

POLICY 4. LEASES

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Policy 4.1 Leases over Ḥaqam Community Lands

Purpose

This purpose of this section is to provide guidance for the issuance of a lease on Ḥaqam community land. A lease of Ḥaqam community lands is an agreement entered into by Ḥaqam and a third party.

An Application for Use form is how the Lease Process is instigated. Form 5-01-1

Roles and Responsibilities

Role of Council

Council is responsible for the following, in addition to what is stated in Policy 1:

- consenting to the original grant of a lease;
- cancelling or correcting any lease over Ḥaqam lands that was issued in error, by mistake or by

- fraud;
- issuing a replacement lease; and
- authorizing a member of Council or the Lands Department to execute leases on behalf of Council.

Role of the Lands Department

The Lands Department is responsible for the following, in addition to what is stated in Policy 1:

- ensuring that ᐃᓕᓕᓕ policy requirements for assessing applications and for negotiating, drafting and executing leases of ᐃᓕᓕᓕ community lands are complied with;
- ensuring that all leases of ᐃᓕᓕᓕ community lands are in accordance with the *ᐃᓕᓕᓕ Amended Land Code*, ᐃᓕᓕᓕ laws, by-laws and any applicable provincial or federal laws;
- registering leases on the First Nation Land Registry
- monitoring and compliance actions related to a lease over ᐃᓕᓕᓕ community lands; and
- maintaining a copy of all leases relating to ᐃᓕᓕᓕ lands in the Lands Department files.

Role of the Lands Committee

The Lands Committee is responsible for the following in addition to what is stated in Policy 1:

- Assist the Lands Department with matters related to a lease over ᐃᓕᓕᓕ community lands.
- Address ᐃᓕᓕᓕ community lands-related requests from the Lands Department or the Council, and where necessary to consult with members on issues related to a lease over ᐃᓕᓕᓕ community lands.

Legal Authorities

Section 18 of the *First Nations Land Management Act* states:

18. (1) A First Nation has, after the coming into force of its land code and subject to the Framework Agreement and this Act, the power to manage First Nation land and, in particular, may
- (a) exercise the powers, rights and privileges of an owner in relation to that land;
 - (b) grant interests or rights in and licences in relation to that land;
 - (c) manage the natural resources of that land; and
 - (d) receive and use all moneys acquired by or on behalf of the First Nation under its land code.

Section 12 of the *Framework Agreement* states:

12.1 A First Nation with a land code in effect will, subject to clause 13, have the power to manage its First Nation land and exercise its powers under this Agreement.

12.2 This power includes

- (a) all the rights, powers and privileges of an owner, in relation to its First Nation land; and
- (b) the authority to grant interests or land rights and licences in relation to its First Nation land and to manage its natural resources, subject to clauses 3, 18.5 and 23.6.

12.3 In any province or territory other than Quebec, an interest or licence granted in relation to First Nation land is subject to any exception, reservation, condition or limitation established by the First Nation in its land code.

- Form 5-1-01 Application for Use of ʔaᓄam lands (inclusive of a Lands Committee Recommendation);
- Motion approving the Negotiation and Drafting of a Lease
- Band Council Resolution approving the Lease;
- Lease Agreement document that sets out the terms of the lease;
- If applicable, a review by legal counsel
- If applicable, an Environmental Review report
- If applicable, a Band Council Resolution stating Mitigation Measures

Characteristics of a Lease

A lease over ʔaᓄam community lands has the following characteristics:

- the lessor is ʔaᓄam;
- the lessee may be any eligible person, whether or not they are a member;
- it grants exclusive possession of land to the lessee during the term of the lease, meaning the lessee will have a right to occupy and control the use of the property, subject to the terms of the lease or other legal interests registered on the property;
- the term may be for up to ninety-nine (99) years;
- the term has a specified commencement and end date;
- it is granted for a specific purpose;
- it grants the lessee and their invitees a right of access to ʔaᓄam land, as per the terms of a lease;
- ʔaᓄam retains the powers and rights of an owner in the land being leased;
- the land remains part of ʔaᓄam reserve land during the term of a lease;
- the land remains subject to ʔaᓄam laws and by-laws during the term of a lease;
- if it is held by a person who is not a member it is subject to a charge, pledge, mortgage, attachment¹, levy, seizure, distress or execution² without the consent of Council or approval of Members;
- if the lessee is a non member and the term is for ten (10) or more years, a legal description is required; and
- it is subject to a charge, pledge, mortgage, attachment, levy, seizure, distress and execution by a mortgagee.

A lease over ʔaᓄam community lands may only be created, granted, disposed of, assigned or transferred by a written instrument issued in accordance with the *ʔaᓄam Amended Land Code* and this policy.

Specific Types of Leases

Types of leases and subleases that Council may grant include:

- (a) commercial;
- (b) natural resource development;
- (c) residential;
- (d) agricultural; and

¹ Means a proceeding in law by which a defendant's property is seized and held in legal custody on application by the plaintiff, to be applied against a claim on which the plaintiff seeks a judgement against the defendant.

² Means the enforcement of a court's judgement, including an order for sale of land under the Court Order Enforcement Act RSBC 1996 c.78.

- (e) recreational.

Written Land Instrument Required

A lease over ʔaḡam community lands may only be created, granted, disposed of, assigned or transferred by a written land instrument in accordance with the *ʔaḡam Amended Land Code* and this Manual.

Applicant Eligibility

An applicant must fall within one of the following categories of persons to be eligible for a lease:

- (a) Canadian citizen or permanent resident 19 years of age or older;
- (b) corporations which are incorporated or registered in British Columbia;
- (c) registered partnership, cooperative, or non-profit society formed under British Columbia laws;
- (d) First Nation or Band or Tribal Council (with a valid Band Council Resolution authorizing the Council to enter into the specific agreement for a licence, permit or easement); or
- (e) Municipal, regional, Provincial or Federal Government.

