

DRAFT LAW

First of Three Readings Passed by Chief and Council on January 17, 2017

TRESPASS AND ACCESS TO ᐱᑯᐱᐱ LANDS LAW, 2017

TABLE OF CONTENTS

PART I CITATION AND PURPOSE..... 4
Citation..... 4
PART II DEFINITIONS, INTERPRETATION AND APPLICATION..... 4
Definitions..... 4
Interpretation 8
Application of Law..... 9
PART III PROHIBITED PURPOSE..... 9
Prohibited Purpose 9
Permits to Enter and Use ʔaʔam ʔamak (ʔaʔam Lands) 10
Cancellation of Permission to Enter ʔaʔam ʔamak (ʔaʔam Lands) 11
Obligations of Permit Holder..... 11
Duty to Produce Permit..... 11
PART IV TRESPASS 122
Trespass 12
Exceptions to Trespass 12
PART V ENFORCEMENT 12
Duty to Give Name and Address 12
Demand to Leave ʔaʔam ʔamak (ʔaʔam Lands) 133
Refusal to Leave ʔaʔam ʔamak (ʔaʔam Lands)..... 133
Offences..... 13
Penalty..... 13
Warrant to Search, Seize and Arrest 133
Search, Seize and Arrest without Warrant 14
Summary Conviction Procedures Apply 14
PART VI GENERAL 14
ʔiʔwatnaʔis ʔaʔam (Council) Delegation of Powers 14
Power to Make Amendments..... 14
Non-Substantive Amendments 14
Other Amendments..... 14
PART VII EFFECTIVE DATE..... 15

WHEREAS

A. ᑭᐱᑦᐱᐱ has an inherent right to self-government which emanates from our people, culture and land and which is recognized and affirmed by section 35(1) of the *Constitution Act, 1982*;

B. ᑭᐱᑦᐱᐱ and ᑭᐱᑦᐱᐱᑎᑦᑎᑦ (members of ᑭᐱᑦᐱᐱ) have responsibility as stewards of ᑭᐱᑦᐱᐱ ᑭᐱᑦᐱᐱ (ᑭᐱᑦᐱᐱ Lands) for the benefit of all ᑭᐱᑦᐱᐱᑎᑦᑎᑦ (members of ᑭᐱᑦᐱᐱ);

C. ᑭᐱᑦᐱᐱ strives to:

- reconnect with the spirit of ᑭᐱᑦᐱᐱ ᑭᐱᑦᐱᐱ (ᑭᐱᑦᐱᐱ Lands) and all living things on ᑭᐱᑦᐱᐱ ᑭᐱᑦᐱᐱ (ᑭᐱᑦᐱᐱ Lands),
- strengthen its stewardship skills and knowledge of ᑭᐱᑦᐱᐱ ᑭᐱᑦᐱᐱ (ᑭᐱᑦᐱᐱ Lands), and
- preserve and protect the cultural resources, sacred sites, and ancestral remains located within ᑭᐱᑦᐱᐱ ᑭᐱᑦᐱᐱ (ᑭᐱᑦᐱᐱ Lands);

D. Pursuant to the subsection 6(3) of the *First Nations Land Management Act* and clause 6.1 of the *Framework Agreement*, a first nation may enter into an individual transfer agreement with the Minister describing the land that must be subject to a land code, providing for the transfer and administration of that land and a description of the interests or rights and licences that have been granted by Canada to the first nation in relation to that land, and the date and other terms of the transfer to the first nation of Canada's rights and obligations as grantor of those interests or rights and licences, and setting out the environmental assessment process that must apply to projects on that land until the enactment of a first nation law in relation to that subject;

E. ᑭᐱᑦᐱᐱ signed an *Individual Agreement* with Canada on June 18, 2014;

F. Pursuant to section 6 of the *First Nations Land Management Act* a first nation that wishes to establish a land management regime in accordance with the *Framework Agreement* and the *First Nations Land Management Act* must adopt a land code applicable to all land in a reserve of the first nation;

