

SHUSWAP INDIAN BAND TRESPASS LAW NO. 0001**PREAMBLE**

Whereas the Shuswap Indian Band manages its lands and resources for the use and benefit of its members and by adhering to the *Framework Agreement on Shuswap Land Management* and by having the *First Nations Land Management Act*, SC 1999, c 24 apply to Shuswap Indian Band reserve lands;

AND Whereas the Shuswap Indian Band entered into the *Framework Agreement on Land Management* with Canada (April 13th, 2012), as amended (the "Framework Agreement"), which was ratified on behalf of the Government of Canada by the *First Nations Land Management Act*.

And Whereas the Shuswap Indian Band ratified the Framework Agreement and brought its Land Code into effect on February 1st 2015;

And Whereas, pursuant to the Land Code, laws may be enacted to protect Shuswap Land and the use and benefit of Shuswap Land, the occupation of Shuswap Land, residence on Shuswap Land, and to establish offences, penalties and remedies for violations of those laws;

THEREFORE, the Council of Shuswap Indian Band enacts the Shuswap Indian Band Trespass Law No. 0001 as follows:

PART 1**PRELIMINARY MATTERS****1.0 Title**

1.1 The title of this law is the Shuswap Indian Band Trespass Law.

2.0 Definitions

2.1 For the purposes of this Law, the following definitions apply:

"Community Land" means any Shuswap Land in which all members have a common interest and which has not been allocated and for which no Certificate of Possession, lease, license, easement or right of way exists;

"Council" means the Chief and Council of the Shuswap Indian Band;

"Enclosed Land" means land that is

- (a) surrounded by a fence, so long as the fence complies with the Land Code, First Nation Laws, and other applicable legislation,
- (b) surrounded by the type of fence referred to in subsection (a) and a natural boundary, or by a natural boundary alone, or
- (c) posted with signs prohibiting trespass in accordance with this Law;

“Shuswap Land” means any land that governed by the Shuswap Indian Band Land Code and includes the land defined as First Nation Land under the Shuswap Indian Band Land Code;

“First Nation Law” means a law enacted by Shuswap Indian Band in accordance with its Land Code and includes its Land Code and includes any such law that has the force and effect of federal law;

“Immediate Family” in respect of a Person means the Person’s parent, sister, brother, child, Spouse or common law Spouse;

“Land Code” means the code, approved by the Shuswap Indian Band and verified on June 16, 2014;

“Litter” means garbage, refuse and all other waste material which is the waste product of something purchased on Community Lands or brought onto Community Lands for use or consumption within Community Lands;

“Member” means a Person whose name appears or is entitled to appear on the Shuswap Indian Band Membership List;

“Mischief” means

- (a) possession, distribution, or sale of a controlled substance as defined by the *Controlled Drugs and Substances Act*, SC 1996, c 19;
- (b) the destruction or damaging of property;
- (c) the destruction or alteration of computer data;
- (d) rendering property dangerous, useless, inoperative or ineffective;
- (e) rendering computer data meaningless, useless or ineffective;
- (f) obstructing, interrupting or interfering with
 - (i) the lawful use, enjoyment or operation of property;
 - (ii) the lawful use of computer data;
 - (iii) any Person in the lawful use, enjoyment or operation of property;
 - (iv) any Person in the lawful use of computer data;
- (g) denying access to computer data to a Person who is entitled by law or contract access to it.

“Natural Resources” means any renewable and non-renewable resources in and of Shuswap Lands;

“Occupier” includes,

- (a) a Person who is in physical possession of Premises,
- (b) a Person who has responsibility for and control over the conditions of Premises or the activities carried on there, or control over Persons allowed to enter the Premises, or
- (c) where the Premises are or include Community Land, the Shuswap Indian Band even if there is more than one Occupier of the same Premises;

“Peace Officer” means a police officer, police constable, constable, or other Person employed for the preservation and maintenance of the public peace, and includes an officer appointed by the Council to enforce the laws of the Shuswap Indian Band;

“Person” includes a natural Person, a corporation of any type, partnership, society or association whether or not incorporated, and any other entity having a separate Personality, or style for carrying out business, recognized in law;

“Premises” means lands, foreshore and land covered by water, and anything on the land including;

- (a) a building or other permanent structure,
- (b) a ship or vessel, train, railway car or Vehicle, except while in operation,
- (c) a trailer or a portable structure designed or used as a residence, for shelter or to house a business, and
- (d) water.