Leases over Lands Held under an Allotment

Refer to Policy 3 in this Manual and the *ʔaḡam Allotment Law, 2015* for information on all transactions related to lands held under an allotment.

Granting Leases to Non-Members

- A person who is not a member may hold a lease over ʔaḡam lands.
- Council must provide their written consent for all original leases in ʔaḡam lands.
- A person who is not a member includes a corporation owned and beneficially controlled by ʔaḡam, Council or a member, even if all of the corporation's shareholders are members of ʔaḡam.
- Once Council consent has been provided on an original lease, it may subsequently be mortgaged, transferred or assigned without the consent of the Council.

Rent – General

- A lease is intended to produce a fair economic return to ʔaḡam.
- Unless otherwise stated in this policy, every lease requires a fair market rent be obtained from the lessee.
- Every lease that is not a fully pre-paid lease must include a provision for review of the rent at least every five (5) years.

Rent – Charged to ʔaḡam Corporations, ʔaḡam Member, Serving Community Purpose

At the discretion of Council, the following may be charged reduced rent at the discretion of Council:

- an ʔaḡam corporation may be charged at a reduced rent under a lease over ʔaḡam community lands as part of an overall economic strategy that benefits ʔaḡam.

- an ᐱᐱᐱ member may be charged at a reduced rent under a lease over ᐱᐱᐱ community lands if that member is leasing land for a residential purpose and the reduced rent is part of an approved ᐱᐱᐱ Housing Strategy.
- a non-profit organization may be charged at a reduced rent under a lease over ᐱᐱᐱ community lands if the purpose of the lease is to provide for some community purpose which Council deems to be of significant benefit to ᐱᐱᐱ.

Registration of Leases

All leases must be registered in the First Nations Land Register in accordance with Policy 2 of this Manual.

Cancellation of a Lease

If Council determines that a lease was granted in error, by fraud or by mistake, they may cancel the lease pursuant to paragraph 31.2(a) of the *ᐱᐱᐱ Amended Land Code* and Policy 6 of this Manual.

All leases must contain terms for cancellation.

Subject to any specific terms in a lease, cancellation may be appropriate when:

- (a) the lessee has failed to pay required fees or other monies due under a lease;
- (b) the lessee has failed to observe terms set out in lease;
- (c) the lessee has changed and there is no provision for assignment in a lease; or,
- (d) the lessee has died and there is no provision for assignment in a lease.

The Lands Department must not cancel a lease without first obtaining consent to do so from Council.

Monitoring and Enforcement

The Lands Department is responsible for the monitoring and enforcement of leases over ᐱᐱᐱ community lands.

Refer to Policies 9 for information on monitoring and enforcement procedures.

Process

This section sets out the process for applying for, negotiating, drafting and executing a lease.

Application for a Lease over ᐱᐱᐱ Lands

The applicant must:

- (a) fully complete Part 1 of Form 5-1-01: Application for Use of ᐱᐱᐱ Lands;
- (b) submit the completed application to the Lands Department along with any required documentation (see below); and
- (c) if the applicant is not a member or a representative of a government agency or agency, present copies of two pieces of government-issued identification to the Lands Department or proof of corporate or government status.

Receiving an Application for Use of ᐱᐱᐱ Lands

The Lands Department employee who receives an application must document the following in Part 2 of Form 5-1-01: Application for Use of ʔaqam Lands:

- (a) date and time that the application was received; and
- (b) the name of the person at the Lands Department who received the application.

If the applicant is not an ʔaqam member or a government representative, the person at the Lands Department who receives the application must:

- (a) obtain copies of two pieces of government issued identification from the applicant;
- (b) compare the two pieces of government issued identification to the applicant and the application and assess whether the applicant is the same person as the person in the identification and the person named in the application;
- (c) photocopy the two pieces of government issued identification that are provided and attach them to the application.

Where the applicant is an **individual**, the Lands Department must review the copies of the applicant's government issued identification on file and determine whether the applicant is a Canadian citizen or permanent resident of Canada. If there is any doubt as to the applicant's citizenship or residency status, the Lands Department should consult legal counsel.

If the person is not making their application in person, make a note on the application setting out that identification verification cannot be completed.

Creation of Lands Department File

The person at the Lands Department who receives an application must ensure that a Lands Department file is created for the application and that the Form 5-1-01: Application for Use of ʔaqam Lands, along with any supporting documentation, is placed in that file.

Initial Letter to Applicant

As soon as practical after receiving an application, the Lands Department must:

- (a) complete and sign Form 5-1-02: Letter to Applicant;
- (b) take a photocopy of the completed Form 5-1-02: Letter to Applicant and place it in the Lands Department file for the application; and
- (c) provide to the applicant:
 - (i) the original, signed copy of Form 5-1-02: Letter to Applicant; and
 - (ii) a copy of the standard lease document that is relevant to the application.

Identity and Legal Status of the Applicant

Where the applicant, or the general partner in a limited partnership, is a **corporation**, the Lands Department must:

- (a) demonstrate that the corporation is in good standing by searching the British Columbia Registry Services website; and
- (b) demonstrate that the applicant is designated as a signing officer for the corporation by producing a copy of the Director's resolution appointing the signing officer.

Where the applicant is a **partnership** the Lands Department must

- (a) demonstrate the legal status of the partnership and the names of its current signing officers by:
 - (i) providing a certified copy of the partnership agreement from the applicant; and

(ii) if the partnership is a limited partnership, searching the British Columbia Registry Services website for the Certificate of Limited Partnership;

(b) demonstrate that the partnership is in good standing by searching the British Columbia Registry Services website for the Certificate of Good Standing;

demonstrate that the applicant is designated as a signing officer for the partnership

Where the applicant is a **society**, the Lands Department must:

(a) demonstrate the legal status of the society by searching the British Columbia Registry Services website for the Certificate of Incorporation;

(b) demonstrate that the society is in good standing by searching the British Columbia Registry Services website;

demonstrate that the applicant is designated as a signing officer for the society by producing a copy of the motion granting signing authority

Where the applicant is a **First Nation, Band or Tribal Council**, the Lands Department must:

(a) demonstrate the legal status of the First Nation, Band or Tribal Council and the names of the current Chief and Councillors by searching online on the First Nations Profiles website;

(b) demonstrate that the applicant is designated as a signing officer for the First Nation, Band or Tribal Council by producing an original Band Council Resolution to that effect

Where the applicant is a **government agency**, the Lands Department must:

(a) Demonstrate the legal status of the government agency; the government agency exists as an entity; and

(b) demonstrate by the government agency that the applicant is the person they allege to be.

