

BY-LAW NO. 2023-01

QUATSINO FIRST NATION

TRESPASS BY-LAW

BEING A BY-LAW OF THE QUATSINO FIRST NATION WITH A PURPOSE OF ESTABLISHING RULES FOR THE REMOVAL AND PUNISHMENT OF PERSONS TRESPASSING ON QUATSINO FIRST NATION LANDS OR FREQUENTING SUCH LANDS FOR PROHIBITED PURPOSES.

WHEREAS:

1. The Quatsino First Nation (the "Nation") manages its lands and resources for the use and benefit of its members by adhering to its Land Use Plan (as amended);
2. The Council of the Nation (the "Council") has authority pursuant to Section 81 of the *Indian Act*, R.S.C. 1985, c. I-5 (the "*Indian Act*"), to make by-laws not inconsistent with the *Indian Act* and regulations made thereunder for any or all of the purposes set out in paragraphs 81(1)(c), (d), (p), (q) or (r) thereof;
3. The Nation desires to enact by-laws to further its goals under the Land Use Plan, including the restriction of land use and trespass and for the imposition of a penalty for a violation thereof; and
4. The Council deems it expedient and in the best interests of the Nation, and necessary for the benefit, comfort and safety of residents of the Nation and for the protection of the Reserve (as hereinafter defined), to make a by-law for the purpose of regulating the conduct and activities of persons entering upon the Reserve and providing for the removal and punishment of persons trespassing on the Reserve or frequenting the Reserve for prohibited purposes;

NOW THEREFORE, COUNCIL OF THE QUATSINO FIRST NATION, DULY ASSEMBLED, ENACTS AS FOLLOWS:

PART I – TITLE, DEFINITIONS, AND APPLICATION

1. SHORT TITLE

1.1 This By-law may be cited as the "Trespass By-law".

2. DEFINITIONS

2.01 In this By-law, unless the context otherwise requires:

- (a) **"Band Council Resolution"** means a written resolution signed and adopted by a quorum of Council at a duly convened meeting;
- (b) **"Building"** includes any structure used by a Person for shelter, accommodation or storage and includes, without limitation, houses, trailers, mobile homes, sheds, tents and barns;
- (c) **"By-law"** means this Trespass By-law;
- (d) **"Citizen"** means a member of the Nation;
- (e) **"Council"** means the Council of the Nation, comprised of the Chief and Councilors, duly elected from time to time;
- (f) **"Court"** means a court of competent jurisdiction in the Province of British Columbia;
- (g) **"Nation"** means the Quatsino First Nation, a band within the meaning of the *Indian Act*;
- (h) **"Non-Citizen"** means a Person who is not a Citizen of the Nation;
- (i) **"Order"** has the meaning as defined in Section 14.01;
- (j) **"Occupant"** means:
 - (i) a Person who is in lawful possession of a Premises pursuant to a Band Council Resolution, Directive, Motion or other form of allocation by Council, or
 - (ii) a Person who has the responsibility for and control over the condition of a Premises, the activities carried on there, or control over Persons allowed to enter the Premises;
- (k) **"Officer"** means any police officer, peace officer or other Person charged with the duty to preserve and maintain the public peace, or any other person appointed by the Council for the purpose of maintaining law and order on the Reserve;
- (l) **"Person"** includes an individual, association, society, corporation, or partnership;
- (m) **"Premises"** means a residence of a Person authorized to live on the Reserve and includes the dwelling house and the outdoor portion of the property surrounding the dwelling house that is acknowledged to be for the Citizen's private use, or any Building or fenced lot used for a residence, business for or by the Nation;
- (n) **"Prohibited Purpose"** has the meaning as defined in Section 6.01.

- (o) **"Removal"** means where Council has issued a Band Council Resolution, ordering the removal of a Person from the Reserve;
- (p) **"Reserve"** means any lands reserved for the Nation within the meaning of the *Indian Act*, specifically those areas as outlined in the Land Use Plan and identified as IR 1 Quattishe, IR 2 Toh-quo-eugh, IR 3 Pa-cat'l-line-ne, IR 4 Kulta, IR 5 Cayilth, IR 6 Cayuse, IR 7 Teeta, IR 8 Mah-te-nicht, IR 9 Clatux, IR 10 Koprino, IR 11 O-ya-kum-la, IR 12 Quatleyo, IR 13 Grass Point, IR 14 Clienna, IR 15 Puleah, IR 16 Ah-we-cha-ol-to, IR 17 Maquazneecht I, IR 18 Quatsino Subdivision, IR 1 Telaise, IR 2 Tsowenachs, IR 3 Klaskish, and any such further reserve land set aside by His Majesty for the use and benefit of the Nation;
- (q) **"Trespass"** means any act that constitutes trespass under common law, and includes, without limitation, the following:
 - (i) entering or remaining in or on a Premises without lawful authority or the permission of the Occupant;
 - (ii) entering or remaining on the Reserve without lawful authority or the permission of either an Occupant or the Nation and includes any injury or damage to the Reserve or a Premises on the Reserve of any type whatsoever caused by or resulting from entering on or remaining on the Reserve without lawful justification; and
 - (iii) entering or remaining on the Reserve or a Premises contrary to a Band Council Resolution an Order by an Officer has been issued;
- (r) **"Trespassing"** means being engaged in any conduct which constitutes a Trespass.

