

**TLOWITSIS TRIBE
BYLAW NUMBER 2004-002**

A Bylaw for the Removal and Punishment of Persons Trespassing
or Frequenting within the boundaries of the Indian Reserves
of the Tlowitsis Tribe for Prohibited Purposes

PREAMBLE

WHEREAS it is deemed to be in the best interests, health, safety and welfare of the Tlowitsis Tribe:

- A. to preserve the amenities on its Indian Reserve lands,
- B. to prevent trespasses on or within its Indian Reserve lands and any and all matters ancillary thereto as set out in this Bylaw, and
- C. to impose a penalty for any breach, infraction or violation of matters for prohibited purposes in this Bylaw.

AND WHEREAS it is deemed to be in the best interests, health, safety and welfare of the Tlowitsis Tribe to establish a bylaw to provide for the removal and punishment of persons trespassing on the reserves or frequenting the reserves of the Tlowitsis Tribe;

AND WHEREAS the *Indian Act*, R.S.C. Chapter I-5, sections 81 (1)(b), (c), (e), (m), (n), (o), (p), (q) and (r) provide that the Council of an Indian Band is empowered to make such by-laws, and any matter ancillary thereto.

NOW THEREFORE the Council of the Tlowitsis Tribe at a duly convened meeting enacts as a bylaw the following:

1.0 SHORT TITLE

- 1.1 This Bylaw may be cited for all purposes as the "Tlowitsis Tribe Trespassers Bylaw No. 2004-002".

2.0 INTERPRETATION

- 2.1 All definitions in this Bylaw shall bear the meaning as those set out in the *Indian Act*, R.S.C. 1985, Chapter I-5 unless otherwise provided herein.

3.0 DEFINITION

3.1 The following terms, whenever used in this Bylaw or in any resolution of the Council dealing with this Bylaw, shall have the meanings respectively ascribed to them in this section unless the context otherwise requires:

- "Authorized Persons" means and includes:
- (i) a Band Bylaw Enforcement Officer,
 - (ii) any person expressly appointed by the Council to exercise authority in relation to this Bylaw (such as the Band Manager or Band Administrator, or the Zoning Administrator as defined in Zoning Bylaw #2004-003), or
 - (iii) a Peace Officer as defined herein.
- "Band" means the Tlowitsis Tribe, being a band as defined by section 2(1) of the *Indian Act*.
- "Band Bylaw Enforcement Officer" means that person appointed by the Council:
- (i) to administer and enforce the civil provisions of the Bylaws of the Band as enacted by Council from time to time, and
 - (ii) to advise and report to Council on matters relating to the administration and enforcement of the civil provisions of the Bylaws.
- "Band List" means a list of members of the Tlowitsis Tribe, a "band", pursuant to section 9(1) of the *Indian Act*.
- "Band Member" means a person whose name appears on the list of members of the Tlowitsis Tribe, a "band", or a person who is entitled to have her/his name appear on that list pursuant to section 2(1) of the *Indian Act*.
- "Boulevard" means that part of a highway on or within Tlowitsis Reserve Lands that is:
- (i) not a roadway,
 - (ii) part of the sidewalk not especially adapted to the use of or ordinarily used by pedestrians, or
 - (iii) that portion of the right-of-way between the property or Lot line and the curb lines or lateral lines of a roadway.
- "Breakwater" means any floating or fixed structure used or intended to be used to reduce or dampen waves or swells created by wind, tides, marine traffic or other causes.
- "Building" means any structure used or designed to be used for shelter, accommodation or enclosure of persons, animals, or chattels.
- "Building Accessory" means
- (i) a building, the use or intended use of which is ancillary to that of the principal building on the same lot, or
 - (ii) a building which is ancillary to the principal use being

made of the lot upon which such building is located.

