

## **POLICY 6 CANCELLING AN INTEREST**

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#### **Policy 6-1: Correcting and Cancelling Interests and Licences**

#### **Granted In Error, by Mistake or by Fraud ..... 1**

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## **Policy 6-1: Correcting and Cancelling Interests and Licences Granted In Error, by Mistake or by Fraud**

### **Purpose**

The objectives of this policy are to:

- (a) set out a standardized process for cancelling or correcting a land instrument in ʔaqam lands that has been issued or allotted by Council in error, by mistake or by fraud; and
- (b) set out the procedures for issuing a replacement land instrument.

The following **definitions** are to be taken into account for Policy 6:

“affected persons” means every person:

- a) who has a registered land instrument in the same parcel of land in which another land instrument is being considered by Council to have been issued in error, by mistake or by fraud; and
- b) whose rights under their registered land instrument may be affected by changes being made to, or the cancellation of, the land instrument being considered by Council to have been issued in error, by mistake or by fraud.

## **Legal Authorities**

The relevant statutory authority is section 31.2 of the *ᐱᐱᐱᐱ Amended Land Code*

## **Roles and Responsibilities**

### **Role of Council**

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

- (a) consenting to the cancellation or non substantive correction of a land instrument that was issued in error, by mistake or by fraud;
- (b) consenting to the issuance of a replacement land instrument;
- (c) authorizing, by Band Council Resolution, a member of Council or the Lands Department to execute replacement land instruments.

### **Role of the Lands Department**

The Lands Department is responsible for in addition to what is listed in Policy 1:

- (a) ensuring that the requirements in this policy for assessing error, fraud and mistake in the issuing or allotment of land instruments are complied with;
- (b) ensuring that all recommendations to Council on the cancellation or correction of a land instrument are in accordance with the *ᐱᐱᐱᐱ Amended Land Code*, ᐱᐱᐱᐱ by-laws and any applicable provincial or federal laws;
- (c) making recommendations to Council on the cancellation and correction of a land instrument;
- (d) at the direction of Council, ensuring that Form 6-1-02: Certificate of Cancellation and any replacement land instruments are executed, provided to the appropriate interest holder, and filed with the First Nation Land Register in accordance with Policy 2; and
- (e) if a request to correct a land instrument is approved by Council, ensuring all documentation related to a request is maintained in the Lands Department file of the land instrument that the request relates to.

### **Role of the Lands Committee**

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

The Lands Committee may assist the Lands Department and Council with any matter related to the cancellation and correction of a land instrument and may perform duties and functions as directed by either Council or the Lands Department.

It is the responsibility of the Lands Committee to respond to all requests from the Lands Department or Council, and where necessary to consult with members on the cancellation and correction of a land instrument.

The Lands Committee is not a decision-making body. However, the Lands Committee may make recommendations to Council on matters related to the cancellation and correction of a land instrument.

## **Policy**

### **Cancelling and Correcting Land Instruments Granted by Allotment Holders to Third Parties**

The Council, Lands Department and Lands Committee have no role in determining the cancellation or correction of a land instrument over lands held under an allotment.

If an allotment holder has granted a land instrument over his or her lands and determines that he or she granted such land instrument in error, by mistake or by fraud, the cancellation or correction of such grant must be dealt with between the allotment holder and the individual to whom the grant was made and, upon written agreement of the parties or determination by an Adjudicator or court, the cancellation or correction may be registered.

Issued or allotted in error means a situation where Council issued or allotted a land instrument in ʔaḡam lands and in doing so incorrectly or accidentally approved of a provision in the land instrument.

Issued or allotted by fraud means a situation where Council issued or allotted a land instrument and the person receiving the land instrument, knowing he or she was doing so, misrepresented the truth or concealed a material fact to induce the Council to approve of the land instrument to the detriment of ʔaḡam.

Issued or allotted by mistake means a situation where Council issued or allotted a land instrument, and in doing so accidentally issued or allotted the wrong land instrument.