Assess Lands Proposed for Use

The Lands Department must complete the following steps and document their results in Part 2 of Form 5-1-01: Application for Use of ʔaḡam Lands:

DESK BASED

(a) determine whether the lands being proposed for use are ʔaḡam community lands

(b) determine whether a legal description will be required and if a legal description already exists for the lands being proposed for use. A legal description will be required for all land instruments being granted to a person who is not a member of ʔaḡam that have a term exceeding ten (10) years. To determine whether a legal description already exists the Lands Department must conduct a search of the, First Nation Land Register, and Natural Resources of Canada website;

(c) complete a parcel abstract report to determine whether there are any known encumbrances and obtain copies of all land instruments that are encumbrances on the parcel of land and add them to the Lands Department file to which the application relates;

(d) determine whether the proposed use is consistent with *ʔaḡam Community Land Use Plan, 2016* and any other ʔaḡam laws or by-laws that may restrict the use of ʔaḡam lands and document all relevant ʔaḡam laws, by-laws and policies;

(e) determine whether an environmental assessment will be required by the applicant pursuant to Policy 8.1 or an environmental site assessment pursuant to Policy 8.2;

(f) determine whether any known environmental or contamination concerns exist with regard to granting the requested use (e.g. Environmental Site Assessment Phase 1 & 2, and Species at Risk Database);

(g) determine whether the parcel of land has within it a cultural heritage site as identified in an *ʔaḡam Heritage Management Plan, 2016* (in which case any development on the land requires approval of members by ratification vote); and

(h) enquire into whether granting a lease over the parcel of land may impact on any development plans which have already been approved by Council or are expected to be approved by Council in the near future. To determine this, contact relevant Directors

Site Visit

The inspection must include an assessment of:

- Topography
- Access to Public Road
- Available Services
- Present Use
- Other noteworthy observations

The Lands Department must sign off on Part 2 of the Application upon completion stating whether or not it will cause conflict with existing registered interests.

Environmental Assessment

Refer to Policy 8. Under Land Code ṽaqam’s environmental assessment process will be triggered in appropriate cases where ṽaqam is approving, regulating or funding a project on ṽaqam land. The assessment will occur as early as possible in the planning stages of the project before an irrevocable decision is made.

Lands Committee Preliminary Review

As early as practical after the Lands Department completes Part II of the Application for Use, the Lands Department must:

- (a) brief the Lands Committee on the scope of the proposed use of ṽaqam lands;
- (b) provide the Lands Committee with a copy of the standard lease that is relevant to the application and any other information required by the Lands Committee; and
- (c) obtain a recommendation from the Lands Committee that the Lands Department take the application to Council for a Preliminary Review and Approval to Negotiate

The Lands Committee must complete Part 3 of Form 5-1-01: Application for Use of ṽaqam Lands.

Council Preliminary Review

As early as practical after the Lands Department obtains a recommendation from the Lands Committee regarding a proposed lease, the Lands Department must:

- (a) brief Council on the scope of the proposed use of ṽaqam lands;
- (b) make available to Council a standard lease that is relevant to the application, and any other information required by Council; and
- (c) obtain instructions from Council to negotiate, draft and arrange the execution of the lease on behalf of ṽaqam via a Motion and obtain any relevant instructions regarding Lease conditions to be included beyond the template standard

Negotiations

After the Lands Department obtains instructions from Council to negotiate, draft and arrange the execution of a lease on behalf of ṽaqam, the Lands Department must negotiate the mandatory terms of that lease with the applicant in accordance with Policy 4.

If any substantial changes are proposed to the language in an approved lease template, the Lands Department will provide Council with a clean Lease Agreement with the revised sections incorporated into a Memo for consideration.

Where the granting of a lease is inconsistent with another interest holder's rights under a land instrument, the Lands Department must attempt to obtain consent from those interest holders prior to executing the lease.

In negotiating a lease, the Lands Department must confirm the adequacy of the compensation and where the compensation is valued at more than \$20,000, the Lands Department must require the applicant, at the applicant's sole expense, to provide Council with an appraisal report that confirms the draft lease compensation is, at a minimum, fair market value.

In negotiating a lease, the Lands Department shall obtain a credit report on the applicant from the applicant. The information contained in a credit report will enable the Lands Department to assess the applicant's payment habits and capacity to fulfill the payment terms of the lease. Credit checks may be obtained through the local Credit Bureau by providing the lessee's name, address, and other available information to the credit agency.

The Lands Department must provide the applicant with a reasonable opportunity to inspect the requested ʔaḡam lands as to:

- (a) the suitability of the requested ʔaḡam lands for any particular use, including the use permitted by the proposed lease;
- (b) the condition of the requested ʔaḡam lands (including surface and groundwater), environmental or otherwise;
- (c) the general condition and state of utilities or other systems on or under the requested ʔaḡam lands; and
- (d) the application of any laws or regulations of Canada or the Province that apply to the requested ʔaḡam lands.

Drafting

The Lands Department is responsible for determining if retaining legal counsel is necessary to prepare or review leases and to modify existing templates

If the Lands Department has negotiated terms or conditions in a lease that vary from the standard lease templates in Schedules B, C and D, such changes will be presented to Council in a Memo.

