

KITSELAS



KITSELAS LAND INTERESTS LAW

K.B.C. 2007 No.1

Kitselas Band Council enacted this law by Resolution on May 18th, 2007

Glenn Bennett, Chief Councillor of the Kitselas Band, under the authority of the Kitselas Band Council, signed this law on Oct. 1, 2007

Signature

Kitselas Band Council

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KITSELAS LAND INTERESTS LAW, K.B.C. 2007 No.1

Article 1. Title

1.01 The title of this enactment is the *Kitselas Land Interests Law*.

Article 2. Purpose

2.01 The purpose of this Law is to set out the principles, rules and administrative procedures for:

- (a) the creation, granting, assigning or transferring of an interest or licence in Kitselas Land;
- (b) the Kitselas Lands Register;
- (c) zoning and land use planning; and
- (d) any matter arising out of or ancillary to the foregoing.

Article 3. Interpretation

3.01 In this Law,

- (a) “Certificate of Possession” has the same meaning as in the *Indian Act*, R.S.C. 1985, c. I-5;
- (b) “Council” means the Chief and Councillors of the First Nation and any successor elected government of the First Nation;
- (c) “interest” in relation to Kitselas Land, means any estate, right or interest of any nature in or to the land but does not include title to the land;



- (d) “Kitselas Land” means a Kitselas Indian Reserve or any portion thereof described more particularly in the Kitselas Lands Management Act;
- (e) “Kitselas Lands Management Act” means the *Kitselas Reserve Lands Management Act* K.B.C. 2005 No.1;
- (f) “Kitselas Lands Office” means the office established by the Council to assist in the management and administration of Kitselas Lands;
- (g) “Kitselas Land Register” means the register of the Kitselas Lands which is part of the First Nations Land Register established and maintained by Canada and held in the Registry at the National Capital Region
- (h) “Lands Director” means the Lands Director appointed by Council;
- (i) “Law” means a Law enacted under the Kitselas Lands Management Act;
- (j) “licence” in relation to Kitselas Land, means any right of use or occupation of the land other than an interest that land; and
- (k) “Order” means an order signed by the Chief Councillor authorized by the Band Council by way of a duly executed Band Council resolution;
- (l) “Register of Laws” has the same meaning as that set forth in section 83 of the Kitselas Lands Management Act;
- (m) “Registry” means the office, known as the First Nations Land Registry, located in the National Capital Region that maintains the First Nations Land Register; and
- (n) “Written Instrument” means an instrument in writing, either in the approved form prepared by the Kitselas Lands Office or such other form as may be agreed to by the Kitselas Lands Office, which purports to create, grant, assign or transfer an interest or licence in Kitselas Lands or affect Kitselas Lands.

3.02 Unless the context otherwise requires words and expressions used in this Law have the same meaning as in the Kitselas Lands Management Act.



3.03 If there is an inconsistency or conflict between this Law and the Kitselas Lands Management Act, the Kitselas Lands Management Act will prevail to the extent of the inconsistency or conflict.

Article 4. Jurisdiction and Authority

4.01 Council has the jurisdiction and authority over Kitselas Land.

4.02 Subject to section 26.1 of the Kitselas Land Management Act, a Written Instrument creating, granting, assigning or transferring an interest or licence in Kitselas Lands under this Law is not valid and enforceable until:

- (a) it is approved by Council;
- (b) it is executed by the applicants; and
- (c) an original executed copy of the Written Instrument is registered or recorded in the Kitselas Land Register.

Article 5. Lands Director

5.01 The Kitselas Lands Office shall be established to carry out the duties and responsibilities delegated or assigned to it pursuant to this Law.

5.02 The Lands Director is responsible for the day-to-day operations of the Kitselas Lands Office and shall perform such duties and responsibilities consistent with this Law.

5.03 Council may by Order delegate administrative authority in relation to this Law to the Lands Director. When Council makes an Order under this Law, that Order will include appropriate directions to the Lands Director to give effect to the Order.

**Article 6. Interests and Licences**

6.01 Upon the enactment of the Kitselas Lands Management Act, Council has exclusive jurisdiction and authority to:

- (a) grant an interest or licence in Kitselas Land; and
- (b) to approve the transfer or assignment of an interest or licence in Kitselas Land,

Council will exercise such jurisdiction and authority by Order.

6.02 Council may by Order grant an interest or licence in Community Land, including but not limited to the following:

- (a) a right of possession and occupation to a Member;
- (b) an easement;
- (c) a right of way;
- (d) a permit; or
- (e) a lease.

6.03 Negotiations or arrangements whether in writing or otherwise, before the execution of a grant of an interest or licence by Council under this Law, are not binding on and do not commit the Kitselas First Nation to perform or complete a transaction.

6.04 A grant of an interest or licence made by Council under this Part may impose terms, covenants and stipulations it considers advisable, including but not limited to the following:

- (a) payment by the applicant of the cost of a survey;
- (b) requirements for an environmental assessment;



- (c) permanent improvement of the land by and at the cost of the applicant on the conditions specified by the Council; or
- (d) any other condition deemed to be necessary by Council.