## **Process**

### **Request for Council Consideration**

The following persons may request Council to consider cancelling or correcting a land instrument where they have a reasonable belief that Council issued or allotted that land instrument in error, by mistake or by fraud:

- (a) a member of Council, in relation to any land instrument;

- (b) Lands Staff, in relation to any land instrument;
- (c) any member of the Lands Committee, in relation to any land instrument;
- (d) an allotment holder, in relation to their allotment;
- (e) a lessee of ʔaḳam community lands, in relation to either an original lease naming ʔaḳam as lessor or a lease to which ʔaḳam is a party;
- (f) a licensee of ʔaḳam community lands, in relation to a licence in which he or she is named;
- (g) a permittee of ʔaḳam community lands, in relation to a permit in which he or she is named;
- (h) a grantee of ʔaḳam community lands, in relation to an easement or right-of-way in which he or she is named; or
  - a. any person who has a legal authority to represent a person who falls into one of categories (a) to (h).

A request to Council, to cancel or correct a land instrument, must be made in Form 6-1-01: Correction of Land Instrument Request and must include the following details:

- (a) the name of the person making the request and the status of that person under this policy that grants them the right to make such request;
- (b) the date the request is being made;
- (c) details of the specific land instrument to which the request relates;
- (d) details of every person who may be an affected person;
- (e) a copy of the land instrument and a copy of any Band Council Resolution related to the issuing or allotting of that land instrument;
- (f) whether the person making the request believes that the land instrument was granted:
  - (i) in error,
  - (ii) by mistake, or
  - (iii) by fraud, and
- (g) specific details, on the reasons the person making the request believes there has been an error, mistake or fraud, accompanied by any supporting documents that relate to the alleged error, mistake or fraud.

A request to Council, to cancel or correct a land instrument, must be delivered to the Lands Department.

## Report to Council

As soon as possible after receiving Form 6-1-04: Correction of Land Instrument Request, the Lands Department must:

- (a) search the First Nation Land Register and the Lands Department files to:
  - (i) identify and gather all relevant documentation that either supports or refutes the claim being made in the request; and
  - (ii) determine whether there are any known affected persons;
- (b) attach the information gathered in (a) to Form 6-1-04: Correction of Land Instrument Request; and
- (c) provide Council with Form 6-1-04: Correction of Land Instrument Request, along with all supporting documentation for a decision by Council at the next scheduled Council meeting on whether to:
  - (i) approve the request,
  - (ii) reject the request, or

(iii) pursue sending notice to all affected persons before Council makes a decision on whether to accept or reject the request.

### **Council Decision**

Council must review all documentation provided by the Lands Department and:

- (a) where there are no affected persons, Council may pass a Band Council Resolution that either:
  - (i) approves the request and sets out instructions for the Lands Department on how to remedy the error, mistake or fraud; or
  - (ii) rejects the request, and sets out their reasons for decision; or
- (b) where there are affected persons Council may either:
  - (i) pass a Band Council Resolution that rejects the request and sets out their reasons for decision; or
  - (ii) direct the Lands Department to pursue sending notice to all affected persons before Council makes a decision on whether to accept or reject the request.

### **Notice to Affected Persons**

If Council directs the Lands Department to pursue sending notice to all affected persons, the Lands Department must deliver written notice to all affected persons by regular mail addressed to their last known address.

A written notice to an affected person must state:

- (a) the circumstances of the alleged error, mistake or fraud;
- (b) the actions that may be taken to correct the alleged error, mistake or fraud, if Council determines such action is necessary;
- (c) that affected persons have thirty (30) days to provide any submissions with regard to effect on them of the alleged error, mistake or fraud to Council by delivering such submissions to the Lands Department; and
- (d) the date and time where Council will consider whether the land instrument has been issued or allotted in error, by mistake or by fraud, which must be more than thirty (30) days from the date the notice is delivered to all affected persons.

### **Report to Council**

At the end of the thirty (30) day submission period, the Lands Department must provide to Council a package containing:

- (a) Form 6-1-04: Correction of Land Instrument Request;
- (b) all submissions received from affected persons; and
- (c) all documentation related to the request.

### **Land Instrument Issued or Allotted in Error or by Mistake – Non-Substantial**

Where Council determines that a land instrument was issued or allotted in error or by mistake and that the error or mistake is not substantial, Council may pass a Band Council Resolution to reject the request.