"Civil Breaches"

means any act or omission contrary to, infraction or violation of, the civil provisions of this Bylaw in connection with:

- (i) the protection of health of residents or occupiers on the reserve and the prevention of the spreading of contagious and infectious disease pursuant to section 81(a) of the *Indian Act*;
- (ii) the dividing of the reserve or portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any zone pursuant to section 81(g) of the *Indian Act*;
- (iii) the regulation of the construction, repair and use of buildings whether owned by the band or by individual members of the band pursuant to section 81(h) of the *Indian Act*;
- (iv) the establishment of pounds, the appointment of pound keepers, the regulation of their duties and the provision for fees and charges for their services pursuant to section 81(e) of the *Indian Act*;
- (v) the construction and maintenance of watercourses, roads, bridges, ditches, fences and other local works pursuant to section 81(f) of the *Indian Act*;
- (vi) the destruction and control of noxious weeds pursuant to section 81(j) of the *Indian Act*;
- (vii) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies pursuant to section 81(l) of the *Indian Act*;
- (viii) the regulation of public games, sports, races, athletic contests and other amusements pursuant to section 81(m) of the *Indian Act*; or
- (ix) any matter arising out of or ancillary to the exercise of powers under sections 81 (a), (e), (f), (g), (h), (j), (l) and (m) of the *Indian Act*.

"Civil Provisions"

means and includes civil matters arising in relation to sections 81 (a), (e), (f), (g), (h), (j), (l), (m) and (r) of the *Indian Act*.

"Commercial Purposes"

means any activity or conduct connected with commerce or trade, made, done or operating primarily for profit.

"Council"

means the Council of the Band, being chosen according to the custom as defined by section 2(1) of the *Indian Act*.

"Highway"

means any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, tunnel, causeway, trestleway or other place, whether publicly or privately owned, used for the passage or parking of vehicles, and includes any sidewalk, boulevard or ditch adjacent or parallel thereto on or within Tlowitsis Reserve Lands.

- "Housing" means:
- (i) Band owned housing, including rental housing units and social housing units, on or within Tlowitsis Reserve Lands; and/or
 - (ii) Band member housing, including member owned housing or housing subject to a CMHC mortgage for which the Band is a guarantor on or within Tlowitsis Reserve Lands.
- "Indian Act" means the *Indian Act*, R.S.C. 1985, Chapter I-5, consolidations and amendments thereto.
- "Lot" means an area of land designated as a separate and distinct parcel on a legally recorded plan or description filed in the Ottawa Indian Lands Registry.
- "Lot Area" means the total horizontal area within the lot line of a lot or site and includes both land and water surfaces but excludes any dedicated rights-of-way. For the purposes of calculating maximum unit density, the lot area shall be determined by the zoning boundaries.
- "Lot Line" means the boundaries of a lot or parcel of land as prescribed by resolution of the Council or as defined in the Tlowitsis Tribe Zoning Bylaw No. 2004-3.
- "Minister" means the Minister of Indian Affairs and Northern Development, Government of Canada.
- "Minor" means a person under the age of majority (19) in the Province of British Columbia.
- "Natural Boundary" means the visible high-water mark of any lake, river, stream or other body of water where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark upon the soil of the bed of the lake, river, stream, or other body of water, a character distinct from that of the banks thereof, in respect to vegetation, as well as in respect to the nature of the soil itself.
- "Non-Member" means a person who is not a Band Member.
- "Occupancy" means the use or intended use or part thereof for the shelter or support persons, animals or property.
- "Occupier" means a person occupying premises owned either by the Band or a Band Member whether by lease, permit or other lawful disposition by resolution of the Council in accordance with the *Indian Act* or Bylaws of the Band.
- "Officer" means any police officer, police constable or other person charged with the duty to preserve and maintain the public

peace, and/or "Authorized Person" as defined herein.

"Owner"

means:

- (i) the Band for whom the Tlowitsis Reserve Lands are set apart for the use and benefit in common of its membership,
- (ii) the Band as the owner of private housing, commercial premises or commercial enterprises on or within Tlowitsis Reserve Lands, or
- (iii) a Band Member who holds a Certificate of Possession as defined by section 20(2) of the *Indian Act*, R.S.C. 1985, Chapter I-5, to a certain Lot or Parcel on or within Tlowitsis Reserve Lands.

"Parcel"

see "Lot".

"Peace Officer"

means and includes:

- (i) a band constable who is a peace officer pursuant to an agreement with a provincial or federal policing authority as the case may be;
- (ii) a police officer employed or authorized by a local or municipal policing authority in accordance with the *Police Act*, R.S.B.C. 1996, chapter 367 acting pursuant to an agreement with or the express written authority of the Council;
- (iii) an officer employed or authorized by the Royal Canadian Mounted Police (RCMP);
- (iv) a peace officer as defined by the Criminal Code of Canada, R.S.C. 1985, chapter C-34; or
- (v) any other person charged with the duty to preserve and maintain the public peace in accordance with the laws of Canada and the Province of British Columbia.

