

POLICY 5. LICENCES, PERMITS, EASEMENTS AND RIGHT-OF-WAYS

POLICY 5. LICENCES, PERMITS, EASEMENTS AND RIGHT-OF-

WAYS 1

POLICY 5.1 LICENCES, PERMITS, EASEMENTS AND RIGHT-OF-WAYS OVER ḤAQAM COMMUNITY LANDS 1

Purpose	1
Roles and Responsibilities.....	2
Legal Authorities	3
Policy.....	3
Process.....	7
Resources and Forms.....	18

Policy 5-2 Drafting Licences, permits, Easements and Right of Ways Using the Mandatory and Optional Terms 19

Purpose	19
Legal Authorities	19
Policy.....	19
Resources.....	25

POLICY 5.1 LICENCES, PERMITS, EASEMENTS AND RIGHT-OF-WAYS OVER ḤAQAM COMMUNITY LANDS

Purpose

The objectives of this policy are:

- (a) to set out a standardized set of rules and processes that apply to obtaining a licence, permit, easement or right-of-way over Ḥaqam community lands; and
- (b) to define the roles and responsibilities of Council, the Lands Department, the Lands Committee and applicants during the application process.

Policies 5-1 **does not** apply to allotted lands. For information on the policies and procedures that apply to obtaining a licence, permit, easement or right-of-way over allotted lands, please refer to Policy 3.

An Application for Use is how the Licence, Permit, Easement and Right-of-Way 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, by Band Council Resolution, to the original grant of, and any assignment or transfer of, a licence, permit, easement or right-of-way; and
- authorizing, by Band Council Resolution, a member of Council or the Lands Department to sign licences, permits, easements and right-of-ways 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 all requirements under Policy 5 are complied with during the assessment of applications and the negotiation, drafting and execution of a licence, permit, easement or right-of-way;
- ensuring all land instruments granting a licence, permit, easement or right-of-way over ᑭᓄᓐ community lands are in accordance with the *ᑭᓄᓐ Amended Land Code*, ᑭᓄᓐ laws, by-laws and any applicable provincial or federal laws;
- in accordance with Policy 9, the monitoring and enforcement of all licences, permits, easements and right-of-ways over ᑭᓄᓐ community lands; and
- maintaining a file in the Lands Department for all licences, permits, easements and right-of-ways over ᑭᓄᓐ community lands.

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 and Council with any matter related to the granting of a licence, permit, easement or right-of-way and may perform duties and functions as directed by either Council or the Lands Department.
- respond to all licence, permit, easement and right-of-way related requests from the Lands Department or Council, and where necessary to consult with members on licence, permit, easement and right-of-way related issues.
- make recommendations to the Lands Department and Council on matters related to the issuance of a licence, permit, easement or right-of-way over ᑭᓄᓐ community lands.

Legal Authorities

The relevant authorities are:

- (a) section 12.1 and paragraph 12.2(b) of the Framework Agreement;
- (b) paragraphs 6(1)(j) and 18(1)(b) of the *First Nations Land Management Act*; and
- (c) section 32 of the *ᑭᓄᓂᓄ ᓄᓂᓄᓄ ᓄᓂᓄᓄ ᓄᓂᓄᓄ*.

Section 12.1 and paragraph 12.2(b) of the Framework Agreement

Paragraphs 6(1)(j) and 18(1)(b) of the *First Nations Land Management Act*:

Section 32 of *ᑭᓄᓂᓄ ᓄᓂᓄᓄ ᓄᓂᓄᓄ ᓄᓂᓄᓄ*:

Policy

Characteristics of a Licence

A licence on ᑭᓄᓂᓄ community lands has the following characteristics:

- (a) the licensor is ᑭᓄᓂᓄ and the licensee may be any person, whether or not they are a member;
- (b) it grants the licensee with a personal privilege or permission to use, occupy or take from ᑭᓄᓂᓄ community lands;
- (c) it does not grant exclusive possession or occupation of ᑭᓄᓂᓄ community lands to the licensee;
- (d) it does not grant the licensee a right to curtail public access over the licence area, except where it would impact on the licensee's right to use the land as per the licence;
- (e) it does not require a legal land description, unless it is for a term of ten (10) years or more and is granted to a person who is not a member of ᑭᓄᓂᓄ;
- (f) its term is certain and limited in duration but must be for a minimum of two (2) years;
- (g) it is granted for a specific purpose;
- (h) it is granted for a specific parcel of ᑭᓄᓂᓄ community lands;
- (i) more than one licence, permit, easement or right-of-way may be granted over the same parcel of ᑭᓄᓂᓄ community lands provided the uses are compatible;
- (j) it may be cancelled by the licensor or at the request of the licensee, within the terms of the licence;
- (k) compensation for licences is based at a minimum on fair market value; and
- (a) it is generally not assignable or transferrable without the written consent of ᑭᓄᓂᓄ and it generally cannot be mortgaged.