### **Land Instrument Issued or Allotted in Error or by Mistake – Substantial**

Where Council determines that a land instrument was issued or allotted in error or by mistake and that the error or mistake is substantial, the Lands Department must prepare and Council must approve a Band Council Resolution that sets out:

- (a) the name of the interest holder;
- (b) the date and title of the land instrument;
- (c) a description of the *ᓖaqam* lands to which the land instrument relates;
- (d) that Council has determined the land instrument was issued or allotted in error, or by mistake;
- (e) the circumstances surrounding the error or mistake;
- (f) the reasons why Council considers the error or mistake to be substantial;
- (g) that to remedy the error or mistake, Council approves the land instrument being:
  - (i) cancelled or
  - (ii) cancelled and corrected; and
- (h) that Council authorizes the Lands Department to do one or more of the following (*whichever are applicable in the circumstances*):
  - (i) complete, sign, and register in the First Nation Land Register Form 3-1-03: Certificate of Cancellation of Land Instrument; and
  - (ii) prepare a corrected land instrument for Council consideration.

### **Cancellation of Land Instrument Issued or Allotted in Error or by Mistake**

If Council authorizes the Lands Department to complete, sign and register in the First Nation Land Register Form 6-1-03: Certificate of Cancellation of Land Instrument, the Lands Department must complete, have an authorized signatory sign, and register in the First Nations Land Register Form 6-1-03: Certificate of Cancellation of Land Instrument.

### **Decision Not To Provide a Corrected Land Instrument**

If Council does not authorize the Lands Department to issue a corrected land instrument, the Lands Department must prepare and provide a written notice to the interest holder setting out that their land instrument has been cancelled and the reasons for that cancellation.

### **Correcting an Allotment**

If Council instructs the Lands Department to prepare a corrected allotment, the Lands Department must prepare for Council and Council must sign:

- (a) two (2) copies of a Band Council Resolution granting the corrected allotment, which must meet the requirements of Policy 3 and the *ᓖaqam Allotment Law*;
- (b) two (2) copies of the completed Form 3-1-02: Allotment to a Member granting the

corrected allotment; and

- (c) a letter to the member whose allotment was cancelled:
  - (i) setting out that their allotment has been cancelled and the reasons for such cancellation,
  - (ii) setting out that Council has approved the granting of a corrected allotment, and
  - (iii) inviting the member to contact the Lands Department so arrangements can be made for the member to execute a new Form 3-1-02: Allotment to a Member that grants the corrected allotment.

The Lands Department must ensure that the member executes Form 3-1-02: Allotment to a Member.

After the member executes Form 3-1-02: Allotment to a Member, the Lands Department must ensure the corrected allotment is registered in accordance with the *ᐱᐱᐱᐱ Land Code* and Policy 3-1 in the First Nation Land Register;

After the corrected allotment is registered, the Lands Department must:

- (a) complete and have an authorized signatory execute one (1) Form 3-2-04: Certificate of Possession for each allotment holder;
- (b) provide each allotment holder with:
  - (i) the names of all *ᐱᐱᐱᐱ* laws, by-laws and *ᐱᐱᐱᐱ Community Land Use Plan, 2016* which are in effect and the locations where the new allotment holder may access such laws, by-laws and *ᐱᐱᐱᐱ Community Land Use Plan, 2016*,
  - (ii) one (1) original, signed copy of the Band Council Resolution granting the corrected allotment,
  - (iii) one (1) original, signed copy of Form 3-1-02: Allotment to a Member,
  - (iv) one (1) original, signed copy of Form 3-2-04: Certificate of Possession, and
  - (v) the updated Parcel Abstract Report; and
- (c) send the allotment holder's information to the *ᐱᐱᐱᐱ* Finance Department to update the taxation and assessment rolls.

### **Correcting a Land Instrument Other Than an Allotment**

If Council instructs the Lands Department to prepare a corrected land instrument other than an allotment, the Lands Department must:

- (a) prepare the corrected land instrument, ensuring it meets the requirements of the policy in this Manual that relates to that type of land instrument;
- (b) provide the corrected land instrument to Council for their approval;
- (c) obtain a Band Council Resolution from Council, approving the corrected land instrument, and such Band Council Resolution must meet the requirements in this Manual that relate to the type of land instrument being approved; and
- (d) prepare and have an authorized signatory sign a letter to the person whose land instrument was cancelled:
  - (i) setting out that their land instrument has been cancelled and the reasons for such cancellation,
  - (ii) setting out that Council has approved the granting of a corrected land instrument,
  - (iii) inviting the person to contact the Lands Department so arrangements can be made for the person to execute the corrected land instrument, and



## **POLICY 6.2 Cancelling a Lease**

### **Purpose**

The objectives of this Policy are:

- (a) to provide a standardized process for the cancellation of a lease over Ṣaqam community lands; and
- (b) to outline the circumstances which trigger the review of an existing lease.