G. ᑭᐱᑦᐱᐱᑎᑦᑎᑦ (members of ᑭᐱᑦᐱᐱ) voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;

H. ᑭᐱᑦᐱᐱᑎᑦᑎᑦ (members of ᑭᐱᑦᐱᐱ) voted in favour of amendments to the *St. Mary's Indian Band Land Code* at a Meeting of Members vote held in accordance with section 48.1 and 13.1 to 13.9 of the *St. Mary's Indian Band Land Code* on January 7, 2016, which has become the *ᑭᐱᑦᐱᐱ Amended Land Code, 2016*;

I. Pursuant to sections 6.4 of the *ᑭᐱᑦᐱᐱ Amended Land Code, 2016* the ᑭᐱᑦᐱᐱᑎᑦᑎᑦ ᑭᐱᑦᐱᐱ (Council) may enact a law in relation to: environmental protection; the protection of archeological and cultural resources; the removal and punishment of persons trespassing upon ᑭᐱᑦᐱᐱ ᑭᐱᑦᐱᐱ (ᑭᐱᑦᐱᐱ Lands) or frequenting ᑭᐱᑦᐱᐱ ᑭᐱᑦᐱᐱ (ᑭᐱᑦᐱᐱ Lands) for a prohibited purpose; and the enforcement of laws;

J. The ʔitwatnaʔis ʔaqam (Council) deems it to be in the best interests of ʔaqam to make a law for such purposes; and

K. The ʔitwatnaʔis ʔaqam (Council) has held a community land code meeting regarding this ʔa-knumuʕtitiʔ (Law) in accordance with sections 7.6 to 7.9 of the *ʔaqam Amended Land Code, 2016* and has considered any objections raised by ʔaqamnik (members of ʔaqam);

NOW THEREFORE the ʔitwatnaʔis ʔaqam (Council of ʔaqam) duly enacts as follows:

PART I CITATION AND PURPOSE

Citation

1. This Law may be cited as the *Trespass and Access to ʔaqam ʔamak (ʔaqam Lands) Law, 2017*.

PART II DEFINITIONS, INTERPRETATION AND APPLICATION

Definitions

2. Unless the context indicates the contrary, in this ʔa-knumuʕtitiʔ (Law):

“kawiʕkinitiʔ ʔamaks (allotment)” means those ʔaqam ʔamak (ʔaqam Lands) that have been lawfully granted to a ʔaqamnik (member) and in which that ʔaqamnik (member) has lawful possession;

“kamatikʕitiʔ ʔamaks (allotment holder)” means a person who has been granted kawiʕkinitiʔ ʔamaks (an allotment) pursuant to:

(a) section 20(1) of the *Indian Act*;

(b) prior to the date the *ʔaqam Allotment Law, 2016* took effect, section 32.1(a) of the *ʔaqam Amended Land Code*; or

(c) the *ʔaqam Allotment Law, 2016*;

and who is entitled to a ʔituʕliʔqat kitkin ʔa-knumuʕtitiʔ (certificate of possession) under the *ʔaqam Allotment Law, 2016*;

“ʔaqam” means dense forest, and in this ʔa-knumuʕtitiʔ (Law) refers to the ʔaqam within the meaning of the *Indian Act*, formerly known as the St. Mary’s Indian Band, for whose use and benefit in common ʔaqam ʔamak (ʔaqam Lands) have been set apart by Canada;

“kitqawxawičkinit ʔamak (ʔaqam Community Lands)” means any ʔaqam ʔamak (ʔaqam Lands) in which all ʔaqamnik (members) have a common interest;

“ʔaqam ʔamak (ʔaqam Lands)” includes:

- (a) ʔaqam - Kootenay Indian Reserve No. 1 (07422);
- (b) kankak - Isidore’s Ranch No. 4 (07423);
- (c) qalsan mayuk - Cassimayooks No. 5 (07424);
- (d) katqakakmaʔnam - Bummer’s Flat No. 6 (07425); and

lands set apart by Canada in the future as lands reserved for the use and benefit of the ʔaqam within the meaning of subsection 91(24) of the *Constitution Act* and section 2(1) of the *Indian Act*;

“ʔaqamnik (member)” means people of the dense forest, and in this ʔa-knumučtitit (Law) means a person whose name appears or whose name is entitled to appear on the ʔaqam membership list;

“Kituqitqat kitkin ʔa-knumučtitit (certificate of possession)” means a certificate of possession issued by:

