

HOMALCO INDIAN BAND
BYLAW NUMBER 1995-001

A Bylaw for the Prevention of Disorderly Conduct and Nuisances
within the boundaries of the Indian Reserves of the Homalco Indian Band

PREAMBLE

WHEREAS it is deemed to be in the best interests, health, safety and welfare of the Homalco Indian Band (the "Band"):

- A. to preserve the amenities on its Indian Reserve lands,
- B. to prevent disorderly conduct and nuisances 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 referred to in this Bylaw.

AND WHEREAS the Indian Act, R.S.C. 1985, Chapter I-5, sections 81(1)(a), (c)-(e), (f)-(h), (j), (l), (m)-(n) and (p)-(r) provide that the Council of an Indian Band may make such bylaws.

NOW THEREFORE the Council of the Homalco Indian Band 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 "Homalco Indian Band Nuisance Bylaw No. 1995-001."

2.0 INTERPRETATION

2.1 All definitions in this Bylaw shall bear the same 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 of the Homalco Indian Band (the "Band Council") dealing with this Bylaw, shall have the meanings respectively ascribed to them in this section unless the context otherwise requires:

- "Authorized Person" means:
- (i) a Band Bylaw Enforcement Officer,
 - (ii) any person expressly appointed by the Band Council to exercise authority in relation to this Bylaw, or
 - (iii) any other Peace Officer acting with the express written authority of the Band Council on matters which are the subject of this Bylaw
- within Homalco Indian Reserve lands.
- "Band" means the Homalco Indian Band as defined by section 2(1) of the Indian Act, R.S.C. 1985, Chapter I-5.
- "Band Bylaw Enforcement Officer" means that person appointed by the Band Council to ensure the bylaws of the Band are being obeyed and complied with, to advise the Band Council of any and all breaches, infractions or violations of such Bylaws and to take instructions from the Band Council as to the procedures for enforcement of such Bylaws.
- "Band Council" means the duly elected Council of the Homalco Indian Band as defined by section 2(1) of the Indian Act, R.S.C. 1985, Chapter I-5.
- "Band Member" means a person whose name is on the Band List of the Homalco Indian Band or a person who is entitled to have her/his name entered on the Band List pursuant to the provisions of the Indian Act, R.S.C. 1985, Chapter I-5, or a duly enacted Membership Code of the Homalco Indian Band.
- "Boulevard" for purposes of this Bylaw only, means that part of a highway that is:
- (i) not 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
- within Homalco Indian Reserve lands.

- "Breaches" means any breach, infraction or violation of the provisions of this Bylaw.
- "Building" means any structure used or intended for use or occupancy within Homalco Indian Reserve lands.
- "Building Accessory" means:
- (i) a building or structure, the use or intended use of which is ancillary to that of the principal building on the same Lot or parcel of land, or
 - (ii) a building or structure which is ancillary to the principal use being made of the Lot or parcel upon which such building or structure is located
- within Homalco Indian Reserve lands.
- "Disorderly Conduct" for purposes of this Bylaw only, means wilful or reckless conduct which disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of others, including but not restricted to:
- (i) intoxication, including abuse of alcohol or other substance,
 - (ii) exposure or indecent exhibition in a public place,
 - (iii) fighting, screaming, shouting, or using profane, obscene or insulting language,
 - (iv) obstructing, impeding, annoying, interfering with or meddling with other persons so as to trouble or harm any person,
 - (v) obstructing, interrupting or otherwise interfering with the lawful use, enjoyment or operation of real or personal property,
 - (vi) destroying, defacing or damaging real or personal property, including rendering such property dangerous, useless, inoperative or ineffective,
 - (vii) 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, or
 - (viii) discharging of firearms
- within Homalco Indian Reserve lands.
- "Highway" for purposes of this Bylaw only, 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 within Homalco Indian Reserve lands.

- "Indian Act" means the Indian Act, R.S.C. 1985, Chapter I-5, consolidations and amendments thereto.
- "Lot Line" means the boundaries of a Lot or parcel of land as prescribed by the Band Council or pursuant to a duly enacted Bylaw of the Homalco Indian Band which designates Lot lines and boundaries within Homalco Indian Reserve lands.
- "Minor" means a person under the age of majority in the Province of British Columbia and, more particularly, a person under the age of 19.
- "Non-Member" means a person who is neither a Band member nor entitled to become a Band member.
- "Noxious Matter or Substance" means that matter or substance which is physically harmful, toxic or destructive to living beings or is otherwise generally distasteful, offensive or unwholesome.
- "Noxious Weeds" means those weeds listed in:
- (i) the regulations to the Weed Control Act, R.S.B.C. 1979, Chapter 432, without extending the general application of such legislation to Homalco Indian Reserve lands, or
 - (ii) a duly enacted Bylaw of the Homalco Indian Band which pertains to this subject matter.
- "Occupier" means a person occupying premises owned either by the Band or a Band member whether by lease, permit or other such disposition within Homalco Indian Reserve lands.
- "Owner" means:
- (i) the Band which holds Homalco Indian Reserve lands in common for its membership, or
 - (ii) 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 of land within Homalco Indian Reserve lands.
- "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

within Homalco Indian Reserve lands.