This policy does not address situations where Ṣaqam wishes to cancel a lease over Ṣaqam community lands because it was issued in error, by mistake or by fraud. In such circumstances, please refer to Policy 6.

### **Legal Authorities**

The *Ṣaqam Amended Land Code* contains no specific provision to cancel leases. The framework for cancelling leases is included as part of the mandatory terms contained in every lease agreement

### **Policy**

#### **Consulting Legal Counsel**

Cancelling a lease is a significant step, with important legal consequences. The cancellation must be managed very carefully, and, where there is any uncertainty, the Lands Department must consult legal counsel on every step to be taken.

#### **When Cancellation May be Triggered**

Each lease must set out the circumstances which will trigger Ṣaqam's right to cancel it. For example, several circumstances that may be in a lease include:

- (a) failure to pay rent or other sums due under a lease;
- (b) failure to perform or observe any covenants set out in a lease; or
- (c) change in corporate control of the Lessee without Ṣaqam consent.

#### **Alternatives to Cancellation**

Cancellation is not automatically the appropriate response to a lessee's failure to perform their obligations under a lease. Council should determine the appropriate course of action, and alternative remedies should always be considered. For example, depending on the circumstances, the department may elect to re-let the land as agent for the lessee, or to perform covenants for, and at the expense of, the lessee.

#### **Cancelling a Lease that has been Mortgaged**

If the lessee has mortgaged his or her interest in a lease and Council is considering cancellation of the lease, the Lands Department and Council must ensure that they take all steps required under the lease to properly effect the cancellation in a manner that respects the lessee's and mortgagee's rights under the lease.

For example, many leases will state that if the lessee has mortgaged his or her interest in a lease, Council must notify the mortgagee before the proposed cancellation of a lease, and give the mortgagee sixty (60) days to assume or sell the leasehold interest, subject to the Council's consent, or to cure the lessee's default.

Many leases will also state that if a mortgagee, after receiving notice of the lessee's default, cures the default within the required time frame, that curing will be interpreted as a curing of the default by the lessee. Then, the cancellation of a lease will not continue, and a lease will again be in good standing. If the mortgagee does not take this action, the lease could be cancelled at the will of Council.

It is important to read the terms of a lease with regard to cancellation and mortgagee interests prior to taking any steps to cancel the lease. Where there are questions, consult with legal counsel.

## **Process**

### **Initiate Contact with Lessee**

If the Lands Department determines that a lessee has failed to perform their obligations under a lease, the Lands Department must initiate contact with the lessee by:

- (a) if the Lands Department has a telephone number for the lessee:
  - (i) phoning the lessee and discussing the alleged default with the lessee to determine whether the lessee has the capacity to cure the default, and
  - (ii) advising the lessee that a report will be made to Council regarding the default; or
- (b) if the Lands Department does not have a telephone number for the lessee, delivering a letter to the lessee advising the lessee that the Lands Department has determined the lessee has failed to perform their obligations under a lease, specifying the obligation that has not been performed, and setting out that a report will be made to Council regarding the default. The letter must invite and encourage the lessee to contact the Lands Department to discuss the lessee's capacity to cure the default.

The Lands Department must document all contact they have with a lessee who is allegedly in default of their lease.

### **Report to Council**

If the Lands Department considers it necessary to initiate cancellation proceedings, they must provide Council with a report setting out the circumstances surrounding the lessee's failure to perform their obligations and attach to the report all documentation relevant to the failure to perform, including a copy of:

- (a) the executed lease with the provision setting out the obligation that the lessee has failed to perform, and any other provision relevant to cancellation of a lease, highlighted;
- (b) any mortgages on the leasehold interest that are registered in the First Nation Land Register;
- (c) any bank statements, building inspection reports or other documents related to the lessee's failure to perform their obligations;
- (d) any notes documenting communications between the Lands Department and the lessee in regard to the lessee's failure to perform their obligations; and
- (e) any written correspondence between the Lands Department and the lessee regarding the lessee's failure to perform their obligations.