“Resolution” means a written Resolution of the Council, passed at a duly convened Council meeting;

“Spouse” means a Person who is married to another Person, whether by a traditional, religious or civil ceremony;

“Vehicle” means any device, in, upon or by which any Person or property is, or may be, transported or drawn upon a street, irrespective of the power, including a horse led or ridden.

PART TWO

APPLICATION

3.0 Trespassing

3.1 Every Person who:

- a) enters onto Community Land;
- b) occupies Community Land; or
- c) uses any roads, bridges or paths which are on Community Lands

is guilty of an offence, unless that Person is

- d) a Member
- e) a Spouse of a Member;
- f) a child of a Member;
- g) a lessee or an invitee of the lessee;
- h) granted the right of access under a permit;
- i) authorized by a government body or any other public body, established by or under an enactment of the Council, the federal Parliament, or the province to establish, operate or administer a public service, to construct or operate a public institution or to conduct a technical survey; or
- i) authorized in writing by Council, the Lands Committee or by a First Nation Law to access Shuswap Land.

- 3.1.1 Every Person who:
- enters onto Shuswap Land in contravention of a Resolution;
 - enters onto Premises without the Occupier's express permission,
 - engages in activity on or in Premises after the Person has had notice from an Occupier of the Premises or a Person authorized by the Occupier that the activity is prohibited,
 - enters Premises that are Enclosed Land,
- is a trespasser and guilty of an offence.
- 3.1.2 Trespassers must give name and address.
- On the demand of an Occupier of a Premises, or a Person authorized by the Occupier, who has reasonable grounds to believe that a Person is on or in the Premises, or was on or in the Premises, in contravention of this Law, the Person must provide the Occupier or authorized Person with his or her correct name and address.
 - A Person who contravenes subsection (a) commits an offence.
 - A Person who contravenes subsection (a) and remains on or in the Premises commits an offence.
- 3.2 Every Person who commits the following activities on Community Land, without authorization from Council:
- hunting, fishing, trapping, or gathering;
 - hawking or peddling wares or merchandise, goods and services;
 - loitering or soliciting;
 - removing any Natural Resources;
 - erecting, constructing or building or causing to be erected, constructed or built any tent, building, shelter, pavilion or other construction whatsoever; or
 - cutting logs or wood
- is guilty of an offence.
- 3.2.1 Every Person who, without authorization from Council or in violation of the conditions imposed by an authorization from Council, occupies or travels along or upon any Community Land in such manner as to:
- obstruct or cause an obstruction with a Vehicle or any other object,
 - interfere with any Person or traffic lawfully using the same,
 - encumber or obstruct, or cause to be encumbered or obstructed in any manner whatsoever any Community Land
- is guilty of an offence and any Vehicle so causing an obstruction may be impounded at the expense of the Person guilty of the offence.
- 3.2.2 Council or any Person employed by Council, may remove or cause to be removed from any Community Lands any obstruction, Vehicle or thing contrary to the provisions of this Law, at the expense of the owner, contractor or other Person responsible for such obstruction; and the Council is empowered to do every lawful act required under the circumstances to have any such obstruction removed in the shortest possible time and to hold any article or thing causing such obstruction until the expense of the removal has been paid.