Characteristics of a Permit

A permit on ᑭᓄᓂᓄ community lands has the following characteristics:

- (a) the permittor is ᑭᓄᓂᓄ and the permittee may be any eligible person, whether or not they are a member;
- (b) it grants the permittee with a personal privilege or permission to use, occupy or take from ᑭᓄᓂᓄ community lands;
- (c) it does not require a legal land description, unless it is for a term of ten (10) years or more;
- (d) it must not exceed a term of five (5) years unless the permittee is a member, and if it's granted to a person who is not a member of ᑭᓄᓂᓄ and the term exceeds ten (10) years a legal

land description must be obtained;

- (e) it is granted for a specific purpose and may be granted for investigative purposes;
- (f) it is granted for a specific parcel of Ḥaqām community lands;
- (g) it does not grant exclusive possession of Ḥaqām community lands to the permittee;
- (h) it does not create a leasehold or easement;
- (i) it may grant a permittee a right to reside on Ḥaqām lands;
- (j) it grants the permittee, and others named in the permit, with a right of access to Ḥaqām community lands as per the terms of the permit;
 - (i) more than one licence, permit, easement or right-of-way may be granted over the same parcel of Ḥaqām community lands provided the uses are compatible;
 - (k) the permittee must allow public access to the permit area without interference, and must recognize and respect the overlapping and layering of interests that may be authorized by Ḥaqām over the permit area;
 - (l) compensation for permits is based at a minimum on fair market value;
 - (m) it may be cancelled by the permittor or at the request of the permittee, within the terms of the permit;
 - (n) it is generally not assignable or transferrable without the written consent of Ḥaqām.

Types of Licences and Permits

It is appropriate for Ḥaqām to grant a licence or permit for the following purposes:

- (a) the use or occupation of Ḥaqām community lands for agricultural or grazing purposes;
- (b) the use, occupation and/or taking of resources from Ḥaqām community lands;
- (c) the use or occupation of Ḥaqām community lands for industrial purposes, including: general industrial, quarry, mining, oil and gas, log handling, renewable power;
- (d) the use or occupation of Ḥaqām community lands for commercial purposes, including: residential developments, alpine skiing, golf course, film, or recreational facilities;
- (e) the use or occupation of Ḥaqām community lands for transportation, communications or utilities, including: airports, communication sites, public and private utilities, or roadways;
- (f) the use or occupation of Ḥaqām community lands by community organizations and institutions; or
- (g) the use or occupation of Ḥaqām community lands for residential purposes.

Characteristics of an Easement

An easement on Ḥaqām community lands has the following characteristics:

- (a) it is permanent and “runs with the land,” which means that it passes with the ownership of the land;
- (b) there must be a land owner who benefits from the easement (the “third party owner”), and a land owner who is burdened by the easement (Ḥaqām);
- (c) Ḥaqām, having all the rights of an owner of Ḥaqām community lands will be the grantor, in an easement granted under this policy;
- (d) a third party will be the grantee in an easement granted under this policy;
- (e) it provides a right to the third party owner to compel Ḥaqām to do or refrain from doing something in respect of Ḥaqām community lands in a way that impacts on the third party owner’s use of their own land;
- (f) it provides a benefit to the third party owner, making their land better and more convenient, and providing them fuller use of their land;

- (g) although it is not necessary that the third party's lands and ?aqam lands be adjacent to one another, there must be reasonable proximity between them;
- (h) common ownership of two parcels of land does not prevent a grant of an easement nor does it extinguish an easement previously granted. This means that ?aqam may grant an easement to itself and where an easement exists and ?aqam acquires the third party owner's land, the easement continues to exist despite the fact that ?aqam owns both parcels of land;
- (i) the easement must be defined and certain, for example:
 - (i) it must be capable of reasonably exact definition and must not be too vague. A third party owner's right to a view is not sufficiently precise. However, a third party owner's right to light through a particular window in their home may be the subject matter of an easement,
 - (ii) an easement must not leave ?aqam without any reasonable use of their land. It must not be so restrictive that ?aqam cannot use the ?aqam community lands at all,
 - (iii) the third party owner who benefits from an easement must be a specified individual or individual(s) and cannot be an indefinite class of persons such as "the public";
- (j) at the time an easement is granted, the interest in land held by the third party owner must be at least equal in size and value to the interest granted by the easement.

Examples of Types of Easements

It is appropriate for ?aqam to use an easement to grant a third party owner with a permanent, non-exclusive right to:

- (a) cross over specified ?aqam community lands at any time of day and in any way;
- (b) cross over specified ?aqam community lands in some restricted way, such as by foot, only during certain hours of the day or only on a specified road;
- (c) natural lighting that restricts ?aqam's use of ?aqam community lands in some way, such as a restriction from building to a certain height in a specified location, or planting tall trees or erecting some structure in an area that will block light into certain parts of the third party owner's land;
- (d) build a roof or other structure that is partially located over ?aqam community lands;
- (e) use a path or garden over ?aqam community lands for leisure purposes; or
- (f) park vehicles on ?aqam community lands in a specific spot.

Characteristics of a Right of way

A right-of-way on ?aqam community lands has the following characteristics:

- (a) ?aqam, having all the rights of an owner of ?aqam community lands will be the grantor, in a right-of-way granted under this policy;
- (b) a third party will be the grantee in a right-of-way granted under this policy and will usually be a government, public utility, pipeline or railroad company;
- (c) it provides a right to the third party owner to access ?aqam community lands in order to maintain services to other parcels of land;
- (d) it may provide a right to a third party in relation to Improvements or Works.

Land Instrument Required

A licence, permit, easement or right-of-way may only be created, granted, disposed of, assigned or transferred by a land instrument in accordance with the *?aqam Amended Land Code* and this policy.