Assess the Draft Lease

The Lands Department must assess the draft lease to confirm:

- that all mandatory terms are included in the lease;
- that the term of the lease is appropriate and consistent with this policy; and
- the suitability of all optional terms appearing in the lease.

Legal Counsel Review

A Review of the Lease by Legal Counsel will be a decision determined by the Lands Department given the circumstances of the proposed Lease. Council may also direct Lands Staff to seek a Legal Review, the main point being the circumstances surrounding the lease (scope, scale, complexity, rent charged, environmental assessment review, etc.) shall be considered when determining when a legal counsel review is necessary.

- (a) When requesting a legal review of a proposed lease, or assistance from legal counsel in the drafting of a proposed lease, the Lands Department must provide legal counsel with a copy of the Land Code;
- (b) a copy of this policy;
- (c) the appropriate template lease;
- (d) a completed Form 5-1-01: Application for Use of ᐃᓐᓐᓐ Lands and any supporting documentation received with the application or obtained by the Lands Department in completing Part 2 of the application;
- (e) copies of any documents obtained by the Lands Department from the Indian Lands Registry System and First Nation Lands Register in relation to the application;
- (f) corporate records search results;
- (g) any other documents in the ᐃᓐᓐᓐ's Lands Department file; and
- (h) any other documents requested by legal counsel.

Address Identified Problems

The Lands Department must promptly address any problems or shortcomings identified during the assessment or legal review of a proposed lease.

Report to Council

The Lands Department must provide the following documents to Council for their consideration:

- (a) one copy of the final draft lease;
- (b) the completed Form 5-1-01 Application for Use of ᐃᓐᓐᓐ Lands;
- (c) any relevant reports from the Lands Committee or opinions from legal counsel;
- (d) any other relevant documents in the Lands Department file for the application; and
- (e) two (2) copies of a Band Council Resolution that sets out the following:

ᐃᓐᓐᓐ BAND COUNCIL RESOLUTION CONSENT TO LEASE AGREEMENT

WHEREAS in 1996 fourteen First Nations and Canada signed the *Framework Agreement on First Nation Land Management (Framework Agreement)*, which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by developing a Land Code and a community approval process, concluding an Individual Agreement with Canada, and ratifying the Land Code and Individual Agreement through a vote of the eligible members;

AND WHEREAS in 1999 Canada passed the *First Nations Land Management Act* to ratify the *Framework Agreement*;

AND WHEREAS in 2001 the fourteen First Nations and Canada agreed to amend the *Framework Agreement* to make it possible for additional First Nations to become signatories of the *Framework Agreement*;

AND WHEREAS ?aqam signed an Individual Agreement with Canada on June 18, 2014;

AND WHEREAS the members of ?aqam 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;

AND WHEREAS the members of ?aqam 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 February 25, 2016, which has become the *?aqam Amended Land Code, 2016*;

AND WHEREAS the Council of ?aqam has authority pursuant to section 32.1 of the *?aqam Amended Land Code* to grant interests in ?aqam community lands;

THEREFORE BE IT RESOLVED THAT the Council of ?aqam (*choose from one of the following options*)

A. consents to the attached Lease Agreement that grants to [Lessee's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

FURTHER IT BE RESOLVED THAT the Council of ?aqam authorizes [Name of Lands Department personnel] to execute the attached Lease Agreement on behalf of ?aqam.

OR

B. conditional on [name of applicant]:

- [enter condition]
- [enter condition]; and
- providing to the ?aqam Lands Department the following documentary proof that such conditions have been complied with by the following dates:
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];

consents to the attached Lease Agreement that grants to [Lessee's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

FURTHER IT BE RESOLVED THAT the Council of ?aqam authorizes [Name of Lands Department personnel] to execute the attached Lease Agreement on behalf of ?aqam after

- [name of applicant] has complied with the conditions set out in this Band Council Resolution;

AND / OR

- the conditions set out in this Band Council Resolution have been added as conditions within the [Licence / Permit]

OR

C. does not consent to the attached Lease Agreement that grants to [Applicant's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

Lease Conditions before Approval

If Council determines that conditions must be completed before the issuance of a lease, the Lands Department must:

- (a) if necessary, complete the relevant parts of Part 5 of Form 5-1-01: Application for Use of ʔaqam Lands, indicating:
 - (i) the conditions precedent that must be met,
 - (ii) the documentary evidence that must be provided by the applicant to the Lands Department as proof of the conditions precedent being met,
 - (iii) the person responsible for monitoring the conditions precedent, and
 - (iv) the dates by which the documentary evidence must be received by the Lands Department;
- (b) provide a copy of Form 5-1-01: Application for Use of ʔaqam Lands, along with the Band Council Resolution, to the applicant;
- (c) follow up in person with the applicant to confirm whether the applicant wishes to pursue the lease with the conditions as either conditions precedent or terms in the lease, as the case may be,
- (d) if the applicant wishes to pursue the lease and the Band Council Resolution requires conditions precedent be met:
 - (i) obtain documentary proof from the applicant of the completion of all conditions precedent required by the Band Council Resolution, and
 - (ii) complete the relevant parts of Part 5 of Form 5-1-01: Application for Use of ʔaqam Lands, indicating whether or not the applicant has provided documentary proof regarding their completion of all conditions precedent required by the Band Council Resolution, and sign the declaration in Part 5 of Form 5-1-01: Application for Use of ʔaqam Lands; and
- (e) if the applicant wishes to pursue the lease and the Band Council Resolution requires that the land instrument have conditions added to it, ensure those conditions are drafted into the lease.

Environmental Assessment/Review: Condition Precedent

If an environmental assessment or environmental site assessment is a condition precedent to the issuance of a lease, the Lands Department must ensure that:

- (a) Policies 8-1 and 8-2 are complied with;
- (b) any mitigating measures resulting from the environmental assessment are either completed or added to the lease as mandatory terms (see Policy);
- (c) the lease also has a term stating that a breach of the mitigating measures will result in ʔaqam having a right to cancel the lease without notice; and
- (d) a legal review of the lease is conducted.