## **Council Consideration of the Alleged Default**

Council must review the Lands Department's report and determine:

- (a) whether the act or omission of the lessee is in fact a failure to perform an obligation under their lease; and
- (b) whether to initiate cancellation proceedings under either this policy or a default provision in their lease.

If the lessee has failed to pay rent as required by a lease, or if the default is one which Council considers the lessee can otherwise remedy easily, and a lease does not have a provision setting out the process for addressing defaults, Council should consider giving the lessee a reasonable time, being sixty (60) days, or such other period of time as permitted under any Law, to remedy the problem.

If the nature of the default is such that Council considers the lessee cannot cure it within sixty (60) days, and a lease does not have a provision setting out the process for addressing defaults, Council should consider cancellation of a lease to remedy the problem.

## **Notice of Default**

If Council determines a lessee is in default of their lease, and a lease has a provision setting out the process for issuing a notice of default, the Lands Department must ensure a notice of default is executed and delivered to the lessee following the process set out in a lease.

If Council determines a lessee is in default of their lease, and a lease does not have a provision setting out the process for issuing a notice of default, the Lands Department must:

- (a) prepare or cause to be prepared a notice of default;
- (b) ensure the notice of default is executed by either Council, or an authorized signatory; and
- (c) ensure the notice of default is delivered to the lessee.

A notice of default must set out:

- (a) the section of a lease under which the lessee is in default;
- (b) the circumstances surrounding the default and the supporting evidence of the default; and
- (c) notice of the timeframe Council considers reasonable (or in the case that a timeframe is set out in the lease, that timeframe) to allow the lessee to correct the default before Council cancels the lease.

## **Notice to Mortgagee**

If Council determines a lessee is in default of their lease and issues a notice of default, and the lease has a provision setting out a process for giving notice to a mortgagee of default, the Lands Department must provide the mortgagee with the notice of default following the process set out in the lease.

If Council determines a lessee is in default of their lease, issues a notice of default and the lease does not have a provision setting out the process for giving notice to a mortgagee of default, the Lands Department must deliver to the mortgagee:

- (a) a copy of the notice of default; and
- (b) a letter setting out that the mortgagee may remedy the lessee's breach prior to cancellation of the lease, or may assume or sell the leasehold interest, subject to the Council's consent and any restrictions set out in the lease.

## **Verify Whether Default Cured**

The Lands Department must verify whether the lessee, or the mortgagee (if applicable), cures the default by the given deadline.

### **Send Cancellation Notice**

If the lessee's default has not been corrected within the time limit required by Council, or by the terms of a lease, the Lands Department must deliver a notice of cancellation to the lessee. The notice should be drafted in close consultation with legal counsel and must:

- (a) include the particulars of a lease being cancelled;
- (b) provide the reason for the cancellation and set out the terms of the lease that have been breached;
- (c) advise the lessee that all outstanding financial obligations due under the lease are still payable, and that the lessee is obligated to pay all outstanding amounts;
- (d) advise the lessee that the cancellation does not prejudice ?aqam's rights under the lease; and
- (e) be executed by Council, or an authorized signatory.

### **Follow Up**

After a cancellation notice has been delivered to a lessee, the Lands Department must ensure that the lessee has vacated the land in accordance with the cancellation notice and that the lessee has completed all of their responsibilities under the lease with regard to vacating and remediating, or cleaning the property.

If a lease is a headlease, the Lands Department must contact each sublessee and advise them that the lease has been cancelled and that ?aqam has acquired all rights and obligations of the lessee under the lease. The Lands Department must instruct each sublessee to make payments to ?aqam and to treat ?aqam as the lessee.

If rent is in default, the Lands Department must, in consultation with Council and legal counsel, determine whether to initiate steps to collect the unpaid rent for ?aqam.

### **Register Notice of Cancellation**

The Lands Department must register all notices of cancellation of a lease in the First Nation Land Register in accordance with Policy 2.

### **Resources**

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 *?aqam Amended Land Code*;
- (e) the *First Nations Land Management Act*;
- (f) the Framework Agreement; and
- (g) the Individual Agreement.

## **POLICY 6.3 Cancellation of an Interest Licence, Permit or Right of Way at the Request of the Licencee, Permittee or Grantee**

### **Purpose**

This policy explains when and how a licensee, permittee, or grantee of a right-of-way may cancel their licence, permit or right-of-way over Ṛaqam community lands.

