on the land exchange agreement is sought pursuant to article 14, Council shall provide the following information to Eligible Voters:

- (a) a description of the kʷikwəłəm Land to be exchanged;
- (b) a description of the land to be received by kʷikwəłəm in the exchange;
- (c) a description of any other compensation to be exchanged;
- (d) a report of a professional land appraiser stating that in their professional opinion, the condition in subsection 16.3(a) has been met;
- (e) subject to any confidentiality obligations, a copy or summary of the exchange agreement; and
- (f) a copy of Canada's consent referred to in section 16.6.

**Process of Land Exchange**

16.8. The land exchange agreement shall provide that:

- (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve for kʷikwəłəm;

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- (b) Council must pass a Resolution authorizing Canada to transfer title to the kʷikwəłəm Land being exchanged, in accordance with the exchange agreement;
- (c) a copy of the instruments transferring title to the relevant parcels of land must be registered in the First Nation Lands Register; and
- (d) the land to be set apart as a reserve for kʷikwəłəm has been subject to an environmental audit, and clearance or remediation as necessary, or that Council is satisfied that adequate provisions have been made for such clearance or remediation.

## PART 5 ACCOUNTABILITY

### 17. Conflict of Interest

#### Application of Other Laws, Rules and Policies

17.1. Any person dealing with a matter that is related to kʷikwəłəm Land must, in addition to complying with the requirements of this article 17, comply with all applicable Laws, policies and procedures established by Council, respecting the avoidance of conflicts, as amended or replaced from time to time.

#### Application of Conflict of Interest Rules

17.2. The rules in section 17.3 apply to the following Persons when dealing with a matter relating to kʷikwəłəm Land:

- (a) each member of Council who is dealing with any matter before Council;
- (b) each Person who is an employee or contractor of kʷikwəłəm; and
- (c) each person who is a member of a board, committee or other body of the kʷikwəłəm.

#### Duty to Report and Abstain

17.3. If there is an actual or potential interest, financial or otherwise, in a matter being dealt with that might involve a Person referred to in section 17.2 or their Immediate Family, that Person shall:

- (a) disclose the interest in writing and/or orally to Council and, if appropriate, to their employer, supervisor, board, committee or other body as the case may be;

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- (b) take no part in any deliberations, recommendations or votes on that matter; and
- (c) remove themselves from the room during deliberation and discussion amongst the remaining members of Council, board, committee or other body, as the case may be, regarding the specific issue.

**Common Interests**

17.4. Section 17.3 does not apply to any interest that is held by a Member in common with every other Member.

**Inability to Act**

17.5. If a board, committee or other body is unable to act due to a conflict of interest, the matter shall be referred to Council.

**Meeting of Members**

17.6. If Council is unable to vote on a proposed Law, Resolution or other matter in relation to kʷikwəłəm Land due to a conflict of interest, Council may refer the matter for community approval in accordance with article 14.

**Other Laws**

17.7. For greater certainty, Council may develop policies or enact Laws to further implement this article 17.

**18. Financial Management**

**Application**

18.1. This article 18 applies only to financial matters relating to kʷikwəłəm Land and Natural Resources, and revenues derived from and incurred in respect of kʷikwəłəm Land and Natural Resources, and will be interpreted in a manner consistent with the *Financial Administration Law*.

**Financial Policies**

18.2. Council may, in accordance with this Land Code, develop, adapt or adopt Laws or policies, related to the financial management of revenues and expenses related to kʷikwəłəm Land and Natural Resources including:

- (a) the regulation of receipt, management and expenditure of moneys, including transfer payments, capital and revenue moneys received from Canada, revenue derived from kʷikwəłəm Land and Natural Resources,

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including moneys received from a grant or disposition of an Interest or Licence;

- (b) the management of financial records and accounts;
- (c) the preparation of financial statements and audits;
- (d) the preparation and implementation of budgets and annual presentation of budgets;
- (e) the determination of general investment strategy;
- (f) the incurrence of loans and other indebtedness;
- (g) the establishment of fees, fines, charges and levies; and
- (h) the establishment and maintenance of a recordkeeping system that ensures confidentiality, security of records and document retention.