Legal Description: Condition Precedent

- If a legal description is a condition precedent to Council approving a lease, the applicant must obtain an official plan or registration plan and provide the Lands Department with a legal description that refers to that plan.
- An official plan or registration plan may be obtained by contacting a Canada Land Surveyor. Contact information for Canada Land Surveyors can be found on the Association of Canada Lands Surveyors website.
- The surveyor will initiate the survey process and will seek to obtain permission from ?aqam to enter ?aqam lands to commence the survey. ?aqam will need to provide a permission letter to the surveyor.
- A permission letter must not be provided until after Council has made a preliminary decision on the proposed lease.
- A permission letter must include:
 - a statement of permission for the surveyor to enter ?aqam lands;
 - information on the work that will be carried out by the surveyor;
 - the name of the surveyor(s) to whom the permission applies; and
 - the signature and title of the authorized signatory.
- After the surveyor has permission to enter ?aqam lands, the surveyor will contact the applicant and enter into a contract for services with him or her.
- After the surveyor and applicant have entered into a contract for services, the surveyor will send a request for survey to the Surveyor General of Canada with the contract for services and the letter of permission attached.
- The Surveyor General of Canada must authorize the survey before the surveyor can begin the work.
- After the surveyor has acquired authorization from the Surveyor General of Canada to conduct the survey, he or she will conduct all the work and review the preliminary official plan or registration plan with the applicant.
- The surveyor will provide ?aqam with a request for their review and approval of the preliminary official plan or registration plan.
- ?aqam must ensure the preliminary official plan or registration plan complies with the scope of work that was approved by ?aqam to be conducted by the surveyor and with all ?aqam laws and by-laws.
- ?aqam must then approve the preliminary official plan or registration plan in writing by providing the surveyor with either a Band Council Resolution.
- After ?aqam approves of a preliminary official plan or registration plan, the surveyor will:
 - record the official plan or registration plan in the Canada Land Survey Records, which is a public registry; and
 - provide a copy of the official plan or registration plan to the applicant and to ?aqam.
- Where ?aqam does not approve of the official plan or registration plan, the Lands Department must work with the applicant and the surveyor to have the survey amended to a form that ?aqam will approve.
- Once an official plan or registration plan is obtained a legal description must be added to the lease.

Report to Council: New Band Council Resolution

If all conditions precedent are satisfactorily complied with, and all other conditions are drafted into the lease, the Lands Department must:

- (a) provide Council with:
 - (i) if necessary:
 - the completed Form 5-1-01: Application for Use of ?a?am Lands, and
 - all documentary proof from the applicant of the completion of all conditions precedent required by the Band Council Resolution,
 - (ii) the newly drafted lease, and
 - (iii) **two (2) original copies of a Band Council Resolution approving of the execution of the lease.**

Letter to Applicant

Where Council has made a final decision on an application, the Lands Department must provide the applicant with a letter:

- (a) confirming whether the lease has been approved;
- (b) if the lease has not been approved, setting out the reasons it was not approved; and
- (c) if the lease has been approved:
 - (i) setting out that the lease has been approved by Council; and
 - (ii) inviting the applicant to contact the Lands Department so arrangements can be made for the completion of a joint site inspection and the applicant to execute the lease.

Executing the Lease

Once the Lands Department has obtained a Band Council Resolution that approves a lease without conditions, the Lands Department must ensure that the following steps are completed to execute the land instrument:

- (a) two copies of the lease are printed off;
- (b) ensure the applicant, in the presence of a witness, executes all copies of the lease by:
 - (i) if the lease is more than one page in length, initialling the bottom left corner of each page; and
 - (ii) signing and dating the lease, and
- (c) ensure the person named in the BCR from Council as the authorized signatory signs and dates the lease.

Signature Requirements

All signatures must be in permanent ink. Each page of the agreement is to be initialled by signatories

- If the person signing cannot sign with his or her signature, he or she may sign with an "X". If a person signs with an "X" his or her signature must be witnessed by another person who signs beside the person signing and makes a note confirming that:
 - (a) the full text of the lease has been verbally read to the person signing;
 - (b) that the person signing has indicated to the witness that the person signing understands the contents of the lease; and
 - (c) that the person signing has indicated to the witness that the person signing understands that by signing, the person signing is bound by the lease.
- When a lease is signed on behalf of a corporation, it must be signed by a person who is authorized to sign on behalf of the corporation and documentation must be attached confirming that person's authorization to sign on behalf of the corporation.

- When a lease is signed on behalf of a partnership it is ideal to have all partners sign. However, the signature of one partner is binding on all partners in the partnership.
- A guardian, trustee or the administrator of an estate must sign a lease using his or her normal signature and must identify the capacity in which he or she is signing and provide proof of such capacity to ᐃᓐᓗᓂ.

Registration

The Lands Department must register the lease in the First Nation Land Register in accordance with Policy 2.

Final Steps

After registration is completed, the Lands Department must:

- (a) provide each new lessee with:
 - (i) the names of all ᐃᓐᓗᓂ laws, by-laws and *ᐃᓐᓗᓂ Community Land Use Plan, 2016* which are in effect and the locations where the new interest holder may access such laws, by-laws and *ᐃᓐᓗᓂ Community Land Use Plan, 2016*,
 - (ii) one (1) original, signed copy of the Band Council Resolution granting the final lease, and
 - (iii) one (1) original, signed copy of the lease, and
- (b) send the new lessee's information to the ᐃᓐᓗᓂ Finance Department to determine whether they need to update the taxation and assessment rolls.

Site Inspection Report

The Lands Department must as soon as practical after executing and registering a new lease:

- (a) invite the new lessee to attend a joint site inspection (and document this invitation in the Lands Department file);
- (b) attend at the site over which the lease relates, preferably with the new lessee) and complete Form 9-1-02: Site Inspection Report; and
- (c) place a copy of the completed Form 9-1-02: Site Inspection Report in the Lands Department file.