Applicant Eligibility

An applicant must fall within one of the following categories of persons to be eligible for a licence, permit, easement or right-of-way in ʔaqam community lands:

- (a) a Canadian citizen or permanent resident who is 19 years of age or older;
- (b) a corporation that is incorporated or registered in British Columbia;
- (c) a registered partnership, cooperative, or non-profit society formed under British Columbia laws;
- (d) a local government including a municipality or a regional district;
- (e) a First Nation or Band or Tribal Council (with a valid Band Council Resolution authorizing the specific agreement for a licence, permit, easement or right-of-way); or
- (f) the Government of a Province or Canada.

Must Be in the Best Interests of ʔaqam

All licences, permits, easements and right-of-ways must be consistent with the best interests of ʔaqam.

Legal Description Required At Cost of Applicant

A registered plan or official plan must be obtained by an applicant who is not a member and at the applicant's expense for any licence, permit, easement or right-of-way with a term longer than 10 years, and must be provided to the Lands Department before Council may consider consenting to that licence, permit, easement or right-of-way.

Terms

Many of the terms in a licence, permit, easement or right-of-way are mandatory and contain wording which is non-negotiable. Other terms may be open to negotiation. Optional terms may also be included to fit a particular situation.

Policy 5-2 contains a description of the various terms used in a licence, permit, easement or right-of-way.

The standard form agreements in Schedules E, F, G and H are drafted based on the mandatory terms required under Policy 5-2.

Registration or Recording of a Licence, Permit, Easement or Right of way

Where a person is granted a licence, permit, easement or right-of-way, the Lands Department must ensure that it is registered in the First Nations Land Register in accordance with Policy 2.

Council Cancellation of a Licence, Permit, Easement or Right of way – Where Granted in Error, by Fraud or by Mistake

Pursuant to section 31.2 of the *ʔaqam Amended Land Code* and Policy 6-1, if Council determines that a licence, permit, easement or right-of-way was granted in error, by fraud or by mistake, they may cancel or correct the licence, permit, easement or right-of-way and issue a replacement land instrument if required.

Council Cancellation of a Licence, Permit or Right of way for Default of Terms

Where a licensee, permittee or grantee in relation to a right-of-way defaults on the terms of their licence, permit, or right-of-way, Council may cancel it by following the same procedures that are set out for the cancellation of leases in Policy 7.

Process

Application for Use of ʔaᑭam Lands

The applicant must:

-fully complete Part 1 of Form 5-1-01: Application for Use of ʔaᑭam Lands;

Receiving an Application for Use of ʔaᑭam 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 ʔaᑭam 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 a member or a representative of a government agency, the person at the Lands Department who receives the application must:

- (a) obtain 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.

The Lands Department must complete Part 2 of Form 5-1-01: Application for Use of ʔaᑭam Lands.

Creation of Lands Department File

The person at the Lands Department who receives the application must ensure that a Lands Department file is created for the application and that the Form 5-1-01: Application for Use of ʔaᑭam 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 licence, permit, easement or right-of-way document that is relevant to the application.

Identity and Legal Status of the Applicant

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.

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

- (a) confirm that the corporation is in good standing by searching the British Columbia Registry Services website; and

(b) confirm that the applicant is designated as a signing officer for the corporation by requesting a copy of the Director's resolution appointing the signing officer.

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

- (a) confirm the legal status of the partnership and the names of its current signing officers by:
 - (i) obtaining 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) confirm that the partnership is in good standing by searching the British Columbia Registry Services website for the Certificate of Good Standing;
- (c) confirm that the applicant is designated as a signing officer for the partnership by finding this information in the partnership agreement and comparing it to the copies of the applicant's identification in the Lands Department file.

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

- (a) confirm the legal status of the society by searching the British Columbia Registry Services website for the Certificate of Incorporation;
- (b) confirm that the society is in good standing by searching the British Columbia Registry Services website;
- (c) confirm that the applicant is designated as a signing officer for the society by requesting a copy of the motion granting signing authority and comparing it to the copies of the applicant's identification in the Lands Department file.

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

- (a) confirm 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) confirm that the applicant is designated as a signing officer for the First Nation, Band or Tribal Council by obtaining from the applicant an original Band Council Resolution to that effect and comparing it to the copies of the applicant's identification in the Lands Department file.

Where the applicant is a **government agency**, the Lands Department must, at the applicant's expense:

- (a) confirm the legal status of the government agency by searching online to determine whether the government agency exists as an entity; and
- (b) confirm with the government agency by telephone that the applicant is the person they allege to be.

Assess Whether Lands Proposed for Use are ʔaḡam community lands

DESK BASED

The Lands Department must complete the following steps and document their results in Part 2 of Form 6-1-01: Application for Use of ʔaḡam Lands:

- (a) determine whether the lands being proposed for use are ʔaḡam community lands;
- (b) determine whether a legal description will be required or whether a legal description already exists for the lands being proposed for use. A legal description will be required for all easements and for any other land instrument that has a term exceeding ten (10) years and is granted to a person who is not a member of ʔaḡam. 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 ᑭᓄᓐ zoning laws, *ᑭᓄᓐ Community Land Use Plan, 2016* and any other ᑭᓄᓐ laws or by-laws that may restrict the use of ᑭᓄᓐ lands and document all relevant ᑭᓄᓐ laws, by-laws and policies;
- (e) determine whether an environmental assessment/review will be required by the applicant pursuant to Policy 8;
- (f) determine whether any known environmental or contamination concerns exist with regard to granting the requested use by referencing the Environmental Site Assessment Phase 1 & 2 (Policy 8.2) and the Species at Risk Database;
- (g) determine whether the parcel of land has within it a cultural heritage site identified in an ᑭᓄᓐ *Heritage Management Plan, 2016*; and
- (h) enquire into whether granting a licence, permit, easement or right-of-way 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 ᑭᓄᓐ Directors.