#### **Administrative Structure**

18.3. Council shall establish the administrative structure to:

- (a) implement all financial policies and procedures;
- (b) oversee the day-to-day operational responsibilities for managing moneys related to kʷikwə́ləm Land and Natural Resources;
- (c) ensure the accuracy of the accounting records; and
- (d) reconcile, review and approve bank statements.

### **19. Annual Report**

#### **Publish Annual Report**

19.1. Council shall publish and present an annual report to Members on kʷikwə́ləm Land and Natural Resources which shall include:

- (a) an annual review of land management activities;
- (b) the annual budget for the current or upcoming fiscal year;
- (c) a copy and explanation of the most recent auditor's report as it applies to kʷikwə́ləm Land and Natural Resources; and

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- (d) any other matter as determined by Council.

## 20. Access to Information

### Access and Copy

- 20.1. A Member may, during normal business hours at the main administrative office of the kʷikwəłəm have reasonable access to or obtain a copy of the annual report referred to in section 19.1.

### Access to Records

- 20.2. Any Person authorized by Council may inspect the financial records of kʷikwəłəm related to kʷikwəłəm Land and Natural Resources.

## PART 6 LAND AND NATURAL RESOURCES ADMINISTRATION

## 21. Land Staff

### Administration

- 21.1. Council will perform all the duties and functions, and exercise all the powers of kʷikwəłəm.

### Delegation

- 21.2. Notwithstanding section 21.1, Council may delegate administrative authority in relation to this Land Code or a Law to an officer or employee of kʷikwəłəm or a board or committee appointed by Council by Resolution.

## 22. Registration of Interests and Licences

### Enforceability of Interests and Licences

- 22.1. An Interest or Licence created or granted after this Land Code takes effect is not enforceable unless it is registered in the First Nation Lands Register.

### Registration of Consent or Approval

- 22.2. No instrument granting an Interest or Licence that requires the consent of Council, or community approval, is registerable unless the instrument contains the requisite consent or a certified copy of the document that records the consent or approval is attached to the instrument.

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**Duty to Deposit**

- 22.3. Provided that Council has received a registerable copy of the following instruments and the prescribed registration fees have been paid, Council shall ensure that each of the following instruments is deposited in the First Nation Lands Register:
- (a) a grant of an Interest or Licence; and
  - (b) a transfer, assignment or encumbrance of an Interest or Licence.

**Limitation of Liability**

- 22.4. Neither kʷikwəłəm, Council nor any employee or contractor of kʷikwəłəm shall be responsible for ensuring that an instrument that affects or purports to affect kʷikwəłəm Land:
- (a) is validly made;
  - (b) complies with this Land Code or any Law;
  - (c) should be or is registered or recorded; or
  - (d) will be accepted by the First Nations Land Registry for registration or recording in the First Nations Land Register.

**PART 7  
INTERESTS AND LICENCES IN LAND**

**23. Limits on Interests and Licences**

**All Dispositions in Writing**

- 23.1 An Interest or Licence may only be created, granted, disposed of, assigned or transferred by a written document made in accordance with this Land Code and any relevant Laws.

**Standards**

- 23.2 Council may establish mandatory standards, criteria and forms for Interests and Licences.

**Improper Transactions Void**

- 23.3 A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which kʷikwəłəm or any other Person purports to grant,

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dispose of, transfer or assign an Interest or Licence after the date this Land Code takes effect is void if it contravenes this Land Code.

**Non Member May Hold an Interest or Licence**

23.4 A Person, whether or not a Member, may hold an Interest or Licence, subject to this Land Code and any relevant Laws.

**Grants of Subsidiary Rights and Interests**

23.5 A holder of an Interest may grant subsidiary rights and Interests, if permitted under the provisions of the granting instrument.