6.05 Subject to section 24.1 of the Kitselas Land Management Act, no person may transfer or assign an interest or licence in Kitselas Land except in accordance with this Law. For greater certainty, any transfer or assignment of an interest or licence in Kitselas Land is null and void unless Council authorizes and approves such assignment or transfer by Order under this Law.

Article 7. Provisos, Restrictions, Exceptions and Reservations

7.01 A grant of an interest or licence under this Law or another Law

- (a) excepts and reserves a right in the Council, or any person acting for it or under its authority, the following interests, rights, privileges and titles:
 - (i) a right to resume any part of the land, with payment of reasonable compensation, that is deemed to be necessary by Council for making roads, canals, bridges or other public works, but not more than 1/20 part of the whole of the land, and no resumption may be made of any land on which a building has been erected, or that may be in use as a garden or otherwise,
 - (ii) a right to take and occupy water privileges and to have and enjoy the rights of carrying water over, through or under any part of the land granted, as may be reasonably required for a public purpose in the vicinity of the land, paying a reasonable compensation to the grantee, the grantee's successors and assigns, and
 - (iii) a right to take from any part of the land granted, with payment of reasonable compensation, gravel, sand, stone, lime, timber or other



material that is not available on other Community Lands that may be required in the construction, maintenance or repair of a road, ferry, bridge or other public work, and

- (b) conveys no right, title or interest to any water that may be found in or under the land, except as otherwise specifically provided for in the Written Instrument.

Article 8. Kitselas Land Register

8.01 The Kitselas Lands Office will maintain:

- (a) a copy of all Written Instruments that are submitted for registration or recording in the Kitselas Land Register; and
- (b) the Register of Laws.

8.02 The Lands Director shall receive all Written Instruments sought to be registered or recorded in the Kitselas Land Register and review them for technical compliance with Kitselas Law and submit them for registration or recording in the Kitselas Land Register.

8.03 The Lands Director may adopt policies and procedures to establish mandatory standards, conditions, criteria, fees and prescribed forms for registering and recording all applications for a grant, transfer or assignment of an interest or licence in Kitselas Land.

8.04 The interests or licences that may be registered or recorded include, but are not limited to:

- (a) a licence;
- (b) a permit;



- (c) an easement;
- (d) a right of way;
- (e) a right of possession and occupation;
- (f) a leasehold interest;
- (g) a judgment or court order;
- (h) a lien;
- (i) a security or guarantee instrument;
- (j) a survey;
- (k) a charge;
- (l) a mortgage;
- (m) an order of an arbitrator; or
- (n) any other instrument approved by Council.

8.05 During regular business hours, any person may attend the Kitselas Lands Office to examine and inspect the records of the Kitselas Land Register after:

- (a) completing an application in the form that the Lands Director requires; and
- (b) on such conditions that the Lands Director imposes.

8.06 Council makes no representation as to the accuracy or completeness of the Kitselas Lands Register and a person may not recover from the First Nation any loss or damage that the person suffers by reliance on the records of the Kitselas Lands Register.



Article 9. Disallowances, Cancellations, Amendments and Abandonment

9.01 Except as otherwise provided under the Kitselas Reserve Lands Management Act, Kitselas Law or by operation of law, no interest or licence in Kitselas Lands may be cancelled or forfeited unless:

- (a) All parties to the relevant Written Instrument have consented in writing to the cancellation or forfeiture as the case may be;
- (b) A court of competent jurisdiction has ordered the cancellation or forfeiture of the interest or licence and the time period for filing an appeal of the order has passed without an appeal having been taken; or
- (c) An arbitrator or other person appointed to adjudicate a dispute pursuant to the Written Instrument in issue has ordered or declared the interest or licence to be cancelled or forfeited and no appeal has been taken from the decision within the allotted time.

9.02 Subject to section 9.01 no interest or licence in Kitselas Lands may be cancelled or forfeited if it will adversely affect:

- (a) An interest or licence in those Kitselas Lands held by a third party; or
- (b) A claim against, or interest or licence in, those Kitselas Lands held by Kitselas First Nation.

9.03 Whenever a Certificate of Possession or a right of possession or occupation was, in the opinion of the Council through due process, issued to or in the name of the wrong person, through mistake, or contains any clerical error or misnomer or a wrong description of any material fact therein, the Council may cancel the Certificate of Possession or a right of possession or occupation and issue a corrected Certificate of Possession or a right of possession or occupation in lieu thereof.



- 9.04 The Council may cancel any Certificate of Possession or a right of possession or occupation that in its opinion, acting reasonably, was issued through proven fraud or in error.
- 9.05 The Council may, with the consent of the holder cancel any Certificate of Possession or a right of possession or occupation.
- 9.06 If an interest or licence in Kitselas Lands is cancelled or forfeited under section 9.01, 9.03, 9.04 or 9.05 the Kitselas Land Register will be amended or rectified accordingly.

Article 10. Land Use Plan

- 10.01 Council may establish a Land Use Plan for Kitselas Lands for purposes of establishing a land use plan, subdivision plan and resource use plan.
- 10.02 Council will file a copy of the land use plan in the Kitselas Register of Laws.