Site Visit

FIELD BASED

The Lands Department must complete a site visit to inspect the land and report the results of that inspection in Part 2 of Form 5-1-01: Application for Use of ᑭᓄᓐ Lands.

The inspection must include an assessment of:

- (a) Topography;
- (b) Access to public roads
- (c) Available Services
- (d) Present Use and Encumbrances
- (e) Other noteworthy observations

Cultural Heritage Sites

If a proposed licence, permit, easement or right-of-way is located on a cultural heritage site, the Lands Department must obtain approval from members at a ratification vote prior to executing the licence, permit, easement or right-of-way.

Environmental Assessment

Refer to Policy 8. Under Land Code the First Nation's environmental assessment process will be triggered in appropriate cases where the First Nation is approving, regulating or funding a project on First Nation 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 licence, permit, easement or right-of-way;

- (b) provide the Lands Committee with a copy of the standard land instrument 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 ᐃᓐᓐᓐ Lands.

Council Preliminary Review

As early as practical after the Lands Department obtains a recommendation from the Lands Committee regarding a proposed licence, permit, easement or right-of-way, the Lands Department must:

- (a) brief Council on the scope of the proposed licence, permit, easement or right-of-way;
- (b) make available to Council a copy of the standard land instrument 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 land instrument on behalf of ᐃᓐᓐᓐ via a Motion, and obtain any relevant instructions regarding land instrument conditions to be included.

Negotiations

The Lands Department must negotiate the mandatory terms of all licences, permits, easements and right-of-ways with the applicant in accordance with Policy 5-2.

Where the granting of a licence, permit, easement or right-of-way 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 licence, permit, easement or right-of-way.

In negotiating a licence, permit, easement or right-of-way, 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 obtain an appraisal report and confirm that the draft licence, permit, easement or right-of-way compensation is, at a minimum, fair market value.

In negotiating a licence, permit, easement or right-of-way with any person except a government agency, the Lands Department must 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 permit, licence, easement or right-of-way.

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

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

Drafting

The Lands Department is responsible for drafting licences, permits, easements and right-of-ways using the approved standard documents and mandatory terms.

If any substantial changes are proposed to the language in an approved standard licence, permit, easement or right-of-way, the Lands Department must provide a clean copy with revised sections incorporated into a specific memo for Council consideration.

Assess the Draft Licence, Permit, Easement or Right of way

The Lands Department must assess the draft licence, permit, easement or right-of-way to confirm that:

- (a) the approved standard documents have been used and that all mandatory terms are included in the licence, permit, easement or right-of-way;
- (b) the term of the licence, permit, easement or right-of-way is appropriate and consistent with this policy; and
- (c) the suitability of all optional terms appearing in the licence, permit, easement or right-of-way.

Legal Counsel Review

A review of licence, permit or right-of-way by legal counsel will be a decision determined by the Lands Department Staff based on the existing circumstances.

When requesting a legal review of a proposed licence, permit, easement or right-of-way, the Lands Department shall provide legal counsel with the following documents:

- (a) a final draft of the licence, permit, easement or right-of-way;
- (b) a completed Form 5-1-01: Application for Use of ?aqam Lands and any supporting documentation received with the application or obtained by the Lands Department in completing Part 2 of the application;
- (c) 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;
- (d) corporate records search results;
- (e) any other documents in the ?aqam's Lands Department file; and

Address Identified Problems

The Lands Department must promptly address any problems or shortcomings identified during the assessment or legal review of the licence, permit, easement or right-of-way and draft a final licence, permit, easement or right-of-way.

Report to Council

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

- (a) one copy of the final draft licence, permit, easement or right-of-way;
- (b) the completed Form 5-1-01 Application for Use of ?aqam 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:

**ᑭᑭᑭᑭ BAND COUNCIL RESOLUTION
CONSENT TO [LICENCE / PERMIT / EASEMENT/RIGHT-OF-WAY] 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 ᑭᑭᑭᑭ signed an Individual Agreement with Canada on June 18, 2014;

AND WHEREAS the members of ᑭᑭᑭᑭ 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 ᑭᑭᑭᑭ 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 ᑭᑭᑭᑭ Amended Land Code, 2016;

AND WHEREAS the Council of ᑭᑭᑭᑭ has authority pursuant to section 32.1 of the *ᑭᑭᑭᑭ Amended Land Code* to grant interests in ᑭᑭᑭᑭ community lands and to grant licences and permits to take resources from ᑭᑭᑭᑭ community lands;

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

If the Band Council Resolution is for a Licence or Permit:

A. consents to the attached [Licence / Permit] Agreement that grants to [Licensee / Permittee], a right to [use / occupy / take resources from] the [Licence / Permit] Area, for the purpose of [enter details regarding the purpose of the Licence / Permit]

FURTHER IT BE RESOLVED THAT the Council of ᑭᑭᑭᑭ authorizes [Name of Lands Department personnel] to execute the attached [Licence / Permit] Agreement on behalf of ᑭᑭᑭᑭ.

