

XOLHMET TE S'OLH TEMEXW SLEWÓYELH

**Shxw'ówhámél First Nation
Environmental Standards Law, 2018**

(a law to designate the environmental standards that apply on Shxw'ówhámél Lands)

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WHEREAS:

- A. We, the Shxw'ōwhámél First Nation ("**Shxw'ōwhámél**"), being a member of the Tiyt Tribe, have and maintain Indigenous Title, Rights and interests to our lands and resources within S'olh T'émèxw, our Stó:lō Territory;
- B. Our Indigenous Title, Rights and interests are expressed in our Halq'eméylem language as: "*S'ólh T'émèxw te ikw'el'ó. Xólhmet te mékw'stám it kwelát*", meaning "This is our land. We have to take care of everything that belongs to us";
- C. *Tómiyeq*w – meaning, at all times we have a responsibility to our past seven generations and seven generations into the future;
- D. We have a unique relationship with our *Sxexó:mes*, including our lands and resources, which is expressed in our *Sxwōxwiyá:m*, *Sqwélqwel* and *Shxwelí*, which together help define our Indigenous Title, Rights and interests;
- E. We have an inherent right to self-government which emanates from our people, culture and land, and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- F. We have taken back our unextinguished right to control and manage our Shxw'ōwhámél Lands and resources pursuant to the *Framework Agreement on First Nation Land Management* and have enacted the *Shxw'ōwhámél First Nation Land Code*, verified on October 23, 2014 (the "**Land Code**");
- G. Pursuant to the Land Code, our Si:yá:m Council is authorized to pass various laws relating to lands and environmental protection; and
- H. Si:yá:m Council has the authority and responsibility to promote healthy environmental conditions of all Shxw'ōwhámél Lands,

NOW THEREFORE BE IT RESOLVED THAT this *Xólhmet Te S'olh Temexw Slewóyelh*, the *Shxw'ōwhámél First Nation Environmental Standards Law, 2018*, (the "**Law**") is hereby enacted as a law of the Shxw'ōwhámél First Nation.

PART 1 – NAME

- 1.1 Short Name. This Law may be cited as the *Shxw'ōwhámél Environmental Standards Law*.

PART 2 – PURPOSE AND APPLICATION

- 2.1 Purpose. The purpose of this Law is to ensure healthy environmental conditions of all Shxw'ōwhámél Lands by specifying strong Environmental Standards that apply to all Shxw'ōwhámél Lands.
- 2.2 Application. The provisions of this Law apply to all Shxw'ōwhámél Lands, as defined in the Land Code.

- 2.3 Authority. The Lands Department is responsible for implementing this Law and will have all powers necessary to give effect to this Law. From time to time, the Lands Department may contract with enforcement services to enforce this Law. The Lands Department may also, from time to time, refer to Council for guidance and advice on the implementation of this Law. The Lands Department may also delegate any part of its authority under this Law to other Persons.
- 2.4 Non-Derogation. No provision of this Law, or any communication, negotiations or engagements carried out pursuant to it, does, or may be deemed to, prejudice, limit, abrogate or derogate from any of Shxw'ōwhámél's title, rights or interests.

PART 3 – INTERPRETATION

- 3.1 Land Code Definitions. Capitalized words not defined in this Law have the same definitions as in the Land Code.

- 3.2 Definitions. For the purpose of this Law, the following definitions apply:

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

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

“Environment” means the components of the Earth and includes:

- (a) air, land and water;
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms; and
- (d) the interacting natural systems that include components referred to in paragraphs (a) to (c);

“Environmental Standards” means technical specifications, standards and/or guidelines that set maximum concentrations of specified parameters in various components of the Environment;

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

“Lands Manager” means the individual appointed by Council to oversee the administration of Shxw'ōwhámél Lands;

“Member” means a member of Shxw'ōwhámél;

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

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

“**Shxw’ōwhámél**” or “**SFN**” means Shxw’ōwhámél First Nation.

3.3 General Interpretation.

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

PART 4 – ENVIRONMENTAL STANDARDS

4.1 General. The most stringent of the following Environmental Standards apply to all Shxw’ōwhámél Lands, and all the Environment therein:

- (a) Environmental Standards outlined in the *Contaminated Sites Regulation* (British Columbia);
- (b) Canadian Environmental Quality Guidelines specified from time to time by the Canadian Council of Ministers of the Environment;
- (c) for sources of potable water, the water quality standards for potable water outlined in the *Drinking Water Protection Regulation* (British Columbia); and
- (d) such other Environmental Standards that Council may by resolution set or incorporate by reference from time to time.

4.2 Prohibition. Unless otherwise authorized by Council, no Person may carry out any activities on Shxw’ōwhámél Lands that result in conditions thereon or on surrounding components of the Environment that exceed the Environmental Standards for the designated use of such components of the Environment.

- 4.3 Remediation. All Persons must carry out such remediation activities required by the Lands Department from time to time to remediate specified Shxw'ōwhámél Lands and components of the Environment to the applicable Environmental Standards for the designated use thereof.
- 4.4 Designated Land Use. The designated land use for a plot or parcel of Shxw'ōwhámél Lands is the land use specified in the *Shxw'ōwhámél Zoning Law*.
- 4.5 Spills. All Persons must promptly report any spills of dangerous or harmful substances, or potentially dangerous or harmful substances, to the Lands Department. The Person responsible for such spills must diligently work with the Lands Department to remedy all contamination of the Environment caused by such spills in accordance with such directions provided by the Lands Department.