"Premises" means a site 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,
- (iii) 2 or more buildings or structures located on the same Lot or parcel of land, or
- (iv) an individual business or residence located within a building where other businesses or residences are also located

within Homalco Indian Reserve lands.

"Property" means real property, being a Lot or parcel of land including any and all buildings or premises situate thereon within Homalco Indian Reserve lands.

"Reserve" means an Indian Reserve within the meaning of section 2(1) of the Indian Act, R.S.C. 1985, Chapter I-5, and, in particular, all Homalco Indian Reserve lands.

"Roadworthy" means a motor vehicle that it is capable of normal physical operation.

"Rubbish" means all discarded, broken or useless items and includes, without restricting the generality of the foregoing, old paper, wood products no longer in use, motor vehicles that are no longer roadworthy or parts thereof.

"Sidewalk" means the area improved for use of pedestrians between the curb lines or lateral lines of a highway and the adjacent property or Lot lines.

"Unightly" means any matter or substance which is untidy, repulsive to the sight or ugly and, without restricting the generality of the foregoing, includes:

- (i) the storage of building materials on a site where construction is not taking place,

- (ii) the storage or accumulation of motor vehicles that are not roadworthy or of parts thereof,
- (iii) the storage, cleaning, repairing or servicing of vehicles or equipment except where the same is carried out entirely within a building,
- (iv) the storage of refuse, rubbish, trash or garbage, including but not restricted to discarded, ruined or worthless material or substance which collects or accumulates within a building, in close proximity to or on the property on which the building is situate

within Homalco Indian Reserve lands.

"Waste" means that matter or substance which is in a ruined or devastated condition, discarded as worthless, defective or of no use, refuse material, trash, garbage or byproducts thereof within Homalco Indian Reserve lands.

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 Homalco Indian Reserve lands as described in Schedule "A" hereto.

4.2 *Inspection / Right of Entry*

The Band Bylaw Enforcement Officer or any other person appointed by the Band Council for purposes of inspection is hereby authorized to enter upon any premises at all reasonable times to ascertain whether the requirements of this Bylaw are being obeyed or complied with.

5.0 RUBBISH AND LITTER CONTROL

5.1 No person, owner or occupier of premises shall cause or permit stagnant water or noxious, offensive, unwholesome, unsightly or waste matter or substance to collect anywhere upon such premises.

5.2 No person, owner or occupier of premises shall deposit bottles, broken glass, paper, cardboard, empty cartons or other rubbish, trash or garbage in any open place upon such premises.

6.0 UNTIDY PREMISES

6.1 No person, owner or occupier of premises shall allow such premises to become or to remain untidy or unsightly by the collection or accumulation thereon of any filth, noxious or unsightly matter or substance, rubbish or waste of any kind.

6.2 It shall be a good and sufficient defence to any prosecution commenced for breaches of section 6.1 for an owner or occupier of any commercial establishment to establish that the storage of materials or the collection, accumulation and storage of unroadworthy motor vehicles or parts thereof is an essential part of a legally licensed business.

7.0 OFFENSIVE GROWTH

7.1 Upon receipt of notice given pursuant to section 20.0 every owner or occupier of property shall immediately clear such property of trees, brush, noxious weeds or other offensive growths or obtain written consent to clear such growths by a set date from the Band Bylaw Enforcement Officer or other person expressly authorized by the Band Council.

8.0 SIDEWALK CLEANLINESS

8.1 Every owner or occupier of property shall remove snow and ice from any sidewalk bordering such property on the day following a snowfall or obtain written consent to clear such sidewalk by a set date from the Band Bylaw Enforcement Officer or other person expressly authorized by the Band Council.

9.0 ROOF SNOW REMOVAL

9.1 Every owner or occupier of premises shall immediately remove snow, ice or other debris from any roof or other part of any structure thereon if the snow constitutes a hazard to persons or premises or obtain written consent to remove such hazards by a set date from the Band Bylaw Enforcement Officer or other person expressly authorized by the Band Council.

10.0 PRIVATE HIGHWAYS

10.1 Every owner or occupier of property upon which a private highway is located shall maintain such highway in a clean, fit and safe state and affix suitable signs indicating that such highway is private.

11.0 FENCES

11.1 No owner or occupier of property shall allow any fence located on such property to fall into a state of disrepair.

11.2 Every owner or occupier of property upon which any fence has fallen into a state of disrepair shall immediately repair same or obtain written consent to complete such repairs by a set date from the Band Bylaw Enforcement Officer or other person expressly authorized by the Band Council.