3. APPLICATION

3.01 This By-law applies on the Reserve.

3.02 Where any federal or provincial law, or any other Nation by-law applies to any matter covered by this By-law, compliance with this By-law will not relieve a Person from also complying with the provisions of any other applicable law, regulation, or by-law.

PART II – REGULATION OF TRESPASS

4. TRESPASS

4.01 No Person shall Trespass on the Reserve.

5. PRESUMPTION OF TRESPASS

5.01 A Non-Citizen on the Reserve is presumed to be trespassing until proven otherwise.

6. PROHIBITED PURPOSES

6.01 A Non-Citizen who is otherwise authorized to be on the Reserve pursuant Section 7.01, who conducts any of the following activities, without limitation, on the Reserve:

- (a) dumping refuse or waste;
- (b) any other activity that is prohibited by federal or provincial law or by Nation by-law,

(each a “**Prohibited Purpose**”)

shall be deemed to be on the Reserve for a Prohibited Purpose and to be Trespassing on the Reserve.

7. LAWFUL JUSTIFICATION

7.01 The following Persons have a right of access to the Reserve:

- (a) Citizens, except that they have no right of access to areas within the Reserve that Council has designated for the use and occupation of specific individuals or their families, whether or not those individuals are present;
- (b) a Person invited onto the Reserve by a Citizen and who, being accompanied by that Citizen and while obeying all laws of general application and By-laws of the Nation, will share that Citizen’s right of access provided such Person is not engaging in a Prohibited Purpose;
- (c) a Person who has entered onto the Reserve, who is carrying Council's written authorization and is conducting him or herself under Council's written authorization, provided such Person is not engaging in a Prohibited Purpose;
- (d) a Person who has been invited or granted access to the Reserve by Council, including under an issued permit, order, or other direction, provided such Person is not engaging in a Prohibited Purpose
- (e) a Person who has entered onto Reserve lands that have been designated for commercial uses provided that such Person is engaged in activities consistent with or related to such commercial uses and is otherwise obeying all laws of general application and not engaging in a Prohibited

Purpose;

- (f) a Person authorized by federal or provincial law or by Nation by-law, provided such Person is not engaging in a Prohibited Purpose;
- (g) a Person travelling on a public road on or through the Reserve, provided such Person is not engaging in a Prohibited Purpose;
- (h) a Person participating in activities on the Reserve that are authorized by Council, provided such Person is not engaging in a Prohibited Purpose; and
- (i) an Officer in the course of their duty.

PART III – NOTICES AND SIGNS

8. DESIGNATION OF AREAS

8.01 Council may by Band Council Resolution, by-law, regulation or another form of legislation enacted by Council, designate locations on the Reserve:

- (a) that are open or restricted to Citizens and Non-Citizens; and
- (b) on which the carrying on of specified activities is permitted or prohibited.

9. ENTRY PROHIBITED

9.01 Other than with the consent of lawful authority, a Person must not enter onto or Trespass on Premises:

- (a) where notice is given or posted prohibiting entry, or
- (b) that are enclosed or fenced in a manner that indicates the Occupant's intention to keep Persons or animals out of the Premises or to keep animals on the Premises.

10. ABILITY TO GIVE NOTICE

10.01 A Person has notice not to Trespass or not to engage in a specified activity when they have been given notice by Council or an Officer.

10.02 A notice not to Trespass under this Section 10 may be given:

- (a) verbally,
- (b) in writing, or

- (c) by means of signs posted so that a sign is clearly visible under normal weather conditions from the approach to each ordinary point of access to the Premises or the area of the Reserve to which it applies.

11. POSTING OF SIGNS

- 11.01 A sign posted for the purposes of this By-law must bear the words “No Trespassing” or “Carrying on of (describe the activity) is prohibited within (describe the area)”.

12. DESTRUCTION OF SIGNS

- 12.01 A Person must not tear down, remove, damage, deface or in any way cover up a sign that has been lawfully posted under this By-law.

13. NOTICE NOT REQUIRED

- 13.01 For certainty, a Person may be found guilty of an offence under this By-law regardless of whether notice not to Trespass or not to engage in a specified activity was given or received.