- 3.2.3 No Person shall, without authorization from Council:
- (a) hinder or interrupt, or cause to be hindered or interrupted, Council, or any engineer, surveyor, manager, contractor, servant or worker employed by or responsible to the Council in the exercise of any powers and authorities vested in the Council by the Land Code, the *Indian Act (Canada)*, this Law or any other First Nation Law;
 - (b) let off or discharge any water so that the same runs waste and useless from or out of any reservoir, pond, pool, lake, stream or hydrant connected with any Community Land;
 - (c) post, paint, affix, distribute or deliver any advertisement, handbill, poster or advertising card of any kind in Community Lands;
 - (d) drive or park any Vehicle over any area that is not a street on Community Lands;
 - (e) break any glass bottle or container on or in Community Lands;
 - (f) light a fire or place fuel on a fire in or on Community Lands;
 - (g) park a Vehicle or allow a Vehicle to be parked in any portion of Community Lands not being a street:
 - (i) for a period exceeding 30 minutes between the hours of 10:00 pm and 6:00 am on the following day; or
 - (ii) in contravention of a sign setting forth parking restrictions or limitations; and the Council or any Peace Officer may cause any such Vehicle to be removed, at the owner's cost, by any towing company operating in Invermere or on Shuswap Lands, and such towing company shall, as an agent for Council, charge the owner reasonable charges only for effecting the removal and for storage until claimed;
 - (h) operate on Community Lands any Vehicle for which registration, a licence, and insurance has not been obtained as provided under the *Motor Vehicle Act, RSBC 1996, c 318* or which is not exempt from the registration, licensing and insurance provisions of the *Motor Vehicle Act, RSBC 1996, c 318*; or
 - (i) deposit litter on Community Lands except in litter containers provided, maintained or authorized by the Council. In any area of Community Lands where litter containers are not provided, all litter shall be removed from the Community Land by the Persons responsible for its presence.
- 3.2.4 No Person shall discharge, throw or deposit any injurious, noxious or offensive thing or matter into a reservoir pond, pool, lake, stream or other water receptacle connected with Community Land, or on to the beach of Community Land, or on to the ice of a reservoir, pond, pool, lake, stream or other receptacle for water where the water is frozen, or in any other way foul the water, or commit any unlawful damage or injury to the works, pipes or water, or encourage any other Person to do the same.
- 3.5 The Shuswap Indian Band's rights and powers under this Law are exercised by Chief and Council, by way of Resolution or by a Person designated by Chief and Council by way of Resolution to exercise some or all of its rights or powers under this Law.
- 3.6 An activity prohibited under this law includes any activity in breach of a First Nation Law, an environmental law of the Shuswap Indian Band, the Land Code, the *Criminal Code (Canada)*, and any law of general application, or any order of a court of competent jurisdiction. Entry into Premises that are Shuswap Land and engaging in any such activity is a separate offence under this Law.

4.0 Prohibition of Entry by Notice and on Certain Areas

4.1 Entry on Premises may be prohibited by notice to that effect and entry is prohibited without any notices on Premises, that

- (a) is a garden, field or other Shuswap Land that is under cultivation, including a lawn, orchard, vineyard and Premises on which trees have been planted and woodlots on Shuswap Land that are used primarily for agricultural purposes; or
- (b) is enclosed in a manner that indicates the Occupier's intention to keep Persons off the Premises or to keep animals on the Premises.

4.2 There is a presumption that access for lawful purposes to the door of a building on Premises by a means provided and used for access purposes is not prohibited unless notice is given otherwise.

5.0 Council Authority

5.1 Council may make or amend a Resolution, policy, or law

- (a) setting out the rules and regulations for the use of any Premises on Community Land, including arenas, community halls, recreational facilities, pools, baseball and soccer fields, schools, health clinics and similar Premises;
- (b) setting out punishments for a breach of a Resolution, policy, law, rule or regulation, or an offence under this Law that include prohibition from entering onto or remaining on any or all Shuswap Lands for any period of time;
- (c) prohibiting entry or activity on Premises located on Community Land, provided that notice is given that the entry to the Premises is prohibited or one or more activities are prohibited on the Premises;
- (d) regulating the hours and seasons in which Premises located on Community Land may be used for specific purposes;
- (e) imposing limits on the activities to be engaged in at Premises located on Community Land; or
- (f) imposing a requirement for a permit to engage in activities on Community Land or in Premises on Community Land or for using Community Land or Premises for specific purposes.

5.2 By granting any authorization under this Law, Council in no way warrants that the Person obtaining the authorization will not be liable under any law of Canada or of the Province of British Columbia, at common law or under any other law. Every Person who obtains authorization from Council under this Law shall save harmless and protect the Shuswap Indian Band and its Council from and against any and all claims, demands, suits or compensation of whatsoever kind arising either directly or indirectly out of the authorization granted.