This policy does not address situations where Ṛaqam wishes to cancel a licence, permit or right-of-way over Ṛaqam community lands because it was issued in error, by mistake or by fraud. In such circumstances, please refer to Policy 6-1.

This policy does not address situations where Ṛaqam wishes to cancel a licence, permit or right-of-way over Ṛaqam community lands because the licensee, permittee, or grantee of a right-of-way has failed to comply with the terms of the licence, permit or right-of-way. In such circumstances, please refer to Policy 9.

### **Legal Authorities**

The *Ṛaqam Amended Land Code* contains no specific provision in relation to the cancellation of a licence, permit or right-of-way by a licensee, permittee or grantee. In most cases, the licence, permit or right-of-way agreement should contain terms for cancellation.

### **Roles and Responsibilities**

Please see Policy 1 and Policy 5

### **Policy**

#### **Consulting Legal Counsel**

The cancellation of a licence, permit or right-of-way agreement is a significant step that may have important legal consequences. The cancellation must be managed very carefully, and, where there is any uncertainty, the Lands Department must consider consulting legal counsel.

#### **Council Consent Required**

The cancellation of a licence, permit or right-of-way agreement requires the consent of Council.

Council must not unreasonably withhold their consent to the cancellation of a licence, permit or right-of-way agreement.

#### **Restrictions on Cancellation**

Council must not consent to the cancellation of a licence, permit or right-of-way agreement in Ṛaqam community lands if:

- (a) such cancellation will adversely affect an interest in Ṛaqam community lands held by a third party;
- (b) such cancellation will adversely affect a claim against, or interest in, Ṛaqam community lands held by Ṛaqam;

- (c) the licensee, permittee or grantee owes ʔaqam money in relation to the licence, permit or right-of-way agreement; or
- (d) the licensee, permittee or grantee has not complied with a requirement under their licence, permit or right-of-way agreement in relation to environmental requirements.

### **No Release of Liability / Obligations**

A release of liability or obligations is a written agreement that acts to cancel the legal liabilities or obligations that exist between two (2) parties, either under an agreement or otherwise. A release is signed by one (1) party to the benefit of the other party as evidence that the party signing the release:

- (a) gives up their right to enforce a term in their contract or agreement with the other party, or their right to enforce other legal rights against the other party; and
- (b) releases the other party from having to fulfill the terms of the contract or agreement, or from having to uphold some other legal obligation towards the party signing the release.

In cancelling a licence, permit or right-of-way agreement, ʔaqam must **not** provide a release of liability or obligations to the licensee, permittee or grantee.

### **Process**

#### **Request to Cancel Licence, Permit or Right of way**

If a licensee, permittee, or grantee in relation to a right-of-way wishes to cancel their licence, permit or right-of-way agreement they must:

- (a) complete two (2) copies of Part 1 of Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way and submit it, along with any required additional documents, to the Lands Department; and
- (b) if the licensee, permittee or grantee is not a member or a representative of a government agency, present two pieces of government issued identification to the Lands Department.

#### **Receiving Request to Cancel Licence or Permit**

The person at the Lands Department who receives a request must document the following in Part 2 of Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way:

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

If the person making the request is not a member or a representative from a government agency, the person at the Lands Department who receives the request must:

- (a) obtain two pieces of government issued identification from the person making the request;
- (a) compare the two pieces of government issued identification to the person who is making the request and assess whether the person making the request is the same person as the person whose identification is being provided;
- (b) photocopy the two pieces of government issued identification that are provided and attach them to Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way; and
- (c) document on Part 2 of Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way whether the identification provided shows a likely representation of the person who is making the request.

### **Lands Department Review and Assessment of Request**

The Lands Department must review the information provided in Part 1 of Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way, and the information in the Lands Department file for the licence, permit or right-of-way agreement to which the request relates, and confirm that the person making the request is authorized to submit the request:

- (a) if the request is on behalf of an individual, the person making the request must be the same person who is named in the licence, permit or right-of-way;
- (b) if the request is on behalf of a corporation, the Notice of Articles for that corporation must provide that the person making the request is a signing officer for the corporation;
- (c) if the request is on behalf of a partnership, the partnership agreement must provide that the person making the request is a signing officer for the partnership;
- (d) if the request is on behalf of a society, the society's by-laws must provide that the person making the request is a signing officer;
- (e) if the request is on behalf of a First Nation, Band or Tribal Council, the person making the request must be a person designated to be a signing officer of that First Nation, Band or Tribal Council; and
- (f) if the request is on behalf of a government agency, the person making the request must be a person with power to sign for that government agency.