OR

B. conditional on [name of applicant]:

- [enter condition]
- [enter condition]; and
- providing to the ᑭᑭᑭᑭ 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 [Licence / Permit] Agreement that grants to [Licensee / Permittee], a right to [use / occupy / take resources from] the [Licence / Permit] Area, for the purpose of [enter details regarding the purpose of the Licence / Permit].

FURTHER IT BE RESOLVED THAT the Council of ᑭᓄᓂᓂ authorizes [Name of Lands Department personnel] to execute the attached [Licence / Permit] Agreement on behalf of ᑭᓄᓂᓂ 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 [Licence / Permit] Agreement that grants to [Licensee / Permittee], a right to [use / occupy / take resources from] those ᑭᓄᓂᓂ lands described in the [Licence / Permit] Agreement as the [Licence / Permit] Area, for the purpose of [enter details regarding the purpose of the Licence / Permit].

If the Band Council Resolution is for an Easement or Right of way:

A. consents to the attached [Easement / Right-of-way] Agreement that grants to [Grantee] a right to use the [Easement/Right-of-way] Area, for the purpose of [enter details regarding the purpose of the Easement/Right-of-way].

FURTHER IT BE RESOLVED THAT the Council of ᑭᓄᓂᓂ authorizes [Name of Lands Department personnel] to execute the attached [Easement/Right-of-way] Agreement on behalf of ᑭᓄᓂᓂ.

OR

B. does not consent to the attached [Easement/Right-of-way] Agreement that grants to [Grantee] a right to use the [Easement/Right-of-way] Area, for the purpose of [enter details regarding the purpose of the Easement/Right-of-way].

Land Instrument Conditions before Approval

If Council determines that conditions must be completed before the issuance of a licence, permit, easement or right-of-way, the Lands Department must:

- (a) if necessary, complete the relevant parts of Part 5 of Form 5-1-01: Application for Use of ᑭᓄᓂᓂ Lands, indicating:
 - (i) the conditions precedent that must be met,
 - (ii) the documentary evidence that must be provided 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 licence, permit, easement or right-of-way with the conditions as either conditions precedent or terms in the licence, permit, easement or right-of-way, as the case may be,
- (d) if the applicant wishes to pursue the licence, permit, easement or right-of-way and the Band Council Resolution requires conditions precedent be met, the person responsible for monitoring whether those conditions precedent have been met must:
 - (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 licence, permit, easement or right-of-way and the Band Council Resolution requires that the land instrument have conditions added to it, ensure those conditions are drafted into the licence, permit, easement or right-of-way.

Environmental Assessment

The Framework Agreement on First Nation Land Management, Section 25.4 states that, The First Nation's environmental assessment process will be triggered in appropriate cases where the First Nation is approving, regulating, funding or undertaking a project on First Nation land. The assessment will occur as early as possible in the planning stages of the project before an irrevocable decision is made.

In most cases, the issuance of a land instrument will require an environmental review/assessment. Please refer to Policy 8

Legal Description: Condition Precedent

If a legal description is a condition precedent to Council approving a licence, permit, easement or right-of-way, 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 ʔaqam to enter ʔaqam lands to commence the survey. ʔaqam 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 land instrument and it must include:

- (a) a statement of permission for the surveyor to enter ʔaqam lands;
- (b) information on the work that will be carried out by the surveyor;
- (c) the name of the surveyor(s) to whom the permission applies; and
- (d) the signature and title of the authorized signatory.

After the surveyor has permission to enter ʔaqam 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.

Next, the surveyor will provide ʔaqam with a request for their review and approval of the preliminary official plan or registration plan.

ʔaqam must ensure the preliminary official plan or registration plan complies with the scope of work that was approved by ʔaqam to be conducted by the surveyor and with all ʔaqam laws and by-laws.

ʔaqam must then approve of the preliminary official plan or registration plan in writing by providing the surveyor with a Band Council Resolution.

After ʔaqam approves of a preliminary official plan or registration plan, the surveyor will:

- (a) record the official plan or registration plan in the Canada Land Survey Records, which is a public registry; and
- (b) provide a copy of the official plan or registration plan to the applicant and to ʔaqam.

Where ʔaqam 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 ʔaqam will approve.

Once an official plan or registration plan is obtained a legal description must be added to the licence, permit, easement or right-of-way.

Report to Council and New Band Council Resolution

If all conditions precedent are satisfactorily complied with, and all other conditions are drafted into the licence, permit, easement or right-of-way, the Lands Department must:

- (a) provide Council with, if necessary:
 - the completed Form 5-1-01: Application for Use of ʔaᓄam Lands,
 - all documentary proof from the applicant of the completion of all conditions precedent required by the Band Council Resolution,
- (i) the newly drafted licence, permit, easement or right-of-way, and
- (ii) two (2) original copies of a Band Council Resolution approving of the execution of the licence, permit, easement or right-of-way, without conditions; and

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 licence, permit, easement or right-of-way has been approved;
- (b) if the licence, permit, easement or right-of-way has not been approved, setting out the reasons it was **not** approved; and
- (c) if the licence, permit, easement or right-of-way has been approved:
 - (i) setting out that the licence, permit, easement or right-of-way 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 licence, permit, easement or right-of-way.