Documentation

The Lands Department must ensure that the Lands Department file contains:

- (a) the original Form 5-1-01: Application for Use of ᐃᓐᓗᓂ Lands;
- (b) original copies of all Band Council Resolutions related to the application;
- (c) all documentation received from the applicant in relation to conditions precedent to the approval of the application;
- (d) an original, signed copy of the lease; and
- (e) a copy of the completed Form 9-1-02: Site Inspection Report.

ᐃᓐᓗᓂ Newsletter and Online Publication

All land instruments issued are to be posted publically

Follow-Up and Monitoring Plan

Lands Management Manual Version 2.0

The Lands Department must complete a follow-up plan for monitoring and enforcement of every lease in accordance with Policy 9-1.

Resources and Forms

In addition to this policy, consult the following resources:

- (a) the *ᑭᓱᓱᓱᓱ Amended Land Code*;
- (b) the *First Nations Land Management Act*;
- (c) the Framework Agreement; and
- (d) the Individual Agreement.

Forms

See Policy 5.1 Forms, regarding an Application for Use 5-1-01

Policy 4-2: Drafting Leases: Mandatory and Optional Terms

Purpose

The objectives of this policy are to:

- (a) provide the mandatory and optional terms that must be included in all leases over ʔaqam community lands; and
- (b) introduce the standard lease templates that may be used for a lease over ʔaqam community lands.

In addition to this policy, Policy 4-1 applies to all leases.

All leases must contain the mandatory terms set out in this policy.

Role and Responsibilities

See Policy 4-1

Legal Authorities

See Policy 4.1

Policy

Approved Standard Lease Templates

Wherever possible, the following approved standard lease templates must be used in the drafting of a lease:

- (a) Schedule B: Headlease Template;
- (b) Schedule C: Residential Sublease Template; and
- (c) Schedule D: Commercial Lease Template.

Mandatory Terms

The following mandatory terms must be included in all leases over ʔaqam community lands.

The Parties

A lease must name ʔaqam as the lessor, as follows:

ʔaqam with an office at
7470 Mission Road
Cranbrook, BC V1C 7E5

A lease must name a lessee that has a legal entity, such as a natural person, corporation, partnership or society, as follows:

[Full Legal Name]
[Mailing Address]
[City, Province Postal Code]

OR

[Company Name] a company
 duly incorporated under the laws of the
 Province of British Columbia and having its registered office at
 [Mailing Address]
 [City, Province Postal Code]

OR

[Partnership Name] a partnership [“registered in” or “doing business in”]
 the Province of British Columbia and having its registered office at
 [Mailing Address]
 [City, Province Postal Code]

OR

[Society Name] a society
 duly incorporated under the laws of the
 Province of British Columbia and having its registered office at
 [Mailing Address]
 [City, Province Postal Code]

Recitals

The recitals in a lease must state:

- (a) that the lands subject to a lease are a part of ʔaḳam lands, referring specifically to the reserve parcel to which a lease is a part and specifying that such lands are held for the use and benefit of ʔaḳam;
- (b) background information relating to those ʔaḳam lands to which the lease is a part;
- (c) that ʔaḳam assumed jurisdiction over the management of ʔaḳam lands under the *First Nations Land Management Act* on July 1, 2014 when the *St. Mary’s Indian Band Land Code* and the Individual Agreement on First Nations Land Management came into force;
- (d) The members of ʔaḳam 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 February 25, 2016, and the *St. Mary’s Indian Band Land Code* has now become the *ʔaḳam Amended Land Code, 2016*;
- (e) that the lessor is authorized to grant a lease pursuant to the *ʔaḳam Amended Land Code*, with reference to the statutory provision under which a lease is issued;

(f) that ʔaqam Council has acknowledged and declared that it has consented to the terms of the lease as evidenced by a Band Council Resolution, with reference to the Band Council Resolution as an attachment to a lease; and

(g) that the Council of ʔaqam, on behalf of ʔaqam, has declared that it has consented to the terms of a lease, as evidence by the signatures of the authorised signatories of ʔaqam on the lease.

Intent and Interpretation

A lease must set out the rules of interpretation with regard to:

- (a) definitions;
- (b) reference to sections;
- (c) headings;
- (d) plurality and general;
- (e) joint and several; and
- (f) the binding effect of a term or condition.

A lease must include a term setting out that the lessee agrees to comply with all applicable laws, bylaws and regulations.

A lease must include a term setting out that a lease constitutes the entire agreement between the parties with respect to the subject matter of a lease and that it supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease and representations.

A lease must include a term setting out that no modifications of a lease are effective unless made in writing, and executed by both parties in the same manner as a lease was executed.

A lease must include a term setting out that “Time is of the essence in this Lease.”

A lease must include a term on severability setting out that if any part of a lease is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if a lease had been executed without the invalid portion.

Change in Control of Lessee

If the lessee is a corporation, partnership or society, a term must be added to a lease to address whether a change in ownership or beneficial control without the lessor’s consent will be deemed to be a default under a lease.

A lease must set out that the lease will be for the benefit of and be binding upon heirs, executors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the parties to the lease during the term of the lease.

Land Description, Status and Warranties

A lease must set out a full, identifiable description of the lands over which a lease will operate and if the term of the lease exceeds ten (10) years such description must conform to the requirements of the *First Nation Land Register Regulations*.

A lease must set out any warranties regarding the status of the leased lands on the commencement date of the lease.

The parcel of land in the land description must be ʔaᓄam community lands over which ʔaᓄam has authority to grant a lease.

Maintenance of Property

A lease must identify the party responsible for maintenance and the standards of maintenance.

Term

A lease must set out the commencement date, length of time and cancellation date of a lease.