The Lands Department must determine whether the licensee, permittee or grantee has fully paid to ?aqam all payments that are due to ?aqam under the licence, permit or right-of-way agreement. This can be done by consulting with the finance department.

The Lands Department must review the terms of the licence, permit or right-of-way agreement that pertain to its cancellation and ensure that the person making the request has provided documentary proof to ?aqam that such terms have been complied with.

The Lands Department must refer to Policy 8 and ensure the applicant complies with all environmental site assessment requirements under that policy.

The Lands Department must review the Lands Department file for the licence, permit or right-of-way agreement to which the request relates and complete a search of the First Nations Land Registry to determine whether the cancellation of the licence, permit or right-of-way will adversely affect:

- (a) an interest in ?aqam community lands held by a third party; or
- (b) a claim against or interest in ?aqam community lands held by ?aqam.

The Lands Department must complete Part 2 of Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way.

### **Report to Council**

The Lands Department must provide Council with the following documents:

- (a) completed Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way;
- (b) ?aqam Lands Department file for the licence, permit or right-of-way; and
- (c) two (2) copies of a Band Council Resolution as follows:

#### **?AQAM BAND COUNCIL RESOLUTION CONSENTING TO**

## **THE CANCELLATION OF A [PERMIT / LICENCE / 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** ʔaąam signed an Individual Agreement with Canada on June 18, 2014;

**AND WHEREAS** the members of ʔaąam 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 ʔaąam 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 *ʔaąam Amended Land Code, 2016*;

**AND WHEREAS** in [year] the Council of ʔaąam consented to the attached [licence / permit / right-of-way] Agreement that grants to [name of licensee / permittee / grantee], a right to use or occupy [enter description of licence or permit /right-of-way area] for the purpose of [enter details regarding the purpose of the licence or permit or right-of-way];

**AND WHEREAS** the Council of ʔaąam has authority to cancel a licence, permit or right-of-way over ʔaąam lands and [enter name of licensee / permittee/grantee] has requested that ʔaąam cancel the [licence / permit right-of-way] Agreement described above;

**THEREFORE BE IT RESOLVED THAT** the Council of ʔaąam:

**A.** consents to the cancellation of the above mentioned [licence, permit or right-of-way agreement] and that such cancellation is effective on the date that ʔaąam registers the Certificate of Cancellation of Licence, Permit or Right-of-way and this BCR in the First Nations Lands Register.

**FURTHER IT BE RESOLVED THAT** the Council of ʔaąam authorizes [Name of Lands Department personnel] to execute the attached Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way on behalf of ʔaąam

### **OR**

**B.** consents to the cancellation of the above mentioned [licence, permit or right-of-way agreement] conditional on the [licensee, permittee or grantee] completing the following:

- [enter conditions]; and
- presenting documentary proof of compliance with the above conditions to the Lands Department,

at which time the cancellation will be effective.

**FURTHER IT BE RESOLVED THAT** the Council of ʔaᑭam authorizes [Name of Lands Department personnel] to execute the attached Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way on behalf of ʔaᑭam after [name of applicant] has complied with the conditions set out in this Band Council Resolution;

**OR**

C. denies the cancellation of the above mentioned [licence, permit or right-of-way agreement] because [enter the reasons for such denial].

### **Council Decision on Cancellation**

Council must review the documents provided by the Lands Department then pass, and sign three (3) copies of, a Band Council Resolution either consenting to (with or without conditions) or denying (with reasons) the cancellation of the licence, permit or right-of-way agreement.

Once Council passes a Band Council Resolution concerning the cancellation of a licence, permit or right-of-way agreement, Council must provide the Lands Department with three (3) signed copies of that Band Council Resolution and return to the Lands Department all documents provided to Council.