**24. Existing Interests and Licences**

**Continuation of Existing Interests and Licences**

24.1 Any Interest or Licence that existed when this Land Code takes effect will, subject to this Land Code, continue in force in accordance with its terms and conditions. Any renewals of any Interest or Licence after this Land Code comes into effect will be in accordance with the terms and conditions of this Land Code.

**Designation Terms Cease to Apply**

24.2 The terms and conditions of any designation of kʷikwə́ləm Land made by kʷikwə́ləm by way of a surrender to Canada that is not absolute pursuant to the *Indian Act* will cease to apply after the date this Land Code takes effect.

**Replacing the Role of Canada**

24.3 Immediately upon the coming into force of this Land Code, Canada transfers to kʷikwə́ləm and kʷikwə́ləm assumes all of the rights and obligations of Canada as grantor in respect of all existing Interests and Licences.

**25. New Interests and Licences**

**Authority to Make Dispositions**

25.1 In accordance with this Land Code and any relevant Laws, Council may, by Resolution, grant:

- (a) Interests and Licences; and
- (b) Licences to take Natural Resources from kʷikwə́ləm Land.

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**Delegation**

25.2 Council may, by Resolution, appoint an officer or employee of kʷikwəłəm to act as its delegate to grant Interests and Licences pursuant to section 25.1.

**26. Limits on Mortgages and Seizures**

**Protections**

26.1 In accordance with the Framework Agreement, sections 29 and 87, and subsections 89(1), 89(1.1) and 89(2) of the *Indian Act* continue to apply to kʷikwəłəm Land.

26.2 The application of subsection 89(1.1) of the *Indian Act* is extended to all Leaseholds in kʷikwəłəm Land.

**Mortgage of Interest**

26.3 An Interest in kʷikwəłəm Land may be subject to mortgage or charge, if the Interest permits such mortgage or charge.

**Time Limit**

26.4 The term of any charge or mortgage of an Interest shall not exceed the term of the Interest.

**Default in Mortgage**

26.5 In the event of default in the terms of a charge or mortgage of an Interest, the Interest is not subject to possession by the chargee or mortgagee pursuant to foreclosure, power of sale or any other form of execution or seizure, unless:

- (a) the charge or mortgage was registered in the First Nation Lands Register; and
- (b) a reasonable opportunity to redeem the charge or mortgage was given to Council on behalf of kʷikwəłəm.

**Power of Redemption**

26.6 If Council exercise its power of redemption under subsection 26.5(b), kʷikwəłəm becomes the Interest holder and takes the position of the charger or mortgagor for all purposes after the date of redemption.

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**Waiver of Power of Redemption**

26.7 Council may, in writing, waive its power of redemption provided for under subsection 26.5(b) in respect of any Interest.

**27. Residency and Access Rights**

**Right of Residence**

27.1 Subject to this Land Code, Laws or Resolutions, the following Persons may reside on kʷikwə́ləm Land:

- (a) a Person who is authorized to reside on kʷikwə́ləm Land pursuant to a written agreement, such as a tenancy agreement, with kʷikwə́ləm;
- (b) a holder of an Interest or Licence, in accordance with the provisions of the granting instrument;
- (c) a Person authorized in writing by Council; or
- (d) a class of Persons authorized by Law.

**Right of Access**

27.2 Subject to this Land Code, Laws or Resolutions, the following Persons have a right of access to kʷikwə́ləm Land:

- (a) a holder of an Interest, and any Person who has a right of access pursuant to the terms of the Interest;
- (b) a holder of a Licence, and any Person who has a right of access pursuant to the terms of the Licence;
- (c) a Member;
- (d) a Member's Spouse, Common-Law Partner and children;
- (e) a Person who is authorized by a government body or any other public body, established by or under a kʷikwə́ləm, federal or provincial enactment to establish, operate or administer a public service or to construct or operate a public institution; or
- (f) a Person authorized in writing by Council or by a Law.

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**Public Access**

- 27.3 Any Person may have access to kʷikwəłəm Land for social or business purposes, if:
- (a) the Person does not trespass on occupied land or interfere with the rights of any holder of an Interest or Licence;
  - (b) the Person complies with all applicable Laws; and
  - (c) no Resolution has been enacted barring that Person from having access to kʷikwəłəm Land.