6.0 Offence**6.1 Every Person who**

- (a) violates any of the provisions of this Law,
- (b) allows any act or thing to be done in contravention or in violation of any of the provisions of this Law,
- (c) neglects to do or refrains from doing anything required to be done by any of the provisions of this Law,
- (d) does any act which violates any of the provisions of this Law
- (e) fails to comply with a Resolution, rule or regulation of Council made under this Law, or
- (f) fails to comply with the terms of any authorization granted under this Law

is guilty of an offence against this Law. Each day that a violation is permitted to exist will constitute a continuing but separate offence.

6.2 Every Person who:

- (a) commits an offence against this Law is punishable on summary conviction by
 - (i) a fine of not more than \$5,000;
 - (ii) imprisonment for not more than six months;
 - (iii) prohibition from attending at or on Premises on Shuswap Land during prescribed hours, dates or times;
 - (iv) prohibition from attending on any or all Shuswap Land or Premises on Shuswap Land at all times;
 - (v) any other conditions that will remedy the offence under this Law or prevent repetition of the offence; or
 - (vi) any combination of the above.
- (b) commits an offence of a continuing nature against this Law is liable to a fine not exceeding \$5,000 for each day such offence is continued.

6.3 Any penalties under this Law

- (a) are subject to any orders or directions Council may make by Resolution, irrespective of a conviction, and
- (b) may be enforced by the Shuswap Indian Band in the Provincial Court of British Columbia.

6.4 When a court imposes a sentence for an offence under this Law, it shall give primary consideration to the punishments under subparagraphs 6.2(a)(iii) and 6.2(a)(iv).

7.0 Method of Giving Notice

7.1 A notice under this Law may be given,

- (1) orally or in writing;
- (2) by means of signs posted so that a sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the Premises to which it applies;
- (3) by Resolution duly published unless delivery to a Member is specifically provided for in this Law.

7.2 Substantial compliance with clause 7.1 is sufficient notice.

8.0 Form of Sign

- 8.1 A sign naming an activity or showing a graphic representation of an activity is sufficient for the purpose of giving notice that the activity is permitted.
- 8.2 A sign naming an activity with an oblique line drawn through the name or showing a graphic representation of an activity with an oblique line drawn through the representation is sufficient for the purpose of giving notice that the activity is prohibited.

9.0 Arrest without warrant

- 9.1 A Peace Officer may arrest without warrant any Person found on or in Premises if the Peace Officer believes on reasonable and probable grounds that the Person is committing an offence under this Law and arrest is necessary to:
- (a) establish the identity of the Person;
 - (b) secure or preserve evidence of or relating to the offence;
 - (c) prevent repetition or continuation of the offence;
 - (d) ensure the safety and security of any victim of or witness to the offence; or
 - (e) ensure the Person will attend court in order to be dealt with according to the law.
- 9.2 If a Peace Officer believes on reasonable and probable grounds that a Person has committed an offence under this Law and has recently departed from the Premises, the Peace Officer may arrest the Person without warrant if
- (a) the Person refuses to give his or her name and address to the Peace Officer on demand, or
 - (b) the Peace Officer believes, on reasonable and probable grounds, that the name or address given by the Person to the Peace Officer is false.

10.0 Parties to the Offence of Trespass

- 10.1 A Person is a party to an offence under this Law and is guilty of an offence if that Person is complicit in the commission of the offence by:
- (a) purporting to give permission for entry to the Premises where that Person is not, or was not at the relevant time, an Occupier or otherwise authorized to give such permission under this Law;

- (b) being the employer of the individual who committed the offence, directed or counseled him or her to do so as part of their employment;
- (c) being the principal of the individual who committed the offence, directed or counseled him or her to do so as an agent;
- (d) being a Person in authority over an individual, counsels or directs that individual to commit an offence; or
- (e) knowing that conduct would be an offence, assists an individual by providing him or her with the means, tools or equipment to commit the offence.

10.2 A Person may be such a party to an offence notwithstanding that the acts subsequent to the offence exceeded the scope of such counseling, authorization, direction or assistance, or that any other individual was convicted under this Law in respect of the same offence.