### **Cancellation of Licence, Permit or Right of way Agreement Approved by Council**

If Council consents to the cancellation of a licence, permit or right-of-way agreement, the Lands Department must:

- (a) ensure the person who is an authorized signatory completes and signs two (2) copies of Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way;
- (b) register the Form 6-1-02: Certificate of Cancellation of Licence, Permit or Right-of-way in the First Nation Land Register along with the Band Council Resolution consenting to the cancellation of the licence, permit or right-of-way agreement;
- (c) provide to the licensee, permittee or grantee one (1) original signed copy of Form 6-1-03: Certificate of Cancellation of Licence, Permit or Right-of-way and one (1) original, signed copy of the Band Council Resolution consenting to the cancellation of the licence, permit or right-of-way agreement.

### **Documentation**

The Lands Department must ensure the Lands Department file contains:

- (a) the completed Form 6-3-03: Request to Cancel Licence, Permit or Right-of-way;
- (b) one (1) original signed copy of Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way;
- (c) one (1) original, signed copy of the Band Council Resolution consenting to the cancellation of the licence, permit or right-of-way agreement; and
- (d) copies of all correspondence with the licensee or permittee regarding the cancellation of the licence, permit or right-of-way agreement.

### **Cancellation of Licence or Permit Approved by Council Conditional on Certain Terms Being Complied With by the Licensee, Permittee or Grantee**

If Council consents to the cancellation of a licence, permit or right-of-way agreement but provides conditions that must be complied with by the licensee, permittee or grantee before the cancellation

will be effective, the Lands Department must provide the licensee, permittee or grantee with a written notice setting out:

- (a) the date that Council considered the licensee, permittee or grantee's request to cancel the licence, permit or right-of-way agreement;
- (b) details of the licence, permit or right-of-way agreement to which the request related;
- (c) the conditions that must be complied with before ?aqam will cancel the licence, permit or right-of-way agreement and the date for when those conditions must be completed; and details of the documentary evidence that the licensee, permittee or grantee must provide to ?aqam to prove that the conditions have been complied with before ?aqam will cancel the licence, permit or right-of-way agreement, and must attach to the written notice an original copy of the Band Council Resolution.

### **Monitoring Conditions**

If Council consents to the cancellation of a licence, permit or right-of-way agreement subject to conditions, the Lands Department must complete Part 3 of Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way and monitor the completion of those conditions before executing form 6-3-01: Certificate of Cancellation of Licence, Permit or Right-of-way.

### **Execute Certificate of Cancellation**

Where:

- (a) Council consents to the cancellation of a licence, permit or right away agreement without conditions; **or**
- (b) Council consents to the cancellation of a licence, permit or right away agreement with conditions and the Lands Department receives the documentary evidence required by a Band Council Resolution in relation the completion of those conditions, the Lands Department must ensure the person who is an authorized signatory completes and signs two (2) copies of Form 6-1-03: Certificate of Cancellation of Licence, Permit or Right-of-way.

### **Register the Cancellation**

The Lands Department must register the cancellation of the licence, permit or right-of-way in accordance with Policy 2.

### **Notice to Applicant**

After registering the cancellation of the licence, permit or right-of-way agreement, the Lands Department must send to the applicant an original, signed copy of Form 6-1-03: Certificate of Cancellation of Licence, Permit or Right-of-way.

### **Request to Cancel Licence or Permit Denied**

If Council denies the cancellation of a licence or permit, the Lands Department must provide the licensee or permittee with a written notice setting out:

- (a) the date that Council considered the licensee, permittee or grantee's request to cancel the licence, permit or right-of-way agreement;
- (b) details of the licence, permit or right-of-way agreement to which the request related;
- (c) that Council has denied the licensee, permittee or grantee's request to cancel the licence, permit or right-of-way agreement; and
- (d) the reasons for why Council denied the request, and must attach to the written notice an original copy of the Band Council Resolution.

**Documentation**

The Lands Department must ensure the following documents are in the Lands Department file to which the cancellation of the licence, permit or easement agreement relates:

- (a) the completed Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way;
- (b) copies of all documentation and communications between the Lands Department and the licensee, permittee or grantee related to the cancellation of the licence, permit or right-of-way agreement;
- (c) one original, signed copy of the Band Council Resolution consenting to or denying the cancellation of the license, permit or easement agreement;
- (d) any documents that relate to the completion of conditions as set out in the Band Council Resolution; and
- (e) if applicable, the completed and signed Form 6-1-03: Certificate of Cancellation of Licence, Permit or Right-of-way.

**Resources and Forms**

Besides this policy, consult the following resources:

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

**Forms**

- 6-3-01 Request to Cancel Licence, Permit or Right of Way