PART IV – ADMINISTRATION AND ENFORCEMENT

14. ENFORCEMENT AND ORDERS

- 14.01 If an Officer or the Council reasonably believes a Person is Trespassing on the Reserve the Officer or member of the Council may order that Person to leave the Reserve immediately (an “**Order**”).
- 14.02 If an Officer reasonably believes a Person is engaging in a Prohibited Purpose, the Officer may order that Person to leave the Reserve immediately.
- 14.03 Where a Person fails or refuses to obey an Order made under section 14.01 or 14.02, an Officer may take such reasonable measures as may be necessary to remove the Person from the Reserve.

15. ORDER DETAILS

- 15.01 An Order issued under this By-law must be issued either:
 - (a) verbally, with details recorded and retained by the Officer or member of Council who issued the Order; or
 - (b) in writing, with details recorded and retained by the Officer or member of

Council who issued the Order, with a copy being offered to the Person to whom the Officer or member of Council issued such Order.

15.02 A copy of each Order issued under this By-law must be made available at the Nation administration building, or as otherwise designated by Council, and to the Person to whom it applies.

16. POWER TO ENSURE COMPLIANCE WITH THE BY-LAW

16.01 Where a Person has been Ordered to refrain from violating this By-law within a specified period, fails or refuses to comply with the order, an Officer may take such reasonable measures as necessary to ensure compliance with this By-law.

17. OBSTRUCTION OF DUTIES

17.01 A Person must not obstruct, interfere with or hinder Council or an Officer in carrying out their duties and responsibilities under this By-law.

18. AVAILABILITY OF OTHER ACTION OR REMEDY

18.01 Nothing in this By-law precludes the Nation from pursuing any other enforcement or remedy provided for in any other law or by-law.

PART V - PENALTIES

19. OFFENCE

19.01 A Person who:

- (a) violates a provision of this By-law,
- (b) is found on the Reserve, after Council has issued a Band Council Resolution ordering their Removal,
- (c) is found residing or otherwise on the Reserve without valid permission,
- (d) permits any act or things to be done in violation of this By-law, or
- (e) neglects to do or refrains from doing any act or thing required to be done under the provisions of this By-law,

commits an offence under this By-law, and will be liable on conviction to the penalties imposed by this By-law,

20. SEPARATE CHARGE

20.01 An Officer may lay a separate charge for each day an offence under this By-law is ongoing or for each separate offence.

21. PENALTIES

21.01 Any Person who is found guilty of an offence under this By-law is liable on summary conviction to a fine not exceeding \$5,000.00, or to a term of imprisonment not exceeding thirty (30) days, or both.

21.02 Where a Person is in default of payment of a fine under this By-law, the Nation may, in its sole discretion as it deems appropriate, withhold an amount payable by it to such Person from time to time not to exceed the amount of the unpaid fine, and shall apply such amount to the unpaid fine.

21.03 Where a Person is in default of payment of a fine under this By-law, the Nation may, in its sole discretion as it deems appropriate, seize and liquidate such assets of the Person to satisfy payment of such fine owed to the Nation.

22. RESPONSIBILITY FOR DAMAGE

22.01 In addition to all other penalties provided herein, any Person causing damage or loss to any Nation property within the Reserve will be responsible for the cost of repairing or replacing such damage or loss.

PART VI – GENERAL

23. MISCELLANEOUS

23.01 Nothing in this By-law relieves a Person from complying with any applicable law, regulation, other Nation by-law or any requirements of any lawful permit, order, or other direction.

23.02 Where this By-law refers to another Act, Regulation or agency, it includes reference to any Act, Regulation or agency that may be varied, modified or replaced from time to time.

23.03 Every provision of this By-law is independent of all other provisions, if any provision of this By-law is declared invalid for any reason by a Court, all other provisions of this By-law shall remain valid and enforceable.

23.04 Words and phrases in this By-law importing the singular number only shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender and neutral.

23.05 Nothing in this By-law affects the civil liability of a Person who contravenes any

provision of this By-law.

24. AMENDMENT


24.01 This By-law may be amended by Band Council Resolution.

25. EFFECTIVE DATE

25.01 This By-law comes into force on the date of publication in accordance with subsection 86(4) of the *Indian Act*.

THIS BYLAW IS HEREBY made at a duly convened meeting of the Quatsino First Nation this 19th day of December, 2023.

Quatsino First Nation:



Chief Tom Nelson



Councillor James Wallas



Councillor Marilyn Morash

Councillor Sonja Conroy



Councillor Patricia Hall



Councillor Moses Nelson

being the majority of those members of the Quatsino First Nation Council present at the aforesaid meeting of the Council.

The quorum of the Quatsino First Nation Council is four (4) members.

Number of members of the Quatsino First Nation Council present at the meeting is six (6).