PART 5 – ENFORCEMENT AND OFFENCES

- 5.1 General. No Person shall obstruct, interfere with or hinder Shxw'ōwhámél, Council, or any authorized employee, officer or agent in the carrying out of their duties and responsibilities under this Law.
- 5.2 Right to Enter. For the purpose of this Law, an Enforcement Officer may enter any lands on Shxw'ōwhámél Lands at any time for the purpose of ascertaining whether the requirements of this Law are being observed.
- 5.3 Offence. Every person who:
- (a) violates or causes or allows any of the provisions of this Law to be violated;
 - (b) fails to comply with any of the provisions of this Law, or any other applicable law; or
 - (c) neglects or refrains from doing anything required under the provisions of this Law,
- shall be deemed to have committed an offence under this Law and shall be liable to a fine or imprisonment, or to both a fine of imprisonment, not exceeding the maximum allowed under the Land Code, and each day such violation is caused or allowed to continue constitutes a separate offence.
- 5.4 Tickets.
- (a) An Enforcement Officer may issue a ticket for any offence under this Law.
 - (b) Any Person issued a ticket under this Law will be required to pay the amount set out in the ticket.
 - (c) A Person seeking to appeal a ticket issued under this Law may apply in writing to the Lands Department.
 - (d) The Lands Department may, after considering a person's application to appeal a ticket and acting reasonably, waive the ticket, reduce the fine or enforce the ticket.

- (e) After consideration of an application to appeal the ticket, the Lands Department will notify the applicant in writing of its decision, which decision will be final and binding.

5.5 Orders.

- (a) In addition to any other applicable fine, penalty or remedy, Council, the Lands Department or a designated official may issue a stop work order or a cease and desist order to order any Person, who has not received full and proper authorization under this Law, to cease carrying out any activity, use or construction that is in breach of this Law.
- (b) An order made under subsection 5.5(a):
 - (i) may be registered in Court and enforced as a court order; and
 - (ii) continues in force until the condition that led to it is remedied or until the activity that is the subject of the order receives a permit or authorization pursuant to this Law.
- (c) An order made pursuant to this Law will have immediate effect.

- 5.6 Qwi:qwelstóm. Notwithstanding sections 5.3 to 5.5, Shxw'ōwhámél may, as directed from time to time by Council, refer the offence to Qwi:qwelstóm to determine an appropriate enforcement mechanism for a Person that commits an offence under this Law and who is willing to participate in the Qwi:qwelstóm alternative dispute process.

PART 6 – IMMUNITY

- 6.1 General. No action for damages lies or may be instituted against present or past Council, or members, employees, representatives or agents of either Shxw'ōwhámél or Council:

- (a) for anything said or done or omitted to be said or done by that Person in the actual or required performance of such Person's duty or exercise of its authority; or
- (b) for any alleged neglect or default in the actual or required performance of the Person's duty or exercise of their authority.

- 6.2 No Defence. Section 6.1 does not provide a defence if:

- (a) the Person in relation to the conduct that is the subject matter of the action has been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
- (b) the cause of action is libel or slander.

- 6.3 No Liability. None of Shxw'ōwhámél, present or past Council, or members, employees, representatives or agents of any of Shxw'ōwhámél or Council are liable for any damages or other loss, including economic loss, sustained by any Person, or to the property of any Person, as a result of neglect or failure, for any reason, to discover or detect any

contravention of this Law or any other Shxw'ōwhámél law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Shxw'ōwhámél law.

6.4 Limitation Period. Subject to sections 6.1 and 6.3, any actions against Shxw'ōwhámél (including its employees, representatives and agents, and Council) for the unlawful doing of anything that:

(a) is purported to have been done under the powers conferred by this Law or any Shxw'ōwhámél law; and

(b) might have been lawfully done if acting in the manner established by law,

must be commenced within six (6) months after the cause of action first arose.

6.5 Required Notice. Shxw'ōwhámél is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to Shxw'ōwhámél within two (2) months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the court of appeal, believes:

(a) there was reasonable excuse; and

(b) Shxw'ōwhámél has not been prejudiced in its defence by the failure or insufficiency.

PART 7 – AMENDMENT

7.1 General. Subject to section 7.3, this Law may only be amended in the manner provided in the Land Code.

7.2 Regular Reviews. Shxw'ōwhámél will review and, if appropriate, amend this Law in accordance with section 7.1 every five (5) years, or whenever Council determines, in its sole discretion, that this Law should be reviewed and, if appropriate, amended.

7.3 Minor Amendments. Council may, from time to time, pass a resolution authorizing minor amendments to this Law for any of the following purposes:

(a) to correct typographical or grammatical errors;

(b) to reference relevant, new or amended Shxw'ōwhámél law(s);

(c) to change the applicable entity(ies) having authority over the implementation of this Law;

(d) to align with an order by a court; and

(e) to clarify this Law where there is no reasonable dispute about the intention underlying the original provision.

PART 8 – GENERAL PROVISIONS

- 8.1 Compliance with other Laws. Where any other law or legal requirement may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of such other applicable law or legal requirement.
- 8.2 Severability. In the event that all or any part of any section of this Law are found by a court of competent jurisdiction to be invalid, such section shall be severable, and the remaining portions and sections of this Law shall remain in full force and effect.
- 8.3 Coming into Force. This Law will come into force and effect on the date that it is duly passed by Shxw'ōwhámél in accordance with the process outlined in the Land Code.

BE IT KNOWN that this Law is entitled the *Shxw'ōwhámél First Nation Environmental Standards Law, 2018* is hereby enacted by a quorum of Council of the Shxw'ōwhámél First Nation held on November 1, 2018.

Genesis Gray

David

Chia Assini

Naomi Stutering

Quorum consists of 4 Council members.