11.3 Every owner or occupier of property where the keeping of livestock is permitted shall immediately erect fences along the boundaries of such property to prevent livestock from straying or obtain written consent to erect such fences by a set date from the Band Bylaw Enforcement Officer or other person expressly authorized by the Band Council.

12.0 BOULEVARDS

12.1 No person shall wilfully damage any part of any boulevard, including but not restricted to:

- (i) trees, shrubs, lawn, plants, bushes or hedges adjacent to any highway,
- (ii) anything erected or maintained adjacent to a highway for the purpose of lighting the highway,
- (iii) any fence erected or maintained adjacent to any highway.

13.0 VISION CLEARANCE

13.1 No tree, shrub, plant or structure which obstructs vision is permitted within a 12-foot radius of the intersection of any highways within Homalco Indian Reserve lands.

14.0 STREET SIGNS

14.1 No person shall remove, deface or damage any street sign, public information sign or other marker which has been authorized by the Band Council to be so displayed.

15.0 BUILDING NUMBERING

15.1 Every owner or occupier of any building shall display the number assigned by the Band Council to such building in a conspicuous place on the property upon which the building is located, so that the same is readable from the highway.

16.0 NOISE

16.1 Between 11:00 in the evening and 7:00 the following morning, no person shall make, cause or permit any noise or sounds which disturb or tend to disturb the quiet, peace, rest, enjoyment, comfort or convenience of others in the vicinity, with the following exceptions:

- (i) repairs or maintenance being carried out by employees or contractors of the Band Council, the District of Campbell River, the Ministry of Highways or other public utility which is duly authorized by the Band Council to complete such repairs or maintenance,
- (ii) any duly authorized person operating an emergency vehicle,
- (iii) any person functioning within the limits set out in a permit issued by the Band Council, said permit to be in a form approved by the Band Council from time to time,
- (iv) snow clearing, provided that it is done as soon as is practicable.

16.2 It shall be a good and sufficient defence to any prosecution commenced for breaches of section 16.1 for an owner or occupier of any commercial establishment, including shopping malls, with areas provided for the parking of the general public with a total capacity in excess of fifty parking spaces to establish that:

- (i) the noise or sounds were made in the course of snow clearing or dust cleaning operations in the parking areas,
- (ii) the snow clearing or dust cleaning operations were commenced as soon as practicable after the close of business for the day,

- (iii) the snow clearing or dust cleaning operations were conducted in such manner as to minimize the disturbance of the quiet, peace, rest, enjoyment, comfort or convenience of others in the vicinity.

17.0 DISORDERLY CONDUCT

17.1 No person shall engage in or permit any disorderly conduct as defined herein.

18.0 ANIMALS

18.1 No person shall keep or harbour any animal or bird which disturbs or tends to disturb the peace, quiet, rest, enjoyment, comfort or convenience of others in the vicinity by its repeated making of noise, dirt, damage or other disturbance.

19.0 DEMOLITION SITES

19.1 Where the demolition of any building or structure has taken place:

- (i) all debris and materials, whether to be discarded or retained, shall immediately be removed, and
- (ii) any basement or other excavation shall immediately be filled in or covered over to Lot grade level

unless the Band Bylaw Enforcement Officer or other person expressly authorized by the Band Council has provided written consent to perform such work by a set date.

20.0 NOTICE

20.1 All notices referred to in or required to be given pursuant to this Bylaw shall be made in writing and shall be served either personally or sent by double registered mail, as follows:

TO: HOMALCO INDIAN BAND
ATTENTION: CHIEF AND COUNCIL
1218 Bute Crescent
Campbell River, British Columbia
V9H 1G5

AND TO: (THE OFFENDER)

20.2 Notice shall be deemed to have been given on the date of delivery if personally served or on the third day after mailing if sent by double registered mail.

21.0 ENFORCEMENT, FAILURE TO COMPLY AND PENALTIES

21.1 The Band Bylaw Enforcement Officer or other person expressly authorized by the Band Council shall investigate and monitor all breaches of this Bylaw, including any complaints arising in relation to the Bylaw, and shall enforce all provisions of the Bylaw.

21.2 Pursuant to section 20.0, any person who has committed a breach of this Bylaw (the "Offender") shall be notified in writing of such breach by the Band Bylaw Enforcement Officer or other person expressly authorized by the Band Council.

21.3 If after 15 days following the giving of any notice under section 20.2, the work required to be performed under such notice remains incomplete and the Band Bylaw Enforcement Officer or other person expressly authorized by the Band Council has not provided written consent to complete the work by a set date:

- (i) the Offender shall be deemed guilty of an offence and is liable upon summary conviction to a fine not exceeding \$1,000.00 or to imprisonment for a term not exceeding 30 days, or both, or
- (ii) the Offender and the Band Council may consent in writing to alternative dispute resolution or mediation and any decision arising therefrom shall be binding upon all parties, or
- (iii) the Band Council may enter upon the subject premises by any means it deems fit and complete the required work at the expense of the Offender.