Executing the Licence, Permit, Easement or Right of way

Once the Lands Department has obtained a Band Council Resolution that approves the licence, permit, easement or right-of-way, the person at the Lands Department who is the authorized signatory must ensure that the following steps are completed to execute the land instrument:

- (a) two (2) copies of the licence, permit, easement or right-of-way are printed off;
- (b) depending on the circumstances, the authorized signatory may wish to speak directly with the applicant and review each term in the licence, permit, easement or right-of-way, emphasizing:
 - (i) the applicant's responsibilities under the licence, permit, easement or right-of-way,
 - (ii) ʔaᓄam's responsibilities under the licence, permit, easement or right-of-way,
 - (iii) terms relating to monitoring and enforcement of the licence, permit, easement or right-of-way,
 - (iv) sanctions that will come into effect if the applicant breaches the terms of the licence, permit, easement or right-of-way, and

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 licence, permit, easement or right-of-way has been verbally read to

the person signing;

(b) the person signing has indicated to the witness that the person signing understands the contents of the licence, permit, easement or right-of-way; and

(c) the person signing has indicated to the witness that the person signing understands that by signing, the person signing is bound by the licence, permit, easement or right-of-way.

When a licence, permit, easement or right-of-way 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 licence, permit, easement or right-of-way is signed on behalf of a partnership it is ideal to have all partners sign. However, the signature of one partner must be binding on all partners in the partnership.

A guardian, trustee or the administrator of an estate must sign a licence, permit, easement or right-of-way 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 ᐃᓄᓄ.

Registration

The Lands Department must register the licence, permit, easement or right-of-way 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 interest holder with:

(i) the names of all ᐃᓄᓄ laws, by-laws and *ᐃᓄᓄ Community Land Use Plan, 2016* which are in effect and the locations where the new interest holder may access such laws, by-laws and *ᐃᓄᓄ Community Land Use Plan, 2016*,

(ii) one (1) original, signed copy of the Band Council Resolution granting the final land instrument, and

(iii) one (1) original, signed copy of the land instrument; and

(b) send the new interest holder's information to the ᐃᓄᓄ Finance Department to determine whether they need to update the taxation and assessment rolls.

ᐃᓄᓄ Publication

The issuance of a land instrument shall be posted publically.

Site Inspection Report

The Lands Department must as soon as practical after executing and registering a new licence, permit, easement or right-of-way:

(a) invite the applicant to attend a joint site inspection (and document this invitation in the Lands Department file);

(b) attend at the site over which the licence, permit, easement or right-of-way relates 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:

Lands Management Manual Version 2.0

- (a) the original Form 5-1-01: Application for Use of ᐱᐱᐱᐱ 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 licence, permit, easement or right-of-way; and
- (e) a copy of the completed Form 9-1-02: Site Inspection Report.

Follow-Up and Monitoring Plan

The Lands Department must complete a follow-up plan for monitoring and enforcement of every licence, permit, easement or right-of-way in accordance with Policy 9-1.

Resources and Forms

Besides this policy consult the following resources:

- (a) Policy 2, Policy 8, Policy 10
- (b) the *ᐱᐱᐱᐱ Amended Land Code*;
- (c) the Lands Committee's Terms of Reference;
- (d) the *First Nations Lands Management Act*;
- (e) the *First Nations Land Registry Regulations*; and
- (f) the *Canadian Environmental Assessment Act 2012* and its associated regulations.

Forms

- 5-1-01 Application for Use
- 5-1-02 Letter to Applicant

Policy 5-2 Drafting Licences, permits, Easements and Right of Ways Using the Mandatory and Optional Terms

Purpose

This policy describes the mandatory and optional terms for, licences, permits, easements and right-of-ways

This policy applies to all licences, permits, easements and right-of-ways. All licences, permits, easements and right-of-ways over ʔaḡam community lands must contain the mandatory terms set out in this policy.

Roles & Responsibilities

See Policy 1 and Policy 5.1

Legal Authorities

The relevant authorities are:

- section 18, *First Nations Land Management Act*;
- section 12, *Framework Agreement*; and
- section 33.2, *ʔaḡam Amended Land Code*.
- Section 18, *First Nations Land Management Act*
- Section 12, *Framework Agreement*;
- Section 32.2, *ʔaḡam Amended Land Code*:

Policy

Band Council Resolution

A licence, permit, easement or right-of-way must attach and reference the Band Council Resolution approving of the licence, permit, easement or right-of-way.

A Band Council Resolution approving of a licence, permit, easement or right-of-way must contain the following wording:

**ʔAḠAM BAND COUNCIL RESOLUTION
CONSENT TO [LICENCE / PERMIT / EASEMENT/RIGHT-OF-WAY] 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 and to grant licences and permits to take resources from ?aqam community lands;

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

If the Band Council Resolution is for a Licence or Permit:

A. consents to the attached [Licence / Permit] Agreement that grants to [Licensee / Permittee], a right to [use / occupy / take resources from] the [Licence / Permit] Area, for the purpose of [enter details regarding the purpose of the Licence / Permit]

FURTHER IT BE RESOLVED THAT the Council of ?aqam authorizes [Name of Lands Department personnel] to execute the attached [Licence / Permit] 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 [Licence / Permit] Agreement that grants to [Licensee / Permittee], a right to [use / occupy / take resources from] the [Licence / Permit] Area, for the purpose of [enter details regarding the purpose of the Licence / Permit].

