

# Sqwá First Nation Land Code

## SUMMARY

(August 8, 2023)

### **Background to the Land Code Process**

In 1996, fourteen First Nations in Canada signed the *Framework Agreement of First Nation Land Management* (the “Agreement”) with the Minister of Indian Affairs and Northern Development. The Agreement enables First Nations to take over management of their reserve lands from the Department of Indian Affairs. The Agreement was enacted by the *First Nations Land Management Act* on June 17, 1999. It was amended into the *Framework Agreement on First Nation Land Management Act* on December 15, 2022.

Over 100 First Nations in Canada have opted in to the process and have developed their own Land Code. Almost all of the Sto:lo First Nations now have a Land Code. **The Land Code process was an option proposed and developed by First Nations. The whole idea of Land Code is to get out from under the *Indian Act* and the control of the federal Minister over land management on Reserve land and put control back into the hands of each First Nation whose members vote in favour.**

The original Framework Agreement has been amended to Squwá as a potential Land Code First Nation. Squwá Members now have an opportunity to vote to see if Members wish the Squwá Land Code to be approved and put in place.

The Land Code will be the Squwá First Nation’s fundamental land law, replacing the land management provisions of the *Indian Act* and it will set out the basic rules for land and resource administration, including the authority to pass other land laws in the future.

### **Preparing and Voting on the Land Code**

A community committee, with technical assistance from a lawyer and the national Lands Advisory Board Resource Centre, drafted the Sqwá First Nation Land Code. The Land Code was finalized with community and committee input and verified by an independent Verifier (the “Verifier”) as being consistent with the Agreement and the Act.

Sqwá Members will vote on the Land Code. If the vote passes, Sqwá will take over its own land management on Reserve land. If the vote does not pass, Sqwá will remain under the *Indian Act*.

### **The Parts of the Sqwá Land Code**

The Land Code contains a Preamble and 13 Parts, summarized below.

#### **Preamble**

The Preamble starts with some important statements in our language about history and sacred lands. It is followed by statements about recognizing our inherent rights and implementing the United Nations Declaration on the Rights of Indigenous Peoples.

#### **Part I: Fundamental Rights**

This Part sets the basic fundamental rights of Sqwá and confirms that the Land Code does not detract from any aboriginal rights or title and is intended to implement UNDRIP and confirm Canada’s fiduciary duties.

#### **Part II: Definitions and Interpretation**

This Part contains definitions for terms used in the Land Code and sets out the basic purpose and principles that underlie the Land Code.

- The Land Code will be consistent with the Framework Agreement, and will take priority over other Sqwá Laws if such Laws are inconsistent with the Land Code.
- The Land Code will be liberally interpreted and the language and culture of the Sqwá First Nation can be used to interpret the Land Code.

#### **Part III: Sqwá Lands**

This Part just sets out that Sqwá Reserve lands are subject to the Land Code.

#### **Part IV: Lands and Natural Resources Administration**

This Part sets out the basics for land and resource management.

- Sqwá is required to have a Lands Manager.
- Sqwá is required to have a Lands Advisory Committee with at least 5 members and no more than 9.
- The Lands Manager and the Lands Advisory Committee have important roles in communicating with Members and advising Council on lands issues.

### **Part V: First Nation Legislation**

This Part sets out the authority and procedures by which Sqwá may pass Laws relating to Sqwá Reserve Land. This includes the power to regulate development, conservation, protection, management, use and possession of Reserve Lands and resources. Examples of Laws that may be enacted include zoning, the creation, regulation and prohibition of interests and licences in Sqwá Land, environmental assessment and protection, enforcement and settlement of disputes with respect to Reserve Lands.

The Land Code sets out the law-making process. Council will set priorities and the Lands Manager and the Committee will work with the community to develop the laws. At least one community meeting is generally required except for emergency laws. Council may pass emergency laws if urgently necessary to protect lands or members but emergency laws only last for 180 days after which, they need to be passed as regular laws with full community input.

### **PART IV: LANDS MEETINGS AND VOTES**

A community Lands Meeting and a successful community ratification vote by a majority of the Members who vote is required to pass any of the following laws or decisions:

- approve the adoption of a land use plan;
- authorize Council to enact an expropriation Land Law;
- approve a voluntary exchange of Sqwá Lands;
- approve, in accordance with this *Land Code*, any substantive amendments to this *Land Code*;
- authorize Council to grant, transfer, assign, renew, or extend easements, rights of way, Permits or Licences in Sqwá Lands for any pipeline or similar utility that does not provide a direct benefit or service to members or the community for residential or administrative use;