- (a) Canada, pursuant to subsection 20(2) of the *Indian Act*, to a ʔaqamnik (member) who is lawfully in possession of ʔaqam ʔamak (ʔaqam Lands) as evidence of that ʔaqamnik (member’s) right to possession of the land described in the certificate of possession; or
- (b) ʔitwatnaʔis ʔaqam (Council), pursuant to section 12 of the *ʔaqam Allotment Law, 2016* to a ʔaqamnik (member) who is lawfully in possession of ʔaqam ʔamak (ʔaqam Lands) as evidence of that ʔaqamnik (member’s) right to possession of the lands described in the certificate of possession;

“community member” means:

- (a) a member of a Ktunaxa Band who resides on ʔaqam ʔamak (ʔaqam Lands); or
- (b) a person who consistently volunteers at or participates in ʔaqam community events or meetings, without receiving compensation for doing so; or
- (c) a person who is deemed a community member by Council; or
- (d) a person who is the immediate family of a ʔaqamnik (member), whether or not that person:
 - (i) resides with the ʔaqamnik (member),
 - (ii) resides on ʔaqam ʔamak (ʔaqam Lands), or
 - (iii) is deceased;

“*Constitution Act*” means the *Constitution Act, 1982*, enacted as Schedule B to the *Canada Act 1982, 1982, c. 11 (U.K.)*, which came into force on April 17, 1982;

“*Controlled Drugs and Substances Act*” means the *Controlled Drugs and Substances Act, S.C., 1996, c. 19*;

“*Pitwatna?is ?aqam (Council)*” means the lawfully elected government of ?aqam and includes the Chief;

“*Criminal Code*” means the *Criminal Code R.S.C., 1985, c. C-46*;

“*First Nations Land Management Act*” means the *First Nations Land Management Act, S.C. 1999, c.24*;

“*yaqawxa? ?ituqhitqa kanuhus ?aqismaknik ?amak?is (First Nation Land Register)*” means the register maintained by the Department of Indigenous and Northern Affairs Canada pursuant to section 25 of the *First Nations Land Management Act*;

“*Framework Agreement*” means the *Framework Agreement on First Nations Land Management* entered into between the Minister of Indian Affairs and Northern Development and the Chiefs of fourteen First Nations, on February 12, 1996, as amended;

“garbage” means solid waste, refuse or other toxic, noxious, offensive or unwholesome matter that is discarded, including:

(a) packaging from consumer goods;

(b) waste paper, plastic, glass, and metal scraps;

(c) cast-off clothing, electronic devices, home appliances, furniture, or motor vehicles;

(d) organic matter, or kitchen scraps, including meats, fish, fruits and vegetables resulting from the handling, preparation, cooking and consumption of food;

(e) soil, gravel, or other natural resources that emanate from outside of ?aqam ?amak (?aqam Lands), and any other substance, such as sewage, that would:

(i) likely cause damage to either fish or fish habitat, or animals or animal habitat, on ?aqam ?amak (?aqam Lands), or

(ii) likely have a detrimental impact on ?aqamnik (member’s) use of fish or animals harvested on ?aqam ?amak (?aqam Lands); and

(f) a wildlife carcass or edible parts of wildlife;

“immediate family” means father, mother, sister, brother, husband, wife, common-law spouse, son or daughter, including adopted;

“*Indian Act*” means the *Indian Act*, R.S.C., 1985, c. I-5;

“Ktunaxa Band” means any of the following:

- (a) ʔakisq̓nuk First Nation;
- (b) ʔaq̓am;
- (c) Yaq̓an Nukiy (Lower Kootenay Indian Band); or
- (d) Tobacco Plains Indian Band;

“natural resource” means a renewable or non-renewable material or component, that can be used and that can be derived from and is located on ʔaq̓am ʔamak (ʔaq̓am Lands);

“loitering” means to be present for any reason other than to attend an ʔaq̓am community event or meeting;

“non-substantive amendment” means an amendment to this ʔa·knumuq̓titiḥ (Law) that does nothing more than:

- (a) correct typographical or other editorial errors that were not caught during the initial drafting process;
- (b) amend this ʔa·knumuq̓titiḥ (Law) to incorporate into it a Ktunaxa term that has the same meaning as the English term used in this ʔa·knumuq̓titiḥ (Law); or
- (b) bring this ʔa·knumuq̓titiḥ (Law) into compliance with changes in the laws of ʔaq̓am, Canada or the Province;

“occupier” means a person entitled to :

- (a) occupy ʔaq̓am ʔamak (ʔaq̓am Lands) under a valid land instrument that is registered in the yaq̓awxaḥ ʔituq̓ḥḥḥ kanuhus ʔaq̓smaknik ʔamakʔis (First Nation Land Register); or
- (b) occupy kitq̓awxawiḥkiniḥ ʔamak (ʔaq̓am Community Lands) under a rental agreement with ʔaq̓am;

“off-roading” means driving an all-terrain vehicle, dirt bike, truck, sports utility vehicle or any other motorized vehicle on kitq̓awxawiḥkiniḥ ʔamak (ʔaq̓am Community Lands) that:

- (a) are made of materials such as sand, gravel, riverbeds, mud, snow, rocks or other natural terrain; and
- (b) are not either paved or gravel roads intended to sustain vehicular traffic;

“peace officer” means:

(d) that if the person named in the permit removes berries, roots, trees, flowers or other natural resources from ʔaḳam ʔamak (ʔaḳam Lands) other than those set out in the permit that the person will be in trespass and will be deemed to be entering ʔaḳam ʔamak (ʔaḳam Lands) for a prohibited purpose.

Permit for Off-Roading

(4) ʔitwatnaʔis ʔaḳam (Council), or a person authorized by ʔitwatnaʔis ʔaḳam (Council), may grant a person who is not a ʔaḳamnik (member) a permit to be on ʔaḳam ʔamak (ʔaḳam Lands) for the purpose of off-roading by providing that person with a permit that sets out:

- a) the name, address, phone number and birthdate of the person to whom the permit is granted;
- b) the areas, dates and times in which the person may off-road on ʔaḳam ʔamak (ʔaḳam Lands);
- c) the purpose for which the person may off-road on ʔaḳam ʔamak (ʔaḳam Lands); and
- d) that if the person named in the permit off-roads in a manner, during a time or for a purpose other than those set out in the permit that the person will be in trespass and will be deemed to be entering ʔaḳam ʔamak (ʔaḳam Lands) for a prohibited purpose.

Cancellation of Permission to Enter ʔaḳam ʔamak (ʔaḳam Lands)

10. ʔitwatnaʔis ʔaḳam (Council), or a person authorize by ʔitwatnaʔis ʔaḳam (Council) may, for any reason, cancel any permit granted under section 9 by delivering a written notice of such cancellation to the person named in the permit, at the address provided in the permit.

Obligations of Permit Holder

11. A person who is granted a permit under section 9 must:

- (a) if their address changes, immediately and in writing advise ʔaḳam of the change in their address; and
- (b) carry on their person at all times while on ʔaḳam ʔamak (ʔaḳam Lands):
 - (i) the original permit; and
 - (ii) at least one (1) piece of government issued photographic identification.

Duty to Produce Permit

12. A person who is granted a permit under section 9 must, on request of either a peace officer or a person authorized by ʔitwatnaʔis ʔaḳam (Council), produce to that person:

- (a) the original permit; and
- (b) at least one (1) piece of government issued photographic identification.

**PART VII
EFFECTIVE DATE**

27. This Law comes into force and effect on the date it is passed by ʔitwatnaʔis ʔaqam (Council), by band council resolution.

This Law is hereby passed at a duly convened meeting of the ʔitwatnaʔis ʔaqam (Council) this _____ day of _____, 2017.

Chief Joe Pierre Jr.

Councillor Corrie Walkley

Councillor Vickie Thomas

Councillor Julie Birdstone

Councillor Codie Morigeau

Being the majority of those members of the ʔitwatnaʔis ʔaqam (Council) present at the aforesaid meeting of ʔitwatnaʔis ʔaqam (Council).

The quorum of ʔitwatnaʔis ʔaqam (Council) is three (3) members.

Number of members of ʔitwatnaʔis ʔaqam (Council) present at the meeting: ____