A lease must set out specific details regarding the responsibilities of the lessee at the cancellation of the lease.

Rent

A lease must set out the:

- (a) rent amount;
- (b) timing of rent payments (e.g. weekly, monthly, annually, etc.);
- (c) method of rent payments (eg. by cheque made out to ʔaᓄam lands Office and delivered to ʔaᓄam lands Office on the first day of every month);
- (d) consequences of a failure to make a rent payment, including the interest rate for rent that is in arrears; and
- (e) the responsibilities of the parties if there is a failure to make a rent payment.

Where the rent depends on a calculation, a lease must include specific instructions defining the method of calculation and addressing any disputes with regard to calculation.

A lease must specify whether there will be compensation review periods, and when such reviews must be completed.

At a minimum, compensation agreed to in a lease must reflect fair market value.

Where reduced rent is to be charged under a lease to an ʔaᓄam corporation, a lease must include a Band Council Resolution from Council approving of the reduced rent.

Where reduced rent is to be charged under a lease to a member, a lease must include the following:

- (a) a Band Council Resolution from Council approving of the reduced rent;
- (b) a statement setting out that member is leasing land for a residential purpose and that the reduced rent is part of a specified ʔaᓄam Housing Strategy.

Access

A lease must set out the access rights of the lessee to and from leased lands.

A lease must set out the terms under which the lessor has a right to access the land over which a lease operates to inspect the leased lands for monitoring and enforcement purposes.

Allowable Use

A lease must clearly define the allowable use of a lease area and must clearly define any prohibited uses.

A lease must clearly identify whether the licensee or permittee may take any resource from a lease area and the quantity of such resource that may be taken by the licensee or permittee.

If a lease allows for the licensee or permittee to take any resource from a lease area, it must set out any conditions or restrictions on the taking of that resource. For example, there may be restrictions or conditions on the method or manner of taking or on the tools allowed to be used in the taking.

A lease must set out that ʔaqam reserves the right to further charge a leased lands, or any part of them, by way of easement, right of way, or restrictive covenant in favor of any Authority and that the lessee agrees, at the request of the lessor, to expeditiously execute and deliver to the lessor such instrument as may be necessary to subordinate the lessee's right and interest in the land under a lease to such charge.

A lease must set out the specific utilities that the lessor will provide to the lessee under a lease and the types of utilities the lessee may provide and maintain on leased lands.

Insurance

A lease must include a term setting out that the lessee will:

- (a) Take out and maintain during the term of a lease liability insurance in an amount of not less than \$2 000 000 or determined by Council with respect to any bodily injury, death, or third party property damage occurring upon ʔaqam community lands;
- (b) Deliver a certificate of insurance to ʔaqam at any time or times upon request by ʔaqam and that such certificates of insurance shall include ʔaqam as an additional insured and shall contain a cross-liability and severability of interest clauses as well as a waiver of subrogation in favour of ʔaqam.
- (c) Ensure that the Band is named as an additional insured on the policy

Indemnification

A lease must include terms setting out that the lessee will indemnify and hold harmless ʔaqam against and from all claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs, liabilities, losses, and sums paid in settlement of claims, howsoever arising out of or related to any breach of a lessee's terms under a lease.

Taxes

A lease must include a term setting out that the lessee agrees to pay all taxes, levies, etc. payable to any authority because of their use and occupation of ʔaqam lands and will pay such taxes, levies, etc. on or before the dates which they become due in each and every year during the term of a lease.

A lease must include a term setting out that at the request of the lessor, the lessee will provide the lessor with evidence that all taxes, levies, etc. are paid. Furthermore, it must set out the form of request and timeframe for when such evidence must be provided.

Historical, Anthropological and Cultural Artifacts

A lease must include a term setting out that the lessee agrees to report finds of a historical, anthropological or cultural nature to Council and to cease all activities on the lease area in which the articles are discovered until further notice from Council.

Environment Related Terms and Conditions

A lease must include terms setting out the rights and responsibilities of the lessee with regard to:

- (a) compliance with environmental laws;
- (b) the generation, manufacturing, refining, treating, transporting, storing, handling, disposal of, transferring, production, or processing of hazardous substances;
- (c) environmental site assessments;
- (d) environmental audits; and
- (e) indemnifying the lessor against actions, etc. related to the presence, suspected presence or release of hazardous substances in or under a leased lands.

A lease must include terms setting out the rights and responsibilities of the lessor with regard to:

- (a) monitoring and enforcement of the lessee's compliance with environmental responsibilities under a lease; and
- (b) termination of a lease related to a breach of environmental laws.

Assignments

A lease must have a term setting out whether a lease may be assigned, and if a lease may be assigned, setting out the conditions which must be met for an assignment of a lease to be valid.

Subleases

A lease must have a term setting out whether leased lands may be subleased, and, if leased lands may be subleased, setting out the conditions which must be met for a sublease to be valid, including conditions regarding the indemnification of ʔaqam and conditions pertaining to environmental standards and assessments.

Mortgages

A lease must have terms setting out:

- (a) the lessors rights of re-entry, distress and cancellation in a situation where a mortgagee takes possession of a leased lands;
- (b) that a mortgagee who takes possession of a leased lands will perform and observe all of the lessee's responsibilities under a lease;
- (c) the rights of the parties and the processes to be followed where a mortgagee takes enforcement proceedings on their mortgage;
- (d) insurance requirements that must be undertaken by a mortgagee; and

- (e) a requirement that the lessee register all mortgages against a leasehold.

Addresses for Notices and Delivery

A lease must identify:

- (a) addresses for the giving of notice to each of the parties;
- (b) the methods of delivery that parties must use in serving notices; and
- (c) when a notice is deemed effective.

Default

A lease must set out the circumstances that will be deemed a default under the lease and the rights and responsibilities of the lessor and lessee should a default occur, including the right and form of waiver that may be taken by the lessor to a default by the lessee.