21.4 The Offender shall pay to the Band Council any costs incurred in any exercise of the Band Council's powers pursuant to section 21.3(iii) by December 31 in the year in which such costs were incurred.

21.5 Any costs which remain unpaid pursuant to section 21.4 shall be added to and form a part of the fees, costs, expenses or taxes payable in respect of such premises:

- (i) if the Offender is a non-member, as arrears on taxes or any other payments due in relation to the Offender's use, occupancy and possession of premises, or
- (ii) if the Offender is a Band member, as a charge against any monies which the Offender may be entitled to receive out of revenues generated by or for the general benefit of the Homalco Indian Band.

21.6 For purposes of proceedings under this Bylaw, the owner or occupier of a premises shall be deemed to be the person responsible for any breach of this Bylaw on such premises in the absence of any evidence to the contrary.

21.7 Joint owners or occupiers of any premises shall be deemed to be jointly and severally liable for any breach of this Bylaw.

21.8 The parent or legal guardian of any minor who breaches this Bylaw shall be deemed liable for such breach.

22.0 IMPOUNDMENT OF DEVICES

22.1 If the Band Bylaw Enforcement Officer or other person expressly authorized by the Band Council has reasonable grounds to believe and does believe that a device or thing is being used in breach of this Bylaw, that person may seize such thing or device for purposes of evidence in a court proceeding.

22.2 Unless a prosecution is commenced against the owner or operator of the device or thing seized pursuant to section 22.1 within 7 days of such seizure, the device or thing shall be returned to its owner or operator immediately upon request. If a prosecution is commenced within 7 days of such seizure, the device or thing shall be held until the proceedings are stayed or concluded in favour of the owner or operator and the device or thing shall thereupon be returned to its owner immediately upon request.

23.0 AMENDMENT / REPEAL

23.1 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.

24.0 MISCELLANEOUS

24.1 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.

24.2 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.

24.3 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.

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

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

24.6 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*.

25.0 DATE OF FORCE OF BYLAW

25.1 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.

Be it known that this Bylaw entitled, "Homalco Indian Band Nuisance Bylaw No. 1995-001" is hereby enacted by the Homalco Indian Band Council at a duly convened meeting of the said Band Council held on the 21st day of August, 1995. The Bylaw is consented to by the following members of the Band Council:

CHIEF

M. Coupal
COUNCILLOR

Susan Blaney
COUNCILLOR

COUNCILLOR

[Signature]
COUNCILLOR

being the majority of those members of the Homalco Indian Band Council present at the aforesaid meeting of the Band Council. A quorum of the Homalco Indian Band Council is set at 3 members.

I, MAYIS COUPAL Chief/Councillor of the Homalco Indian Band, 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 21st day of August, 1995.

M. Coupal
CHIEF / COUNCILLOR

[Signature]
WITNESS
S. L. KREDETSER

MODE:F ACTION:10
DIAND

ILRS - TABLE SUB-SYSTEM
BAND TABLE

VER 1.0 E ILK5040
Remaining:

Current/Previous Name Indicator
(C/P)

01 Band Code..... 552
02 Band Name..... HOMALCO
03
04
05 Region..... 09 BRITISH COLUMBIA
06 French Name.....

C

MODE:F ACTION:

RESERVE IN THIS BAND

VER 1.0 E ILK5041

01 Reserve.. 07912 MUSHKIN NO. 5A
02 07914 AUPE NO. 6A
03 07913 AUPE NO. 6
04 07911 MUSHKIN NO. 5
05 07909 POTATO POINT NO. 3
06 07907 HOMALCO NO. 2
07 09038 HOMALCO NO. 9
08 07916 BEAR BAY NO. 8

Homalco Indian Reserves

SCHEDULE "A"

HOMALCO INDIAN BAND
Nuisance Bylaw 1995-001

MODE:F ACTION:10
DIAND

ILRS - TABLE SUB-SYSTEM
BAND TABLE

VER 1.0 E ILK5040
Remaining:

01 Band Code..... 552
02 Band Name..... HOMALCO
03
04
05 Region..... 09 BRITISH COLUMBIA
06 French Name.....

Current/Previous Name Indicator
(C/P)
C

MODE:F ACTION:

RESERVE IN THIS BAND

VER 1.0 E ILK5041

01 Reserve.. 07910 ORFORD BAY NO. 4
02 07906 HOMALCO NO. 1
03 07915 BARTLETT ISLAND NO. 7
04 07908 HOMALCO NO. 2A
05
06
07
08

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LANDS & RESOURCE

002/003