"Person"

means any corporation, partnership or party, and the heirs, executors, administrators or other legal representatives of such person to whom the context can apply according to the law and includes:

- (i) the owner, the owner's agent or the purchaser of a Band member's interest in an Agreement for Sale of any real or personal property, buildings or building accessories, or
- (ii) the occupier of property or premises on or within Tlowitsis Reserve Lands.

"Premises"

means a site on or within Tlowitsis Reserve Lands which is separate and distinct from all others as identified by its unique use and/or occupancy, and may include:

- (i) a lot or parcel of land with or without buildings or structures,
- (ii) a building or structure located on a Lot or parcel of land, or
- (iii) 2 or more buildings or structures located on the same Lot or parcel of land.

- "Property" means real property, being a lot or parcel of land, including any and all Buildings, Building Accessory or Premises situate on or within Tlowitsis Reserve Lands.
- "Quasi-criminal Breaches" means any act or omission contrary to, infraction or violation of, the quasi-criminal provisions of this Bylaw which are of a quasi-criminal nature in connection with:
- (i) the observance and regulation of traffic pursuant to section 81(b) of the *Indian Act*;
 - (ii) the observance and regulation of law and order pursuant to section 81(c) of the *Indian Act*;
 - (iii) the prevention of disorderly conduct and nuisances pursuant to section 81(d) of the *Indian Act*;
 - (iv) the prevention of trespass by cattle or other domestic animals pursuant to section 81(e) of the *Indian Act*;
 - (v) the prohibition of public games, sports, races, athletic contests and other amusements pursuant to section 81(m) of the *Indian Act*;
 - (vi) the observance and regulation of conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise pursuant to section 81(n) of the *Indian Act*;
 - (vii) the preservation, protection and management of fur-bearing animals, fish and other game on reserve pursuant to section 81(o) of the *Indian Act*;
 - (viii) the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes pursuant to section 81(p) of the *Indian Act*; and
 - (x) any matter arising out of or ancillary to the exercise of powers under sections 81(b),(c),(d), (m), (n), (o) and (p) of the *Indian Act*.
- "Quasi-criminal Provisions" means and includes quasi-criminal matters arising in relation to sections 81(b), (c), (d), (m), (n), (o), (p) and (r) of the *Indian Act*.
- "Reserve" means a "reserve" as defined by section 2(1) of the *Indian Act*.
- "Resident" means a person living or residing in premises owned by the Band or a Band Member in accordance with the Bylaws of the Band and/or the provisions of the *Indian Act*.
- "Structure" means anything constructed or erected, the use of which requires location on or in the ground or attached to something having location on or in the ground, or in the case of floating structures, requires anchoring to the ocean floor or attachment to a structure so anchored, and shall include all types of boat, ships and similarly named vessels.
- "Tlowitsis Reserve Lands" means those "reserves" set apart for the exclusive use and benefit of the Band, as listed in Schedule "A" which is attached hereto.

- “Trespass” means the entry onto or the presence on Tlowitsis Reserve Lands by a person:
- (i) who is not a Band Member or Occupier;
 - (ii) whose entrance or presence on Tlowitsis Reserve Land is without invitation or consent of the Council, Band member or Occupier as the case may be; or
 - (iii) whose entrance or presence on Tlowitsis Reserve Land is without lawful justification.
- “Use” means the purpose of which any lot, site, building, or structure is designed, arranged or intended.
- “Vessel” means all types of boat, ships, and similarly named objects and structures used or intended for the shelter of vessels, but specifically excludes houseboats, barges, aircraft and aircraft shelters.
- “Village” means Kalugwis, the traditional village of the Tlowitsis Tribe on Turnour Island in British Columbia.
- “Wharf” means any floating or fixed structure used or intended to be used for the moorage of vessels and float planes.

4.0 BASIC PROVISIONS

4.1 *Application of the Bylaw*

The provisions of this Bylaw shall apply to all premises, and the whole of the area or property within, on or under the lands, waters and boundaries of Tlowitsis Tribe Reserve lands as described in Schedule “A” hereto.