A lease must also set out the process that the lessor must follow if the lessor declares a default has occurred and such process must include a:

- (a) notice of default;
- (b) reasonable opportunity for the lessee to cure the default;
- (c) description of the rights and role of any mortgagee or sublessee in default proceedings; and
- (d) description of the options available to the lessor if a default is not cured.

Optional Terms for All Leases

The Lands Department must consider the following optional terms during negotiation of the draft lease.

Standards

A lease must identify any relevant standards governing construction, health and remedies for failure to meet standards.

Insolvency

A term may be added to a lease to address the payment of rent in the event that a lessee becomes insolvent or bankrupt, or if it is a corporation and proceedings are initiated to wind up or a receiver, receiver-manager or trustee is appointed.

Fencing

In some circumstances, fences and locks may be acceptable on an area of leased land. For example, fences and locks may be necessary for safety and security reasons or for agricultural grazing purposes. In such circumstances a term may be added to a lease requiring the lessee to be responsible for the maintenance of that fence or locked off area and to provide ʔaḡam with a key to any lock.

Improvements

A lease may identify a process that must be followed by a lessee before the development of improvements on leased lands and may identify who owns any improvements made to the land after the cancellation of a lease.

Dispute Resolution

A lease may specify a dispute resolution mechanism to resolve disagreements between the parties regarding the application of the terms contained within it.

Right to Renew / Right of First Refusal

A lease may set out the terms under which the lessee will have the first right to renew the lease of the leased land and the process the lessee must follow to exercise such right.

Encumbrances

A lease may set out that it is subject to encumbrances with reference to specific encumbrances.

Band Council Resolution

A lease must attach and reference the Band Council Resolution approving of the lease.
A Band Council Resolution approving of a lease must contain the following wording:

ᐱᐱᐱ BAND COUNCIL RESOLUTION CONSENT TO LEASE AGREEMENT

WHEREAS in 1996 fourteen First Nations and Canada signed the *Framework Agreement on First Nation Land Management (Framework Agreement)*, which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by developing a Land Code and a community approval process, concluding an Individual Agreement with Canada, and ratifying the Land Code and Individual Agreement through a vote of the eligible members;

AND WHEREAS in 1999 Canada passed the *First Nations Land Management Act* to ratify the *Framework Agreement*;

AND WHEREAS in 2001 the fourteen First Nations and Canada agreed to amend the *Framework Agreement* to make it possible for additional First Nations to become signatories of the *Framework Agreement*;

AND WHEREAS ᐱᐱᐱ signed an Individual Agreement with Canada on June 18, 2014;

AND WHEREAS the members of ᐱᐱᐱ 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;

AND WHEREAS the members of ᐱᐱᐱ 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 February 25, 2016, which has become the *ᐱᐱᐱ Amended Land Code, 2016*;

AND WHEREAS the Council of ᐱᐱᐱ has authority pursuant to section 32.1 of the *ᐱᐱᐱ Amended Land Code* to grant interests in ᐱᐱᐱ community lands;

THEREFORE BE IT RESOLVED THAT the Council of ?aqam (*choose from one of the following options*)

A. consents to the attached Lease Agreement that grants to [Lessee's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

FURTHER IT BE RESOLVED THAT the Council of ?aqam authorizes [Name of Lands Department personnel] to execute the attached Lease Agreement on behalf of ?aqam.

OR

B. conditional on [name of applicant]:

- [enter condition]
- [enter condition]; and
- providing to the ?aqam Lands Department the following documentary proof that such conditions have been complied with by the following dates:
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];

consents to the attached Lease Agreement that grants to [Lessee's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

FURTHER IT BE RESOLVED THAT the Council of ?aqam authorizes [Name of Lands Department personnel] to execute the attached Lease Agreement on behalf of ?aqam after

- [name of applicant] has complied with the conditions set out in this Band Council Resolution;

AND / OR

- the conditions set out in this Band Council Resolution have been added as conditions within the [Licence / Permit]

OR

C. does not consent to the attached Lease Agreement that grants to [Applicant's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

Resources and Forms

(2) In addition to this policy, consult the following resources:

- (a) the *?aqam Amended Land Code*;
- (b) the *First Nations Land Management Act*;
- (c) the Framework Agreement; and
- (d) the Individual Agreement.

and

(d) **Headlease Terms are Binding:** The sublease will bind the sublessee to all the terms of the headlease.

Mortgage

- A mortgage involves pledging either the lessee or sublessee's interest in the land as security for the repayment of a loan made to the lessee or the sublessee by the mortgagee.
- Should the lessee or sublessee fail to repay the loan as required, the mortgagee is generally entitled to sell or assume the lessee or sublessee's interest to satisfy the debt.
- Because a mortgagee's security is tied to the value of a leasehold interest, a mortgagee is acknowledged to have a special role in the cancellation and amendment of a lease.
- It must be noted that if the designation stipulates a specific lessee, that lessee may have difficulty in obtaining a mortgage as the mortgagee may not then have the ability to assume the lessee's interests in the event of a default.

Consent of Council Generally Not Required

All leases over *ᑭᐱᑭᐱ* community lands may be assigned, subleased or mortgaged in accordance with the terms of the lease, which must be approved by council at the time the lease is granted.

Registration

Every assignment, sublease or mortgage must be registered in the First Nation Land Register. The assignment, sublease or mortgage must be drafted in a form suitable for registration.

Process

Process Set out in Lease

The processes relevant to the assignment, sublease or mortgage of a lease must be those processes set out in the lease document itself.

Resources and Forms

In addition to this policy, consult the following resources:

- (a) the lease and the Lands Department file for the lease;
- (b) any subleases registered in the First Nation Land Register;
- (c) any mortgages registered in the First Nation Land Register;
- (d) the *ᑭᐱᑭᐱ Amended Land Code*;
- (e) the *First Nations Land Management Act*;
- (f) the Framework Agreement; and
- (g) the Individual Agreement.