11.0 Curfew, Exclusion and Banishment

11.1 In addition to punishment on summary conviction provided for under this Law for an offence, or to protect the public or Personal safety of Persons entitled to use and occupy Shuswap Land, or prevent the commission of Mischief on Shuswap Land, Council may by Resolution do any or all of the following:

- (a) prescribe hours, dates or times when a Person is permitted or prohibited from attending at or on Premises on Shuswap Land, or restricting that Person to specified Premises during specific hours, dates or times;
- (b) prohibit entry by a Person at all times on any or all Shuswap Land or Premises on Shuswap Land; or
- (c) prescribe any other conditions that will remedy the offence under this Law or prevent repetition of the offence

and in any case, Council shall cause Personal service of a Resolution to be effected upon the Person unless service can only be effected by other forms of notice pursuant to this Law, which other forms of notice Council shall cause to be effected.

11.2 Council shall make best efforts to effect service of Resolutions made pursuant to this section, shall arrange for all such Resolutions to be posted on Shuswap Land as it sees fit and shall inform Peace Officers of such Resolutions in a timely manner.

11.3 A Person who is the subject of a Resolution under this section and who has received or has notice of the Resolution may appeal to Council for the Resolution to be altered or rescinded. Council will prescribe a form for such an appeal to be commenced and shall decide that appeal on the basis of the representations submitted in writing or orally by the Person. Council shall issue written reasons for its decision to the Person.

11.4 An appeal decision of Council under subsection 11.3 may be further appealed by the Person who is the subject of the Resolution to a "Special Land Code Committee" appointed in accordance with this section.

11.5 Council shall

- (a) subject to this section, establish criteria for the appointment of a "Special Land Code Committee" for Appeal Processes for the purposes of hearing and deciding appeals from appeal decisions made by Council; and
- (b) appoint five appointees to the "Special Land Code Committee".

11.6 Because of the unusual conflicts of interest possible in the community, not more than two members from the same extended family may be members of the "Special Land Code Committee".

11.7 Any decision of the "Special Land Code Committee" is only valid if made by a majority of members of the "Special Land Code Committee".

11.8 A member of the "Special Land Code Committee"

- (a) has a conflict of interest when the member is being asked to deliberate or decide on a matter where there is the opportunity to further his or her private interest or the private interest of a member of his or her Immediate Family;
- (b) has an apparent conflict of interest if there is a reasonable perception, which a reasonably well-informed Person could properly have, that the member's ability to deliberate or decide on the matter must have been affected by his or her private interest or the private interest of a member of his or her Immediate Family.

11.9 A member of the "Special Land Code Committee" must not participate in any decision in which he or she has a conflict of interest or an apparent conflict of interest.

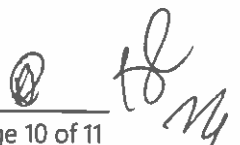
11.10 If the "Special Land Code Committee" is unable to decide an appeal due to a conflict of interest or apparent conflict of interest resulting in the inability to form a majority, the remaining members of the "Special Land Code Committee" may refer the matter to a community meeting under the Land Code and, if a quorum of eligible voters under the Land Code is present, a majority of eligible voters present at the meeting may decide the appeal.

11.11 For certainty, Council may enact laws to further implement this section.

11.12 Every Person who fails to comply with a Resolution made pursuant to this section, is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000, to imprisonment for a term not exceeding six months and to such other orders as may be conducive to preventing repetition of the offence.

12.0 Civil Action for Trespass Preserved

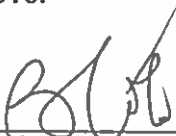
12.1 Nothing in this Law extinguishes the right of a Person, including the Shuswap Indian Band, to bring a civil action for damages arising out of a trespass on any Premises on Shuswap Land, and all civil remedies for trespass are preserved.



13.0 General

- 13.1 Section 18 of the Land Code applies to all Council decisions made under this Law.
- 13.2 It is the intention of the Shuswap Indian Band that each separate provision of this Law shall be deemed independent of all other provisions herein and it is further the intention of the Shuswap Indian Band that if any provision of this Law be declared invalid, all other provisions thereof shall remain valid and enforceable.
- 13.3 This law shall come into force and take effect on the date of the final passing hereof by the Council, and shall from such date have the force and effect.

BE IT KNOWN that this Law entitled Trespass Law No. 0001 is hereby enacted by a quorum of Council at a duly convened Council meeting of the Shuswap Indian Band held on September 12, 2018.



Chief Barbara Cote



Councillor Tim Eugene



Councillor Rosalita Pascal

A quorum consists of 2 Council Members.