FURTHER IT BE RESOLVED THAT the Council of ?aqam authorizes [Name of Lands Department personnel] to execute the attached [Licence / Permit] 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 [Licence / Permit] Agreement that grants to [Licencee / Permittee], a right to [use / occupy / take resources from] those ʔaḡam lands described in the [Licence / Permit] Agreement as the [Licence / Permit] Area, for the purpose of [enter details regarding the purpose of the Licence / Permit].

If the Band Council Resolution is for an Easement or Right of way:

A. consents to the attached [Easement / Right-of-way] Agreement that grants to [Grantee] a right to use the [Easement/Right-of-way] Area, for the purpose of [enter details regarding the purpose of the Easement/Right-of-way].

FURTHER IT BE RESOLVED THAT the Council of ʔaḡam authorizes [Name of Lands Department personnel] to execute the attached [Easement/Right-of-way] Agreement on behalf of ʔaḡam.

OR

B. does not consent to the attached [Easement/Right-of-way] Agreement that grants to [Grantee] a right to use the [Easement/Right-of-way] Area, for the purpose of [enter details regarding the purpose of the Easement/Right-of-way].

Land Description, Status and Warranties

A licence, permit, easement or right-of-way must set out a full, identifiable description of the lands over which the licence, permit, easement or right-of-way will operate and:

- (a) if the land instrument is for a term of less than the (10) years, the land description must be clear and unambiguous; and
- (b) if the land instrument is for a term of ten (10) years or more, the land description must set out a description of the lands that refers to one or more complete parcels on a registration plan or official plan. Such description must be clear and unambiguously identify the land subject to the land instrument. If the land instrument is for the whole of, or a portion of a lot shown on an existing plan then the description must refer to the lot and plan.

The parcel of land in the land description must be ʔaḡam community lands over which ʔaḡam has authority to grant licences, permits, easements or right-of-ways.

A licence, permit, easement or right-of-way must set out any representations and warranties regarding the status of the lands to which the licence, permit, easement or right-of-way apply on the commencement date of the licence, permit, easement or right-of-way.

Maintenance

A licence, permit, easement or right-of-way must identify the party responsible for maintenance and the standards of maintenance.

Term

A licence or permit or right-of-way must set out the commencement date of the licence, permit or right-of way, the length of time and the cancellation date.

An easement must set out the commencement date of the easement and may set out the length of time and the cancellation date or may state that the easement is permanent.

Compensation

A licence, permit, easement or right-of-way must set out:

- (a) the compensation amount;
- (b) timing of compensation payments (e.g. specific dates, weekly, monthly, annually);
- (c) method of compensation payments (e.g. by cheque made out to the Lands Department and delivered to the Lands Department);
- (d) consequences of a failure to make a compensation payment, including the interest rate for compensation that is in arrears; and
- (e) the responsibilities of the parties if there is a failure to make a compensation payment.

Where the compensation depends on a calculation, the licence, permit, easement or right-of-way must include specific instructions defining the method of calculation.

A licence, permit, easement or right-of-way must specify whether there will be compensation review periods, and when such reviews must be completed.

At a minimum, compensation agreed to in a licence, permit, easement or right-of-way must reflect fair market value or reflect a reduced rate as determined by Council.

Access

A licence, permit, easement or right-of-way must set out the terms under which the Lands Department, or any person duly authorized by the Lands Department, has a right to access the land over which the licence, permit, easement or right-of-way operates to examine the operations on the premises and for monitoring and enforcement purposes.

Allowable Use

A licence, permit, easement or right-of-way must clearly define the allowable use of the licence, permit, easement or right-of-way area and must clearly define any prohibited uses.

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

If a licence or permit allows for the licensee or permittee to take any resource from the licence or permit 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.

Insurance

A licence, permit, easement or right-of-way must include a term stating that the licensee, permittee or grantee will:

- (a) take out and maintain during the term of the licence, permit, easement or right-of-way

General Liability Insurance in an amount not less than [\$2,000,000.00 or some other amount deemed necessary by Council], inclusive per occurrence, insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the licence, permit, easement or right-of-way area or any improvements. Such insurance policy must include a cross liability clause, provision to provide ?aqam with thirty (30) days written notice of any material change or cancellation of the policy, and name ?aqam as an additional insured;

(b) ensure that all insurance required under paragraph (a) that is maintained by the licensee, permittee or grantee is primary insurance and does not require the sharing of any loss by any of ?aqam's insurers;

(c) within ten (10) business days of the Commencement Date, provide ?aqam evidence of the insurance required under paragraph (a) in the form of a completed "Province of British Columbia Certificate of Insurance";

(d) within ten (10) business days before the date that the insurance policy required under paragraph (a) is set to expire or is cancelled, provide ?aqam evidence of a new policy or a renewal of the policy that meets the insurance requirements under paragraph (a) in the form of a completed "Province of British Columbia Certificate of Insurance";

(e) at ?aqam's request, provide ?aqam with a certified copy of the insurance policy required under paragraph (a); and

(f) maintain and pay for any additional insurance that the licensee, permittee or grantee is required by law to carry.