**Use of Roads**

- 27.4 Subject to this Land Code, Laws or Resolutions , any Person may have access to public roads within kʷikwəłəm Land.

**Trespass**

- 27.5 Any Person, who resides on, enters or remains on kʷikwəłəm Land, other than in accordance with a residence or access right under this Land Code, is guilty of an offence and may, in addition to other remedies, be ordered evicted or removed by Resolution, enforceable by an peace officer or enforcement official designated by Council by Resolution.

**Civil remedies**

- 27.6 All civil remedies for trespass are preserved.

**No Obligation**

- 27.7 A right of residence or access does not imply any financial obligation on the part of kʷikwəłəm.

**No Liability**

- 27.8 No liability is imposed on kʷikwəłəm in respect of any Person exercising a right of residency or access under this Land Code for injuries or damages suffered on account of the condition or state of kʷikwəłəm Land.

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## 28. Transfers on Death

### Entitlement to Possession Pursuant to Will or Intestacy

28.1 A Member who claims to be entitled to possession of kʷikwə́ləm Land by devise or descent in accordance with the provisions of the *Indian Act* relating to the estate of an Indian is not entitled to possessions of that kʷikwə́ləm Land unless:

- (a) the Member has filed with Council, and Council has approved a written instrument, duly executed by the personal representative of the estate of the deceased Member transferring the possession to the Member; and
- (b) the written instrument referred to in subsection 28.1(a) is registered in the First Nations Land Register.

### Entitlement to Possession by Purchaser under s.50(2) of *Indian Act*

28.2 The purchaser of a right to possession of kʷikwə́ləm Land under subsection 50(2) of the *Indian Act* shall be deemed not to be in lawful possession of kʷikwə́ləm Land unless:

- (a) the purchaser has filed with Council, and Council has approved a written instrument, duly executed by the person authorized under the *Indian Act* to execute a transfer of lawful possession of kʷikwə́ləm Land obtained under subsection 50(2) of the *Indian Act*; and
- (b) the written instrument referred to in subsection 28.2(a) is registered in the First Nations Land Register.

## PART 8 DISPUTE RESOLUTION

## 29. Dispute Resolution

### Dispute Resolution

29.1 Except as otherwise provided in this Part, disputes in relation to kʷikwə́ləm Land or Interests or Licences shall be determined as follows:

- (a) the parties to the dispute may agree that the dispute may be determined by mediation, arbitration or other dispute resolution process; or
- (b) if the parties to the dispute do not agree to a dispute resolution mechanism, the dispute may be determined by a court of competent jurisdiction.

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**PART 9  
OTHER MATTERS**

**30. Liability**

**Liability Coverage Laws**

30.1 Council may enact Laws providing for limits on liability, defences and immunities to any Person in respect of any act or omission occurring in the exercise of a power or the performance of a duty under this Land Code or under a Law.

**Liability Limitations**

30.2 The limits on liability, defences and immunities in a Law shall be no greater than those that would apply to a Person performing a similar duty under the laws of the Province of British Columbia.

**Liability Coverage**

30.3 Council shall arrange, maintain and pay insurance coverage for:

- (a) liability of kʷikwəłəm in relation to kʷikwəłəm Land; and
- (b) kʷikwəłəm Councillors, and officers and employees engaged in carrying out any matter related to kʷikwəłəm Land to indemnify them against personal liability arising from those activities.

**Extent of Coverage**

30.4 The extent of the insurance coverage shall be determined from time to time by Council.

**31. Commencement**

**Preconditions**

31.1 This Land Code shall not come into effect unless:

- (a) this Land Code and the Individual Agreement are approved by Eligible Voters in accordance with the Framework Agreement and the *First Nations Land Management Act*; and
- (b) this Land Code has been certified by the verifier pursuant to the Framework Agreement.

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**Commencement Date**

31.2 This Land Code shall take effect on the first day of the month following the certification of this Land Code by the verifier pursuant to the Framework Agreement.

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