4.2 The Council may, by resolution, appoint or designate:

4.2.1 A person as the Band Bylaw Enforcement Officer or other Authorized Person (such as the Band Manager, Band Administrator or Zoning Administrator) as defined herein to administer and enforce the civil provisions of this Bylaw; and/or

4.2.2 A band constable, who is a Peace Officer as defined herein, to administer and enforce the provisions of this Bylaw as defined herein.

5.0 PROHIBITED PURPOSES

5.1 A person shall not enter or be present on a reserve unless that person:

5.1.1 Is a Band Member or is otherwise authorized by Council to reside on or occupy reserve land;

5.1.2 Is invited, given permission or is otherwise authorized by a Band Member or Council to conduct or engage in business or other lawful activities on reserve; or

- 5.1.3 Otherwise has lawful justification under the laws of Canada and the Province of British Columbia as applicable hereto.
- 5.2 Subject to the laws of Canada and the Province of British Columbia as applicable hereto, a person who enters or is present on a reserve absent evidence of the invitation, permission, authorization or lawful justification described in section 5.1 shall be deemed to be in trespass.
- 5.3 Subject to the laws of Canada and the Province of British Columbia as applicable hereto, a person who conducts any of the following activities on reserve absent evidence of the invitation, permission, authorization or lawful justification described in section 5.1 shall be deemed to be frequenting the reserve for a prohibited purpose:
- 5.3.1 Hunting, fishing or trapping;
 - 5.3.2 Hawking or peddling of wares or merchandise; or
 - 5.3.3 Soliciting for financial assistance.
- 5.4 Subject to the laws of Canada and the Province of British Columbia as applicable hereto, a person who conducts any of the following activities on reserve shall be deemed to be frequenting the reserve for a prohibited purpose:
- 5.4.1 Loitering or lingering idly without purpose in a public place and in any way obstructing or otherwise disturbing other persons who are in that place;
 - 5.4.2 Generally conducting herself / himself in such a manner whereby the residents or occupiers of the reserve are concerned for their safety or the safety of their children; or
 - 5.4.3 Using a firearm, crossbow, restricted weapon, or prohibited weapon as defined by the *Criminal Code* of Canada.

6.0 ENFORCEMENT, FAILURE TO COMPLY

- 6.1 Subject to the laws of Canada and the Province of British Columbia as applicable hereto, a Peace Officer is authorized to order any person who trespasses on the reserve or who frequents the reserve for a prohibited purpose to leave the subject reserve immediately (the "Affected Person").
- 6.2 Subject to the laws of Canada and the Province of British Columbia as applicable hereto, the Peace Officer may take such reasonable measures as may be necessary to remove the Affected Person from the subject reserve where that person who has been ordered by a Peace Officer to leave the reserve fails or refuses to do so as set out in section 6.1.
- 6.3 Subject to the laws of Canada and the Province of British Columbia as applicable hereto, no person shall interfere with or obstruct a Peace Officer making an order under section 6.1 or resist or fail to comply with Peace Officer acting pursuant to section 6.2.

7.0 PENALTIES

7.1 Absent evidence to the contrary and subject to the laws of Canada and British Columbia:

7.1.1 A person who acts in contravention of any provision of this Bylaw, or interferes with or obstructs a Peace Officer or an Authorized Person in the administration and enforcement of this Bylaw, commits an offence.

7.1.2 A person who commits an offence as provided herein is liable on summary conviction to a fine not exceeding \$1,000.00 or to imprisonment not exceeding thirty (30) days, or to both pursuant to section 81(r) of the *Indian Act*.

7.1.3 Where an act or omission in contravention of this Bylaw continues for more than one (1) day, such act or omission shall be deemed to be a separate offence committed on each day during which it continues, and may be punished as such.

8.0 AMENDMENT / REPEAL

8.1 An application to amend or repeal this Bylaw shall be made in writing and in the same manner as the enactment of this Bylaw, including all special actions, approvals or prerequisites necessary for the original Bylaw.

9.0 MISCELLANEOUS

9.1 If any section, subsection, sentence, clause or phrase of this Bylaw is, for any reason, held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Bylaw.

9.2 Wherever the singular is used in this Bylaw, the same shall be construed as meaning the plural or vice versa where the context so requires.

9.3 The headings of the sections and subsections of this Bylaw are inserted for convenience of reference only and shall not affect the construction or interpretation of this Bylaw in any way.