**Commented [A1]:** Skwah Lands but should it not also be small lands

- (f) authorize Council to grant, transfer, assign, renew, or extend a License in respect of non-renewable Natural Resources on Sqwá Lands for a term exceeding five years;
- (g) authorize Council to grant, transfer, assign, renew, or extend a Licence in respect of water on Sqwá Lands, other than those which only provide services to Sqwá First Nation or Members;
- (h) in the case of Community Lands, authorize Council to grant, renew, or extend an Interest or Licence, if the total term, including any renewal or extension, exceeds twenty-five (25) years;
- (i) in the case of Member Lands, authorize a Member to grant, transfer, assign, renew, or extend an Interest or Licence, if the total term, including any renewal or extension, exceeds seventy-five (75) years; and
- (j) approve of enacting a draft Land Law or deciding on any other Lands matter within the authority of Council, where a quorum of Council has a conflict of interest and a Vote of the Members is required under this *Land Code*.

#### **Part VII: Protection of Land**

Reserve Lands under Land Code are protected against expropriation by the provincial government and against most types of federal expropriation. However, Sqwá may pass Laws to expropriate interests in our own Reserve Lands, as a last resort, for community purposes. Such Laws are required to include good faith attempts at negotiations, a fair process, formal community consultations, compensation and a dispute resolution process.

Subject to full membership approval and other strict standards, Sqwá Reserve Land may also be exchanged for new Reserve Lands of greater value.

#### **Part VII: Conflicts of Interest**

This Part establishes strict rules to prevent conflict of interest for Council members, committee members, employees and land management officials. The basic requirement is that if such persons or their immediate family have a financial or other interest in a matter being dealt with, they are required to disclose the nature of that interest and refrain from participating in the decision-making process. Immediate family includes parents, siblings, children, step-children, dependents, spouses and other family members.

A person is not in a conflict of interest if their interest is shared generally with other Sqwá Members.

There are alternative measures if a quorum of a Committee or Council are conflicted out. In the extreme, a matter can go to a community vote if too many Council members are in conflict.

There are also significant penalties if someone fails to follow the rules and participates in a conflict of interest situation. They can be ordered to re-pay money or pay penalties or they can be removed from their position.

### **PART IX: Financial Management**

This Part sets strict measures for the management of moneys related to Sqwá Reserve Land, including record keeping, bank accounts, designation of signing officers, audits and reporting to the members. Anyone dealing with land revenues must be trained and accountable. Land revenues can only be spent in compliance with a budget approved by Council. Auditor's reports and the annual report on First Nation Land management must be made available to members.

### **Part X: Interests and Licenses in Land**

No interest or licence in Sqwá Reserve Land can be created or granted or be enforced after the Land Code comes into effect unless it is registered or recorded in the Lands Registry. All documents proposed to be registered or recorded in the Lands Register (located in Ottawa) must first be submitted to the Sqwá Lands Office for review.

This Part ensures that the Land Code is the only mechanism for the creation, granting and disposition of interests and licences in Sqwá Reserve Lands. Council can pass Laws for creating, granting and disposition of interests and licences and setting the standards for such interests and licences, based on the community processes described above and consultation with the Lands Committee.

Non-Members will not be allowed to hold Certificate of Possession lands but could possibly hold leases.

Members will be able to hold Member Only land interests, which could include Certificates of Possession or other interests. We will work with Members and the Lands Advisory Committee on options for Members to hold lands and the degree to which Members will be able to get mortgages.

Interests or licences existing at the time the Land Code is enacted will continue to be in effect but will be administered by Sqwá rather than the Department of Indian Affairs and will be regulated by Sqwá laws.

The Land Code limits the liability of Sqwá from civil suits brought by anyone with a right of access to reserve land. It preserves the ability to control trespass by persons who reside, enter or use reserve lands without authority.

If the Land Code is passed, we will work on a Development Law. However, the Land Code sets out that no development will be able to take place without a development permit.

**PART XI: Residency, Access and Trespass**

This part states that Sqwá Reserve lands are mainly intended for Members and that anyone on our Reserves without a right of access is a trespasser. Trespassers can be removed and fined.

**PART XII: Dispute Resolution**

This Part states a preference for disputes relating to Reserve lands to be resolved through informal or cultural processes. Council may pass laws setting out more detailed processes or people may take issues to the courts if necessary.

**PART XIII: Other Matters**

This Part establishes liability projection and requirements for liability insurance to cover the Sqwá First Nation and its representatives and employees when they are acting in good faith. It also sets out the procedure for future amendment of the Land Code.

It enables offences against the Land Code or Laws under it to be prosecuted as summary conviction offences. The Land Code and Laws will be enforced in the Provincial Court system or alternatively, Sqwá may pass Laws to appoint justices of the peace.

Council may make minor amendments to the Land Code but major amendments require a community vote.

Finally, the Land Code will come into effect after ratification by community vote and after Canada has signed the related Individual Agreement. Ratification.