Indemnification

A licence, permit, easement or right-of-way must include terms stating that the licensee, permittee or grantee will indemnify and save harmless ?aqam and ?aqam's servants, employees, representatives and agents from and against all claims, causes of action, liabilities, demands, losses, damages, costs and expenses including fees of solicitors and other professional advisors, made against or incurred, suffered or sustained by ?aqam where the same or any of them are based upon the actions or omissions of the [licensee / permittee / grantee].

Taxes

A licence, permit, easement or right-of-way must include a term stating that the licensee, permittee or grantee agrees to

(a) pay, when due, all taxes to ?aqam;

(b) pay, when due, all charges for electricity, gas, water and other utilities supplied to the [Licence / Permit / Easement / Right-of-Way] Area for use by the licensee, permittee or grantee;

(c) deliver to ?aqam, immediately and upon demand, receipts or other evidence of the payment of charges required to be paid under the [Licence / Permit / Easement / Right-of-Way] Agreement.

Agreement to Comply with Laws

A licence, permit, easement or right-of-way must include a term stating that the licensee, permittee or grantee agrees to observe, abide by, and comply with all applicable laws, by-laws and regulations of Canada, the Province or ?aqam in relation to the licensee, permittee or grantee's use of ?aqam lands, including laws, by-laws and regulations of Canada, the Province or ?aqam relating in any way to Hazardous Substances, Environmental Laws, and human health and safety.

Historical, Anthropological, Archeological or Cultural Materials

A licence, permit, easement or right-of-way must include a term stating that upon discovering any historical, anthropological, archeological or cultural material on or under the Right-of-way Area, the Grantee must immediately stop all actions related to their operations that may disturb the historical, anthropological, archeological or cultural material; and notify ʔaqam. Furthermore, that they must not resume their operations until provided consent to do so by ʔaqam.

Notice

A licence, permit, easement or right-of-way must identify:

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

Cancellation of Licences, Permits and Rights of Way

All licences, permits and right-of-ways must contain terms for cancellation, including terms that state as follows:

Council may unilaterally cancel or correct this [licence / permit / right-of-way] in accordance with section 31.2 of the *ʔaqam Amended Land Code* if Council determines this [licence / permit / right-of-way] has been issued in error, by fraud or by mistake.

If Council unilaterally cancels or corrects this [licence / permit / right-of-way] in accordance with section 31.2 of the *ʔaqam Amended Land Code* because Council has determined that this [licence / permit / right-of-way] has been issued in error, by fraud or by mistake, ʔaqam will not be liable to any third party to whom the [licensee / permittee / grantee] has granted a subsidiary interest in this [licence / permit / right-of-way].

Other appropriate terms for cancellation of a licence, permit or right-of-way may include:

- (a) the licensee, permittee or grantee has failed to pay required fees or other monies due under the licence, permit or right-of-way;
- (b) the licensee, permittee or grantee has failed to observe terms set out in the licence, permit or right-of-way;
- (c) the licensee, permittee or grantee has changed and there is no provision for assignment in the licence, permit or right-of-way; or
- (d) the licensee, permittee or grantee has died and there is no provision for assignment in the licence, permit or right-of-way.

Default

A licence, permit or right-of way must set out that, upon default, compensation due and payable are collectable and ʔaqam has an option to cancel the licence, permit or right-of-way and it must set out the requirements for such cancellation.

Dispute Resolution

A licence, permit, easement or right-of-way must set out that if a dispute arises under the Licence, Permit, Easement or Right-of-way Agreement, the Parties will make all reasonable efforts to resolve the dispute through informal discussions, mediation or negotiation within thirty (30) Lands Management Manual Version 2.0

days of the dispute arising, and that the Parties will provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

A licence, permit, easement or right-of-way must further set out that if a dispute under the Licence, Permit, Easement or Right-of-way Agreement cannot be resolved, either Party may refer the dispute for resolution to the Office of the Adjudicator in accordance with Part 8 of the *ᑭᐱᑭᐱᐱ Amended Land Code*.

Optional Terms

The following optional terms may be included in a licence, permit, easement or right-of-way.

The Lands Department must consider the optional terms during negotiation of the draft licence, permit, easement or right-of-way.

Standards

A licence, permit, easement or right-of-way may identify any relevant standards governing construction, health and remedies for failure to meet standards.

Fencing

Fences and locks are only acceptable on a licence, permit, easement or right-of-way area if necessary for safety and security reasons or for agricultural grazing purposes.

Where a licence, permit, easement or right-of-way provides for the licensee, permittee or grantee to erect a fence around an area or lock an area off from the public, it must set out that the licensee, permittee or grantee will be responsible for the maintenance of that fence or locked off area and will provide ᑭᐱᑭᐱᐱ with a key to any lock.

Damages

A licence, permit, easement or right-of-way may set out a remedy for damage caused to ᑭᐱᑭᐱᐱ lands by the licensee, permittee or grantee.

Improvements

A licence, permit, easement or right-of-way may identify who owns any improvements made to the land after the cancellation of the licence, permit, easement or right-of-way.

Assignment

If a licence or permit provides the licensee or permittee an option for the assignment of the licence or permit, it must set out the mechanism for such assignment.

Resources

Besides this policy, consult the following resources:

- (a) Policy 8: Environmental Assessments/Review;
- (b) *First Nations Land Management Act*;
- (c) *ᑭᐱᑭᐱᐱ Amended Land Code*;
- (d) *First Nations Land Registry Regulations*.