9.4 The Schedule attached to this Bylaw shall be construed as forming a fundamental part of this Bylaw.

9.5 This Bylaw shall be construed in accordance with the laws of Canada and British Columbia where the context so requires.

9.6 No section, subsection, sentence, clause or phrase of this Bylaw shall be construed as restricting or limiting the application of the *Criminal Code of Canada*.


10.0 DATE OF FORCE OF BYLAW

10.1 This Bylaw shall come into force and effect 40 days after the original of such Bylaw is forwarded to the Minister of Indian and Northern Affairs Canada unless it is disallowed by the Minister within the said 40-day period, but the Minister may declare the Bylaw in force at any time before the expiration of the 40-day period pursuant to section 82(2) of the *Indian Act*.

TLOWITSIS TRIBE TRESPASSERS BYLAW NUMBER 2004-002

Be it known that this Bylaw entitled, "Tlowitsis Tribe Trespassers Bylaw No. 2004-002" is hereby enacted by the Tlowitsis Tribe Council at a duly convened meeting of the said Band Council held on the 17th day of January, 2005.

The Bylaw is consented to by the following members of the Band Council:



JOHN M. SMITH, CHIEF



THOMAS SMITH, COUNCILLOR



GEORGE TAYLOR, COUNCILLOR

being the majority of those members of the Tlowitsis Tribe Band Council present at the aforesaid meeting of the Band Council. A quorum of the Tlowitsis Tribe Council is set at two (2) members.

I, John M. Smith, Chief of the Tlowitsis Tribe, do hereby certify that an original of the foregoing Bylaw was forwarded to the Minister of Indian and Northern Affairs pursuant to subsection 82(1) of the *Indian Act*, this 17th day of January, 2005.



JOHN M. SMITH, CHIEF



KERRI FARRINGTON, WITNESS

SCHEDULE "A"

TLOWITSIS TRIBE RESERVE LANDS

No.	Name	Location	Hectares
7103	KARLUKWEES NO. 1	COAST DISTRICT, RANGE 1, ON SOUTH SHORE OF TURNOUR ISLAND ON BEWARE PASSAGE RESERVE ALSO INCLUDES 3 SMALL ISLANDS	10.8
07104	AGLAKUMNA-LA NO. 2	COAST DISTRICT, RANGE 1, ON AGLAKUMNALA ISLAND, BEWARE PASSAGE, AT EAST END OF HARBLEDOWN ISLAND	0.3
07105	COFFIN ISLAND NO. 3	COAST DISTRICT RANGE 1, LOT 1510, ON COFFIN ISLAND, AT EAST END OF BEWARE PASSAGE, EAST END OF HARBLEDOWN ISLAND	6.1
07106	SMALL ISLAND NO. 4	COAST DISTRICT, RANGE 1, LOT 1523, ON SMALL ISLAND IN BEWARE PASSAGE, BETWEEN CRACROFT AND TURNOVER ISLANDS	0.2
07107	AGLAKUMNA NO. 4A	COAST DISTRICT, RANGE 1, ON SOUTH SHORE OF HARBLEDOWN ISLAND, NEAR WEST ENTRANCE TO BARONET PASSAGE	4.1
07108	ETSEKIN NO. 1	COAST DISTRICT RANGE.1, ON EAST SHORE OF HAVANNAH CHANNEL, EAST OF THE NORTH END OF HULL ISLAND INCLUDES 3 SMALL ADJACENT ISLANDS	13.2
07109	KEECEKILTUM NO. 2	COAST DISTRICT, RANGE 1, ON EAST SHORE OF PORT HARVEY CRACROFT ISLAND	11.7
07110	HAYLAHTE NO. 3	VANCOUVER ISLAND, RUPERT DISTRICT, AT MOUTH OF ADAM RIVER, ON JOHNSTONE STRAIT	19
07111	PORT NEVILLE NO. 4	COAST DISTRICT, RANGE 1, AT HEAD OF PORT NEVILLE, ON NORTH SHORE	14.9
07112	PAWALA NO. 5	COAST DISTRICT, RANGE 1, LOT 1526, AT THE HEAD OF CALL INLET	1.0
07113	HANATSA NO. 6	COAST DISTRICT, RANGE 1, LOT 1525, ON SOUTH SHORE OF PORT NEVILLE	95.1